

## **Settlement and Release of Claims**

This Settlement and Release of Claims Agreement ("Agreement") is made and entered into by and between The Port of Tacoma ("the Port") and Sound Mattress & Felt Company ("Sound Mattress"), (collectively referred to as the "Parties").

### **Recitals**

A. Whereas, the Port has incurred and will continue to incur remedial action costs pursuant to the Washington Model Toxics Control Act, RCW 70.105D ("MTCA"), in remediating hazardous substances under the oversight of the Washington Department of Ecology ("Ecology") at the Former Sound Mattress & Felt Co. Site in Tacoma, Washington (as more particularly defined below) ("Site").

B. Whereas, the Port acquired portions of the Site from Sound Mattress in 2006 pursuant to the October 27, 2006 Purchase and Sale Agreement ("PSA") entered into by the Parties.

C. Whereas, Sound Mattress acquired portions of the Site from Washington Steel Products, Inc. or its successor in 1964. Washington Steel Products conducted various industrial processes related to the metal fabrication industry at the Site from approximately 1947 to 1964, during which time hazardous substances are alleged to have been released into the environment at the Site.

D. Whereas the PSA stated that "Buyer shall have no liability for hazardous waste or materials present on the Property or on any surrounding properties prior to the Closing." The PSA further provided that Sound Mattress would defend and indemnify the Port up to the amount Sound Mattress "is able to obtain under [its] insurance policies", from liability for hazardous substances released on or near the Property prior to closing.

E. Whereas the Port made demand upon Sound Mattress to remediate contamination on the Site, and Sound Mattress has not yet completed that remediation resulting in disputes between the Parties.

F. Whereas the Port undertook remediation of certain hazardous substances on the Site which were present on the Property prior to closing, and allegedly incurred substantial costs in doing so for which it made demand upon Sound Mattress, but for which Sound Mattress denies liability resulting in disputes between the Parties.



G. Whereas the Port and Sound Mattress dispute each other's allegations and claims, and the Port commenced a lawsuit known as the *Port of Tacoma v. Sound Mattress & felt Co., et al.*, Pierce County Civil Cause Number 16-2-08637-9 (the "Lawsuit"), in which the Port brought claims against Sound Mattress for MTCA statutory contribution under RCW 70.105D.080, and declaratory judgment and breach of contract claims pursuant to the indemnity agreement in the PSA, and in which Sound Mattress counterclaimed against the Port for MTCA statutory contribution under RCW 70.105D.080. In the same Lawsuit, both Sound Mattress and the Port asserted MTCA statutory contribution claims against third-party Wyeth as successor-in-interest to Washington Steel Products, Inc.

H. Whereas the Parties seek to resolve their disputes without further litigation.

NOW, THEREFORE, in consideration of the promises, releases, and covenants contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, the Parties mutually agree as follows:

### **Terms and Conditions**

**1. Definitions.** For purposes of this Agreement, the following definitions apply:

1.1 "Claim(s)" is defined as any and all federal, state, and common law claims, cross-claims, counterclaims, demands, suits, actions, administrative proceedings, Potentially Responsible Party or Potentially Liable Party letters, notices of responsibility, requests for relief, penalties, fines, obligations, judgments, settlements, expenditures, damages, Natural Resource Damages, costs (including attorneys' fees), causes of action, and any other assertion or allegation of liability and/or responsibility of any kind or nature, legal or equitable, actual, potential, threatened, or alleged, fixed or contingent, matured or unmatured, liquidated or unliquidated, direct or consequential, foreseen or unforeseen, past, present, or future, and known or unknown arising out of the Site (as defined below).

1.2 "Claim Bar Order" is an order entered in the Lawsuit barring any and all claims by Wyeth against Sound Mattress arising out of the Released Environmental Claims and the facts upon which the Lawsuit is based.

1.3 "Sound Mattress" and "the Port" are defined to include, where applicable, their respective commissioners, officers, directors, principals, affiliates, divisions, members, shareholders, employees, attorneys, agents, insurers, independent contractors, representatives, parent corporations, subsidiaries, predecessors, successors, transferees, and assigns.



1.4 "Effective Date" is defined as the date upon which the last Party signs this Agreement.

1.5 "Hazardous Substances" is as defined under RCW 70.105D.020(13).

1.6 "Payment" shall mean the receipt of the Settlement Amount by the Port's bank.

1.7 "Released Environmental Claims" means any and all Claims that arise out of, or are in any way connected with or related to Hazardous Substances at, under, or migrating from the Site in the past, present, or future, including but not limited to claims sounding in contract, tort, or statute, or regulation, known or unknown, and past or present.

1.8 "Site" is further defined as the Sound Mattress & Felt Co. Site in Tacoma, Washington, Ecology Facility Site ID No. 1232087, as that site is defined by Ecology, which includes the property located at 1940 East Eleventh Street, Tacoma, Washington.

**2. Settlement Amount and Payment.** Sound Mattress will pay the Port the lump sum amount of \$3.4 million ("Settlement Amount") by wire transfer or check within forty-five (45) days of the entry of the Claim Bar Order (as described below).

**3. Claim Bar Order.** As discussed below, the Port's agreement to defend and indemnify Sound Mattress, and the Port's agreement to release and dismiss its claims against Sound Mattress in the Lawsuit, are both expressly conditioned upon the entry of a Claim Bar Order. The Port and Sound Mattress agree to cooperate in the preparation and joint presentation for entry of such an order. Said order will be presented for entry within three weeks of the Effective Date of this Agreement.

**4. Mutual Release and Dismissal of Claims by the Port and Sound Mattress.** Upon the entry of a Claim Bar Order and the Payment of the Settlement Amount, the Port and Sound Mattress each fully release and discharge each other with respect to all Released Environmental Claims. After the entry of a Claim Bar Order and within three weeks of the Payment of the Settlement Amount, the Port and Sound Mattress will take the steps necessary to dismiss with prejudice their claims and defenses against each other in the Lawsuit.

**5. Indemnity.** Upon the entry of a Claim Bar Order and the Payment of the Settlement Amount, the Port agrees that it will defend and indemnify Sound Mattress from and against any and all third-party MTCA statutory contribution claims related to hazardous substances at, under, or migrating from the Site in the past, present, or future



and/or relating to the PSA, but only such claims arising out of the Released Environmental Claims or the facts upon which the Lawsuit is based, and provided that Sound Mattress tenders such defense and indemnity to the Port within thirty (30) days of discovering or becoming aware of any claims to which this indemnity applies, and provided that Sound Mattress reasonably cooperates with the Port in the defense of the claims. The Port shall have sole discretion in defending and settling such claims. Sound Mattress will not pursue any Claims or contribution for any Claims against anyone relating to the third-party MTCA statutory contribution claims that are subject to the defense and indemnity promise in this Paragraph without prior approval of the Port.

**6. Pacific Crest.** Sound Mattress will cause its consultant for the Site, Pacific Crest, to provide the Port within three weeks of the entry of a Claim Bar Order, working copies in native files of all of Pacific Crest's data and work product for the Site to include without limitation its CAD files, GIS files, Database files, Word and Excel files. The Parties agree that the Port shall have access to Bill Carroll of Pacific Crest to ask follow-up questions provided that the Port is responsible for payment of Pacific Crest's bills in conjunction with providing that assistance. Sound Mattress agrees that it will assert no work product claims over these materials and will not seek to prohibit the Port from consulting Mr. Carroll.

**7. Notice.** Any notice, consent, request, report, demand, or other document required to be given to the Parties shall be in writing and be delivered to or mailed to the receiving Parties at the following addresses:

**The Port:**

Rob Healy  
Environmental and Planning Director  
Port of Tacoma  
One Sitcum Plaza  
Tacoma, Washington 98401  
rhealy@portoftacoma.com  
253-830-5321

with a copy to:

Carolyn Lake  
Goodstein Law Group PLLC  
501 South G Street  
Tacoma, WA 98405

Mark Nadler  
The Nadler Law Group PLLC  
720 Third Avenue, Suite 1400  
Seattle, Washington 98104  
mnadler@nadlerlawgroup.com  
206-621-1433

**Sound Mattress:**

Robert Shea  
Managing Partner  
Sound Mattress & Felt Company  
7424 Bridgeport Way West, Suite 313  
Lakewood, WA 98499

with a copy to:

Blake Marks-Dias  
Corr Cronin Michelson Baumgardner Fogg & Moore LLP  
1001 Fourth Avenue, Suite 3900  
Seattle, Washington 98154  
bmarksdias@corrchronin.com  
206-625-8600

**8. Modifications.** This Agreement contains the entire understanding of the Parties with respect to the specific matters set forth herein. Any change, amendment, or alteration to this Agreement must be approved by the Port of Tacoma Commission, be in writing and signed by both Parties to be effective. Each Party warrants that it is not relying on any other representations, whether written or oral, in entering into this Agreement other than those set forth in this Agreement.

**9. No Admissions.** Nothing contained in this Agreement shall be construed as an admission of any fact or liability of either Party to this Agreement. Pursuant to federal and state rules of evidence, this Agreement shall not be admissible in any court or administrative proceeding as evidence of responsibility or liability of any Party with regard to any Hazardous Substances at any location. This Agreement is admissible, however, in any action to enforce the terms and conditions of this Agreement. No actions taken pursuant to this Agreement shall be construed as an admission of liability or equitable responsibility for the presence of any Hazardous Substances at any location. This Agreement shall not be cited as precedent for any other site.



**10. Assignment of Claims.** Effective upon entry of the Claim Bar Order, Sound Mattress assigns to the Port all Claims Sound Mattress asserted or could have asserted against Wyeth in the Lawsuit. Except with respect to the foregoing, each Party hereto represents and warrants that it has not and will not in the future assign, transfer or grant, or purport to assign, transfer, or grant, any of the claims, cross-claims, demands, suits, actions, damages, costs, or causes of action disposed of by this Agreement; provided, however, that this Paragraph shall not prohibit an assignment by a Party made by merger, consolidation, or operation of law, or to Party's successor-in-interest.

**11. Third Parties.** This Agreement is not intended for the benefit of any third party and is not enforceable by any third party, including, but not limited to, federal, state, and local regulatory agencies.

**12. Attorney Fees and Costs.** Except as otherwise stated herein, the Parties shall bear their own attorneys' fees and independent consultants' costs incurred in connection with the negotiation of this Agreement. In any action brought to enforce the terms of this Agreement, the Parties shall bear their own attorneys' fees and consultants' costs incurred therein.

**13. Governing Law and Venue.** This Agreement shall be interpreted and enforced pursuant to the laws of the state of Washington. Venue for any lawsuit arising out of this Agreement shall be in Pierce County, Washington.

**14. Execution.** This Agreement shall be executed in two originals.

**15. Headings.** The headings used in this Agreement have been inserted for convenience only and shall not affect the construction of this Agreement.

**16. Construction.** This Agreement or any portion thereof shall not be construed against one Party or the other as drafter but shall be construed as if drafted by the Parties.

**17. Authorized to Execute.** Each person executing this Agreement represents and warrants that he or she is fully authorized to execute this Agreement on behalf of the Party he or she represents, and in the case of the Port of Tacoma, that to be effective the Agreement shall be approved by Port of Tacoma Commission in public session with authorization to execute delegated to the Port of Tacoma CEO which approval was given on \_\_\_\_\_.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**THE PORT OF TACOMA**

By: \_\_\_\_\_

Printed Name: John Wolfe

Title: Port of Tacoma CEO

Date: \_\_\_\_\_

**SOUND MATTRESS & FELT CO.**

By: Robert T. Shea

Printed Name: Robert T. Shea

Title: President

Date: 5-2-2018