



WHEREAS, Class Representatives moved the Court to certify a class action comprised of two classes for purposes of this Action, a property damage class and a health effects class;

WHEREAS, Defendants opposed Class Representatives' motion for class certification;

WHEREAS, Class Representatives' motion for class certification, and Defendants' opposition, are pending before the Court;

WHEREAS, the Parties have engaged in extensive motion practice and discovery;

WHEREAS, Defendants have denied all liability with respect to all claims, including the assertion that this Action should be certified as a class action;

WHEREAS, Class Representatives and Defendants now seek to resolve the claims that are raised in or could have been raised in the Action as further provided herein, and they have agreed to the terms of this Agreement; and

WHEREAS, the Parties agree that this Agreement has been negotiated at arms' length and in good faith, and that settlement will avoid the expense, inconvenience, and uncertainty of continued litigation;

NOW, THEREFORE, IT IS AGREED by the undersigned Class Representatives on behalf of the Settlement Class that the Action be settled and dismissed with prejudice as set forth herein, subject to Court approval under Federal Rule of Civil Procedure 23, on the following terms and conditions:

### **DEFINITIONS**

1. The following definitions are applicable to this Agreement. Definitions contained elsewhere in this Agreement shall also be effective.
  - a. "Action" means the two lawsuits consolidated under the caption above, including the lawsuits pending as Civil Action No. 0:21-cv-01480-SAL (D.S.C.) and 0:21-cv-01704-SAL.

- b. “Agreement” means this Class Action Settlement Agreement and Release and all exhibits hereto.
- c. “Attorneys’ Fees” mean all fees for services, exclusive of Costs and Expenses, that Plaintiffs’ counsel claim or could claim they are entitled to in connection with their investigation into, development of, litigation of, and settlement of this Action. For purposes of this Agreement, Attorneys’ Fees shall not include any fees in connection with the CWA/RCRA Action, the Intervention Action, and the PSD Action.
- d. “Bar Date” means the deadline by which Class Members must register to participate in the claims process pursuant to this Agreement as described in Paragraph 19.
- e. “Claims Adjudicator” means the third party or parties selected by the Plaintiffs and approved by the Court to adjudicate the claims made by the Participating Class Members.
- f. “Claims Administrator” means the third party selected by the Plaintiffs, consented to by the Defendants, and approved by the Court to administer the QSF (as defined in Paragraph 7) and the claims process in accordance with this Agreement.
- g. “Class Members” means those Persons who are part of the Settlement Class, and “Class Member” means any one such Person.
- h. “Class Period” means January 31, 2021 through and including the Effective Date.
- i. “Class Representatives” mean Kenny N. White, Candice Cherrybone, Shane Nickell, Tracie Nickell, Amanda Swager, Shara Swager, Terri Kennedy, Marty Kennedy, Enrique Lizano, Sansanee Lizano, Melda Gain and Orrin Gain.
- j. “Class Settlement Impact Area” means the area that is geographically bounded by an ERSI shapefile represented by the solid blue line on **Exhibit A**.
- k. “Costs and Expenses” mean any and all costs and expenses (including but not limited to costs and expenses for filing fees, court reporters, expert witnesses, consultants, litigation

support, environmental sampling and analysis, supplies, travel, salaries, overhead, and incidentals) incurred by Class Representatives or Plaintiffs' Counsel in connection with the investigation into, development of, litigation of, settlement of this Action, and implementation of this Agreement.

- l. "Court" means the United States District Court for the District of South Carolina.
- m. "CWA/RCRA Action" means that lawsuit filed and docketed as Civil Action No. 0:23-cv-00602-SAL (D.S.C.).
- n. "Date of Final Approval" means the later of the date of the Court's final approval of this Agreement, the date of the expiration of the time for filing appeals (if no appeals are filed), and, should any appeals be filed, the date on which any and all appeals have been resolved in favor of upholding the final approval of the Agreement, including the expiration of the time for reconsideration or further appeals of that favorable resolution.
- o. "Day" means a calendar day unless expressly stated otherwise.
- p. "Defendants" means New-Indy Catawba LLC, a limited liability company organized under the laws of Delaware with its principal place of business in Catawba, South Carolina, and New-Indy Containerboard LLC, a limited liability company organized under the laws of Delaware with its principal place of business in Ontario, California
- q. "Effective Date" has the meaning provided in Paragraph 36.
- r. "Facility" means the pulp and paper mill located at 5300 Cureton Ferry Rd, Catawba, SC 29704
- s. "Final Approval" means a Court order, written or verbal, granting final approval of this Agreement under Federal Rule of Civil Procedure 23.
- t. "Final Approval Hearing" means the hearing, also known as a fairness hearing, at which the Court will consider the Parties' motion for final approval of this Agreement and will

hear any objections to this Agreement.

- u. “Intervention Action” means the lawsuit filed and docketed as Civil Action No. 22-cv-02366-SAL (D.S.C.) and currently on appeal to the United States Court of Appeals for the Fourth Circuit as Appeal No. 23-1052.
- v. “Notice of Objection” means a Class Member’s valid and timely written objection to this Agreement.
- w. “Notice” means the Notice to be provided to all Class Members as described in Paragraph 13 and attached hereto as **Exhibit B**.
- x. “Participating Class Members” means Class Representatives and all Class Members who do not submit a timely and valid Request for Exclusion on or prior to the Response Deadline.
- y. “Parties” means Class Representatives and Defendants, and a “Party” means any Class Representative or Defendant.
- z. “Person” means any individual or legal entity.
- aa. “Plaintiffs” means the Class Representatives as individuals and all others similarly situated as alleged in the Second Amended Complaint and shall be construed to include the Settlement Class.
- bb. “Plaintiffs’ Counsel” means Chase T. Brockstedt and Philip C. Federico of Baird Mandalas Brockstedt & Federico, Richard A. Harpootlian of Richard A. Harpootlian Law Firm, P.A., and T. David Hoyle of Motley Rice LLC.
- cc. “Preliminary Approval” means a Court order, written or verbal, granting preliminary approval of this Agreement pursuant to a Motion for Preliminary Approval.
- dd. “PSD Action” means the lawsuit filed and docketed as Civil Action No. 0:22-cv-02366-SAL (D.S.C.) and currently on appeal to the United States Court of Appeals for the

Fourth Circuit as Appeal No.: 23-1988.

- ee. “Qualified Settlement Fund” or “QSF” means a fund established for the benefit of the Settlement Class as described in Paragraph 7.
- ff. “Released Claims” means all allegations and claims of any kind, known or unknown, whether pursuant to federal, state, or local statutory law, common law, regulations, or other law that Plaintiffs made or could have made against any Releasee that arose, directly or indirectly, from or relate to (a) the matters alleged or that could have been alleged in the Action related to acts or harm during the Class Period; (b) Attorneys’ Fees and Costs and Expenses in the Action.
- gg. “Releasees” means Defendants, their successors, assigns, parent, subsidiaries, and affiliates, as well as each of their respective employees, representatives, officers, directors, shareholders, owners, agents, and attorneys, and “Releasee” means any one of the above.
- hh. “Request for Exclusion” means a timely and valid letter submitted by a Class Member indicating a request to be excluded (i.e., to opt-out) from the Agreement.
- ii. “Response Deadline” means the deadline by which Class Members must postmark or otherwise submit Requests for Exclusion or Notices of Objection.
- jj. “Settlement Amount” means the total amount of \$18.0 million dollars (USD) inclusive of all Attorneys’ Fees, Costs and Expenses, pre- and post-judgment interest, and any other expenses incurred, or to be incurred, by Plaintiffs, Plaintiffs’ counsel, the QSF, the Claims Administrator, and Claims Adjudicator, and claims of any other kind related to the Action.
- kk. “Settlement Class” shall have the meaning set forth in Paragraph 2.

## SETTLEMENT CLASS

2. Definition of the Settlement Class. The Parties shall propose to the Court that the following Settlement Class be certified for purposes of this Settlement:

All Persons who meet any of the following criteria:

- (a) during the period from January 31, 2021, until September 11, 2021, owned a single-family home located in whole or part within the Class Settlement Impact Area; or
- (b) spouses or children of those who, during the period from January 31, 2021, until September 11, 2021, owned a single-family home located in whole or in part within the Class Settlement Impact Area, and resided at that home for at least 30 days between January 31, 2021, until September 11, 2021; or
- (c) retained the representation of any one of Plaintiffs' Counsel in connection with alleged emissions from the Facility on or before April 25, 2024, as set forth on the list attached as **Exhibit B**.

3. Exclusions from the Settlement Class. The following Persons are excluded from the Settlement Class: (1) Defendants; (2) any entity in which Defendants have a controlling interest; (3) any Person with an ownership interest in Defendants; (4) any current or former officer or director of Defendants; (5) any current or former employee of any Defendant with respect to any potential exposure during their employment by such Defendant; (6) Persons who have entered into separate settlement agreements with any Defendant related to claims similar to those claims made in the Action; and (7) the legal representatives, successors, or assigns of Defendants.
4. Effect of Agreement to Settlement Class Certification. The Parties agree that certification of the Settlement Class is for settlement purposes only. Should the Court deny Preliminary Approval or

Final Approval of the Settlement Class, or should any Preliminary Approval or Final Approval be reversed on appeal, the Parties' agreement herein to class certification shall immediately be revoked without any further action required. The Parties agree that their stipulation and agreement to class certification for purposes of this Agreement shall not be admissible in, or considered in connection with, the issue of whether a class should be certified in a contested or other non-settlement context in this Action, or in any other matter filed or to be filed. Plaintiffs furthermore expressly waive the right to argue that Defendants have waived, forfeited, or are otherwise estopped or precluded from opposing class certification based on any statements made in connection with this Agreement.

#### **PRELIMINARY APPROVAL**

5. Motion for Preliminary Approval. No later than seven (7) days after the Effective Date of this Agreement, Plaintiffs shall file with the Court a Motion for Preliminary Approval which shall seek entry of an order that would, for settlement purposes only: (a) preliminarily certify the Settlement Class under Federal Rule of Civil Procedure 23; (b) preliminarily approve this Agreement as fair, reasonable, and adequate; (c) approve the Notice Plan, as described in Paragraph 13 and attached hereto as **Exhibit C**; and (d) seek other relief as agreed by the Parties. Defendants shall join the Motion for Preliminary Approval for settlement purposes only but, in doing so, Defendants do not make any admission of fact, law, or liability. The Motion for Preliminary Approval shall disclose the existence of the agreements settling the CWA/RCRA Action, the Intervention Action, and the PSD Action, a summary of the agreed-upon remedial actions, and the agreed-upon value of all remedial actions made in connection with resolution of the CWA/RCRA Action, the Intervention Action, and the PSD Action (\$85,000,000.00).



### QUALIFIED SETTLEMENT FUND

6. Establishment of Settlement Fund. Defendants agree to pay the Settlement Amount according to the following schedule: 28.57% shall be paid within five (5) days of Preliminary Approval; 28.57% shall be paid on the one-year anniversary of Preliminary Approval; and 42.86% shall be paid on the two-year anniversary of Preliminary Approval. Defendants shall deposit the sums due into an account established and administered by the Settlement Administrator at a financial institution agreed upon by the Settlement Administrator, Defendants, and Class Counsel. The Settlement Administrator shall provide wiring instructions and a properly completed and duly executed IRS Form W-9 to Defendants as soon as practical after the entry of the Preliminary Approval Order. Following Defendants' payment of the entirety of the Settlement Amount, Defendants shall have no responsibility, financial obligation, or liability whatsoever with respect to the selection of the settlement fund account, investment of settlement fund account funds, payment of federal, state, and local income, employment, unemployment, excise, and any other taxes or tax-related expenses imposed on the Settlement Fund account or its distributions, or payment of the administrative, legal, accounting, or other costs occasioned by the use or administration of the QSF.
7. Qualified Settlement Fund. The Parties agree that the QSF is intended to be maintained as a qualified settlement fund within the meaning of Treasury Regulation § 1.468 B-1, and that the Settlement Administrator, within the meaning of Treasury Regulation § 1.468 B-2(k)(3), shall be responsible for filing tax returns and any other tax reporting for or in respect of the QSF and paying from the QSF taxes and tax-related expenses owed with respect to the QSF. The Parties agree that the QSF shall be treated as a qualified settlement fund from the earliest date possible and agree to any relation-back election required to treat the QSF as a qualified settlement fund from the earliest date possible. Any and all funds held in the QSF shall be held in an interest-bearing account insured by the Federal Deposit Insurance Corporation. Funds may be placed in

a non-interest bearing account as may be reasonably necessary during the check clearing process. The Settlement Administrator shall provide an accounting of any and all funds in the QSF, including any interest accrued thereon and payments made pursuant to this Agreement, upon request of any of the Parties.

8. In the event that the Court denies Preliminary Approval or Final Approval, or should any Preliminary Approval or Final Approval be reversed on appeal, the Claims Administrator shall cause all funds in the QSF to be returned to Defendants (in a manner prescribed by Defendants) within 7 days.
9. Settlement Amount Not Considered Punitive Damages. The Parties agree that no amount of the Settlement Amount shall be considered punitive damages.
10. Claims Administrator. The Parties agree that the QSF shall be administered by the Claims Administrator selected by Plaintiffs, agreed to by Defendants, and approved by the Court.

#### **ATTORNEYS' FEES AND COSTS AND EXPENSES**

11. Attorneys' Fees and Costs and Expenses. Plaintiffs' Counsel may seek Court approval for: (a) the payment of Attorneys' Fees in an amount of up to 20% of the Settlement Amount; and (b) Costs and Expenses not to exceed \$4.5 million. The Parties agree that the requested Attorneys' Fees and Costs and Expenses shall not include the payment of fees for, or the reimbursement of costs and expenses incurred in, the CWA/RCRA Action, the Intervention Action, and the PSD Action. The Parties agree that Attorneys' Fees and Costs and Expenses approved by the Court shall be paid solely from the QSF. Defendants take no position on the application for Attorneys' Fees or Costs and Expenses.

#### **CLASS NOTICE AND DEADLINES**

12. Notice to Class Members. As soon as practicable after Preliminary Approval, the Claims Administrator will provide Notice in accordance with the Notice Plan attached hereto as **Exhibit**

**C.**

13. Contents of Notice. All known Class Members shall be mailed a Notice in substantially the form as included within **Exhibit C**, subject to Court approval. Such Notice includes, among other information: (a) information regarding the nature of the Action; (b) a summary of the Agreement's principal terms; (c) the Settlement Class definition; (d) a general description of the claims adjudication and allocation process; (e) the dates that constitute the Class Period; (f) instructions on how to submit Requests for Exclusion or Notices of Objection; (g) the Response Deadline by which the Class Member must postmark or submit electronically Requests for Exclusion or Notices of Objections; (h) the claims to be released; and (i) the date of the Final Approval Hearing.
14. Request for Exclusion. Any Class Member wishing to opt out from the Settlement Class, other than Class Representatives, must sign and postmark or submit electronically a written Request for Exclusion to the Claims Administrator within the Response Deadline. In the case of Requests for Exclusion that are mailed to the Claims Administrator, the postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely submitted. In the case of Requests for Exclusion that are submitted electronically, the electronic time stamp (i.e., date and time received) on the electronic mail, as received by the Claims Administrator, shall be the exclusive means to determine whether a Request for Exclusion has been timely submitted. A Request for Exclusion whose timeliness cannot be ascertained shall be considered untimely. Class Members who fail to submit a timely Request for Exclusion shall be considered Participating Class Members and shall be deemed to have waived all rights to opt out of the Agreement and shall be foreclosed from pursuing separate claims against the Defendants in this Action or any other proceeding. The Class Representatives agree that they shall not make a Request for Exclusion.
15. Time and Method of Filing Notice of Objection. To object to the Agreement, a Class Member must postmark a Notice of Objection to the following three addresses on or before the Response

Deadline:

<b>Clerk of the Court</b>	<b>Class Counsel Designee</b>	<b>Defendants' Counsel Designee</b>
Robin L. Blume Clerk of Court United States District Court 901 Richland Street Columbia, SC 29201	T. David Hoyle Motley Rice LLC 28 Bridgeside Blvd. Mount Pleasant, SC 29464	Scott T. Schutte Morgan, Lewis & Bockius LLP 110 North Wacker Drive, Suite 2800 Chicago, IL 60606-1511

16. The Notice of Objection must be signed by the Class Member and state the reasons for the objection. In the case of Notices of Objection that are mailed to the Claims Administrator, the postmark date shall be the exclusive means to determine whether a Notice of Objection has been timely submitted. A Notice of Objection whose timeliness cannot be ascertained shall be considered untimely. Class Members who fail to submit a timely Notice of Objection in the manner specified above shall be deemed to have waived all objections to the Agreement and will be foreclosed from making any objections, whether by appeal or otherwise, to the Agreement. Class Members who timely submit Notices of Objection shall have a right to appear at the Final Approval Hearing in the manner prescribed by the Court in order to have their objections heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to submit written objections to the Agreement or appeal from the Final Approval of the Agreement.

17. Notice of Objection. Any objection to the Agreement, including any of its terms or provisions, by a purported Class Member must set forth the following: (a) the Objector's full name; (b) the Objector's mailing address and place of residence, if different; (c) proof that the Objector is a Class Member (which may be satisfied by proof of the Objector's residence address being within the Class Settlement Impact Area during the Class Period); (d) the grounds for the objections and any documents supporting those objections; (e) whether the Objector is represented by separate

legal counsel; and (f) whether the Objector or his/her counsel intends to appear before the Court at the Final Approval Hearing in the manner prescribed by the Court.

18. Reports Regarding Requests for Exclusion. The Claims Administrator shall provide the Parties' counsel with a weekly report regarding the number of Class Members who have submitted valid Requests for Exclusion. The Claims Administrator shall provide the Parties' counsel a final report within 7 days after the Response Deadline.
19. Bar Date for Registration. The Notice shall provide a Bar Date by which Class Members who wish to participate in the claims process must register; provided that some of the Settlement Amount shall be segregated for Class Members who, in the sole discretion of the Claims Adjudicator, are determined to have good cause for late registration.

### **CLAIMS PROCESS**

20. Individual Settlement Payment Adjudications. The Parties agree that the payments to qualifying Participating Class Members shall be determined by the Claims Adjudicator. The claims process shall include consideration of all of the Participating Class Members' claims for damages, including but not limited to personal injuries for air and/or property damages, nuisance, negligence, gross negligence, recklessness, and/or negligence per se.
21. No payments shall be made from the QSF prior to the Date of Final Approval without the written consent of Defendants.
22. Claims Administration and Adjudication Costs. All administrative costs for the administration and allocation of the QSF, including but not limited to the cost of the QSF, the Claims Administrator, the Claims Adjudicator, lien resolution, and any court-approved administrators, trustees, allocators, or other personnel and the costs of providing notices to, and other communications with, the Settlement Class as described below, shall be paid from the QSF. Plaintiffs will not seek any further fees, costs, or other expenses from Defendants, and Defendants

shall have no responsibility or liability for the administration or costs of the QSF or to provide any further funding to the QSF.

23. Any and All Other Costs. The Parties agree that each Party will bear any other fees, costs, or other expenses associated with this Action and the execution of this Agreement that they have incurred or may incur.
24. Agreement Binds All Participating Class Members. Any Class Member who does not affirmatively opt out of the Settlement Class by submitting a timely and valid Request for Exclusion pursuant to Paragraph 14 shall be bound by all of the terms of this Agreement, including those pertaining to the Released Claims, as well as any judgment that may be entered by the Court if it grants Final Approval.
25. Medicare Addendum and Liens. In the absence of an agreement as set forth in Paragraph 26 below, any Participating Class Member who is a Medicare recipient or who is Medicare eligible and who receives compensation for personal injury damages pursuant to the claims process pursuant to this Agreement shall be required to execute a Medicare Addendum in substantially the form set forth in **Exhibit D**. Such Participating Class Member shall be responsible for any liens or reimbursement rights by any hospital, ambulance service, or other medical provider, Medicare, Medicaid, insurance company, or attorney enforceable against the proceeds of this settlement or against the Releasees, their insurers or the persons, firms, or corporations making the payment herein. If such a lien or reimbursement right is asserted against the proceeds herein or against Releasees, their insurers, or any person, firm, or corporation making payment herein, then, in consideration of the damages payment made such Participating Class Member covenants: (i) to obtain a release of such asserted lien or reimbursement right; (ii) to pay and satisfy, including on a compromise basis, such asserted lien or reimbursement right; and (iii) to obtain a written release of Releasee, their insurers, and the persons, firms or corporations making the damages payment

herein or, alternatively, agree to indemnify and hold harmless said parties from any costs, expenses, attorney's fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement right by any entity having such lien or reimbursement right. Any Participating Class Member who receives compensation for personal injury damages pursuant to the claims process pursuant to this Agreement but does not execute the Medicare Addendum in substantially the form set forth in **Exhibit D**, represents that such Participating Class Member is not a Medicare recipient and/or is not Medicare eligible. Defendants shall have no responsibility with respect to any obligations set out in this Paragraph, Paragraphs 26 and 27.

26. As an alternative to Paragraph 25 above, the Parties may agree upon an alternative approach, such as the use of a lien resolution administrator that is responsible for (a) identifying all potential Medicare liens for each Participating Class Member; (b) causing lienholders to be reimbursed for any injury-related medical expenses paid in connection with the events underlying the Released Claims; and (c) ensuring that all asserted liens are fully and finally released before settlement funds are disbursed to Participating Class Members.

27. No Set Aside Required. The Parties recognize that Medicare is a secondary payor and do not intend to shift to Medicare the burden of paying for the past and/or future medical care allegedly caused by the actions of Defendants. This Agreement is based upon a good faith resolution of a disputed claim. The Parties made every reasonable effort to adequately protect Medicare's interest and incorporate such into the settlement terms and to comply with both federal and state law. The future medical needs of the Participating Class Members and their Medicare status shall be considered by the Claims Adjudicator. Based upon these considerations, the Parties have concluded that no set aside or similar arrangement should be established.

28. Administration of Taxes. The Claims Administrator shall be responsible for issuing to Plaintiffs, Participating Class Members, and Plaintiffs' Counsel IRS Forms 1099-MISC or any other tax

forms as may be required by law for all amounts paid pursuant to this Agreement.

29. Tax Liability. Defendants make no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiffs and Participating Class Members are not relying on any statement, representation, or calculation by Defendants or by the Claims Administrator in this regard.
30. Unredeemed Individual Settlement Payment Checks. Individual Settlement Payment checks returned as undeliverable or remaining unredeemed for more than 180 days after issuance shall be allocated to Participating Class Members at the discretion of the Claims Adjudicator.

#### **FINAL APPROVAL**

31. Final Approval Hearing and Final Approval. The Notice shall provide the date for the Final Approval Hearing. Plaintiffs' Counsel shall be responsible for drafting all documents and making all arrangements required by the Court that are necessary to obtain Final Approval, subject to an opportunity for Defendants to review and revise such documents, to the extent such documents are to be filed jointly or by consent. Plaintiffs' Counsel shall also be responsible for drafting the Attorneys' Fees and Costs and Expenses application to be heard by the Court.
32. Continued Jurisdiction. Upon Final Approval, the Court shall retain continuing jurisdiction solely for purposes of addressing (a) the interpretation and enforcement of the terms of the Agreement, (b) administrative matters, and (c) such other matters as may be appropriate under Court rules or as set forth in this Agreement. Provided, however, that there shall be no right to review of decisions of the Claims Adjudicator by this Court.
33. Certificate of Completion. Upon completion of the administration of the QSF, the Claims Administrator shall provide a written declaration under oath to certify such completion to the Court and to counsel for all Parties.



### **RELEASE AND OTHER OBLIGATIONS**

34. Release. In consideration of and in exchange for the terms and conditions of this Agreement, the Participating Class Members fully and forever release the Releasees from the Released Claims. With respect to the Released Claims, the Participating Class Members expressly waive all rights they may have with respect to the subject matter of the Released Claims.

### **TERMINATION**

35. Termination of Agreement. In the event that (a) the Court does not order Final Approval; (b) Final Approval is not upheld on appeal, if any appeals are filed; or (c) the Agreement does not become final for any other reason, then this Agreement will be null and void. Any order or judgment entered by the Court in furtherance of this Agreement will likewise be treated as void from the beginning.

### **GENERAL TERMS AND CONDITIONS**

36. Effective Date. This Agreement shall become effective once agreed to and executed by all Parties. The effective date of this Agreement shall be the date of the last signature below; provided, however, that the Agreement remains subject to the Preliminary Approval and Final Approval of the Court and the terms and conditions herein.
37. Bound by Agreement. The Parties agree that they intend this Agreement to be fully enforceable and binding on all Parties and that the Agreement shall be admissible and subject to disclosure in any proceeding to enforce its terms.
38. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties.
39. Acknowledgement that Agreement is Fair and Reasonable. The Parties believe this Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Agreement after arm's-length negotiations and in the context of adversarial litigation, taking into account all

relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of the Agreement.

40. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class certification for purposes of this Agreement only, except that (a) Plaintiffs or Plaintiffs' counsel may appeal any reduction to the Attorneys' Fees and Costs and Expenses below the amount they request from the Court but within the amount permitted by Paragraph 11; (b) any Party may appeal any Court order that materially alters the Agreement's terms; and (c) any Party may appeal any decision not to approve the Agreement, in whole or part, or any other decision that is materially adverse to the Agreement and the Parties.
41. Cooperation. The Parties and their counsel shall cooperate with each other and use their best efforts to achieve the implementation of the Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties may seek assistance of the Court to resolve such disagreement.
42. Public Statements Concerning the Agreement. Upon an Order granting Final Approval, the Parties intend to make a joint public statement concerning the Agreement. Other than such joint public statement, the Parties do not intend to make any statements concerning the Settlement without approval of all Parties. To the extent that a Party decides to make a public statement, they will not do so without providing prior written notice to the other Party.
43. Modification. No provision of this Agreement may be modified except by a subsequent writing signed by all of the Parties.
44. Entire Agreement. Except for the settlement of the CWA/RCRA Action, the Intervention Action, and the PSD Action, this Agreement contains the entire agreement between the Parties

on this subject matter. Nothing in this Agreement shall be construed to alter, supersede, amend, or terminate any provision of any other agreement, including but not limited to the settlement of the CWA/RCRA Action, the Intervention Action, and the PSD Action.

45. Construction. Each of the Parties represents that it has been represented by counsel of its choice in the negotiation and drafting of this Agreement. Accordingly, this Agreement shall not be strictly construed against any Party on the ground that the rules for the construction of contracts requires resolution of any ambiguity against the party drafting the document. Each of the Parties further represents that its counsel has completely explained to it the terms of this Agreement, and that it fully understands and voluntarily accepts those terms.
46. Severability. If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.
47. Assignment. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged. This Agreement is not assignable.
48. No Admission. Neither this Agreement nor any of its provisions shall operate or be construed as an indication, inference, presumption, admission, or as evidence relative to any fact, issue of law, issue of liability, or any other matter on the part of any of the Parties. Neither this Agreement nor any action taken pursuant to this Agreement shall be filed or offered or received in evidence in any action or proceeding except, and only to the extent necessary to enforce its terms.
49. Costs of Agreement. The Parties shall bear their own costs, expenses, attorneys' and paralegals' fees, consultants' fees, and other fees incurred in connection with the negotiation of, preparation of, execution of, and compliance with this Agreement.

50. Circumvention. The Parties shall not circumvent their obligations pursuant to this Agreement by seeking to have any third party take any action that the Parties themselves are prohibited from taking.
51. Persons Not Party to this Agreement. The Parties reserve all rights against persons and entities not Parties to this Agreement, and this Agreement shall not be deemed to create any rights whatsoever as a third-party beneficiary or otherwise in any person or entity that is not a Party other than Releasees.
52. Governing Law, Venue, and Jurisdiction. This Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina without reference to its conflicts of law principles. The Parties agree that personal jurisdiction over them shall be proper and the exclusive venues for any action arising out of or related to this Agreement shall be in the Court.
53. Authority. The undersigned representatives of each of the Parties certify that they are authorized to enter into this Agreement and to bind such Party to all of its terms and conditions.
54. Counterparts. This Agreement may be executed in any number of counterparts (whether by email, PDF, or original), each of which will be deemed to be an original and all of which together will constitute the same instrument. In addition, a photocopy, electronic copy, or a tele-facsimile shall be considered the original document, and all persons may rely on the same for all purposes.

In witness thereof, the Class Representatives, on behalf of Plaintiffs, and Defendants have executed this Agreement on the date following each signature below.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

AND IT IS SO AGREED:

DocuSigned by:  
Kenny N. White (L.S.)  
267EF969705943B...

5/24/2024 | 8:47 AM PDT

Kenny N. White

Date

DocuSigned by:  
Candice Cherrybone (L.S.)  
950EBBEB53DF421...

5/24/2024 | 11:39 AM EDT

Candice Cherrybone

Date

DocuSigned by:  
Shane Nickell (L.S.)  
180EE766AC5647C...

5/24/2024 | 6:28 AM CDT

Shane Nickell

Date

DocuSigned by:  
TRACIE NICKELL (L.S.)  
180EE766AC5647C...

5/24/2024 | 8:25 AM CDT

Tracie Nickell

Date

DocuSigned by:  
Amanda Swager (L.S.)  
AC81E2367C844AD...

5/23/2024 | 8:57 PM CDT

Amanda Swager

Date

DocuSigned by:  
Shara Swager (L.S.)  
EE07B99D30A84DB...

5/24/2024 | 5:53 AM PDT

Shara Swager

Date

DocuSigned by:  
Terri Kennedy (L.S.)  
B4B62238E3EF47B...

5/23/2024 | 5:53 PM EDT

Terri Kennedy

Date

DocuSigned by:  
Marty Kennedy (L.S.)  
A584C2B2EE2B418...

5/23/2024 | 5:13 PM EDT

Marty Kennedy

Date

DocuSigned by:  
*Enrique Lizano*  
D88A4F355A3A467... (L.S.)

5/23/2024 | 5:43 PM PDT

Enrique Lizano

Date

DocuSigned by:  
*Sansanee Lizano*  
2E154249883145A... (L.S.)

5/23/2024 | 3:36 PM PDT

Sansanee Lizano

Date

DocuSigned by:  
*Melda Gain*  
3DFE51DA646E43A... (L.S.)

5/23/2024 | 7:39 PM PDT

Melda Gain

Date

DocuSigned by:  
*Orrin Gain*  
3DFE51DA646E43A... (L.S.)

5/23/2024 | 2:36 PM PDT

Orrin Gain

Date

NEW-INDY CATAWBA LLC

*Chris Loach* (L.S.)

May 24, 2024

By: Chris Loach

Date

Title: Mill Manager

NEW-INDY CONTAINERBOARD LLC

\_\_\_\_\_ (L.S.)

\_\_\_\_\_

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

Date

Title: \_\_\_\_\_

NEW-INDY CATAWBA LLC

\_\_\_\_\_  
(L.S.)

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

Title: \_\_\_\_\_

\_\_\_\_\_

Date

NEW-INDY CONTAINERBOARD LLC

  
\_\_\_\_\_  
(L.S.)

By: Scott Conant

Title: President

5/24/24

Date