UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

IN RE: NEW INDY EMISSIONS LITIGATION	)	
	)	Case No. 0:21-cv-1480-SAL
	)	
	)	Class Action Complaint
	)	
	)	Demand for Jury Trial
	)	

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

COMES NOW Plaintiffs Kenny N. White, Tracie Nickell, Amanda Swagger, and John Hollis, Terri Kennedy, Enrique Lizano, Melda Gain, Krista Manus-Cook, Jean Hivanec, and Kathleen Moran, by and through their undersigned counsel, on behalf of themselves and all others similarly situated ("Plaintiffs"), who file this Class Action Complaint against Defendants. In support of this amended complaint, Plaintiffs allege as follows:

INTRODUCTION

1. This is a class action seeking damages from Defendants New-Indy Catawba LLC, d/b/a New-Indy Containerboard ("NI Catawba") and New-Indy Containerboard, LLC's ("NI Containerboard") (collectively, "Defendants") for the egregious and wrongful emission of foul and harmful hydrogen sulfide, methyl mercaptan, methanol, and other pollutants and contaminants to the air, and the discharge of inadequately treated wastewater to the Catawba River, affecting potentially over one million citizens, residents, and workers in South Carolina and North Carolina.

2. Defendants' paper mill is located at 5300 Cureton Ferry Road in Catawba, South Carolina (the "Mill"). Once known as the Resolute Forest Products paper mill, it has been in operation since 1957, and, until 2020, manufactured bleached paper used in magazines and catalogs.

3. In 2018, Defendants purchased the Mill with the express intent to fundamentally alter the nature of its operations by converting it from a facility producing bleached paper to producing brown paper for containerboard. NI Catawba and NI Containerboard are joint ventures created and controlled by the Kraft Group, LLC, a Delaware limited liability company with its principal place of business located at One Patriot Place, Foxborough, MA 02035, and Schwarz Partners LP, an Indiana limited partnership with its principal place of business located at 10 West Carmel Drive, Suite 300, Carmel, IN 46032.

4. Defendants claim they have "established a perfect balance in their manufacturing process." *See* https://newindycontainerboard.com/

5. Unfortunately for the citizens of York County and surrounding areas, Defendants have instead engaged in conduct that has, and continues, to egregiously emit ongoing pollution into the surrounding environs, directly and proximately causing harm and damages to Plaintiffs and the proposed Class Members.

6. Defendants have admitted in toxic release filings with the U.S. Environmental Protection Agency (the "EPA") that they emitted 31,700 pounds of hydrogen sulfide, 148,400 pounds of ammonia, and over a million pounds of methanol to the atmosphere in 2019—all before they began sending the foul wastewater to the open-air lagoons adjacent to the Mill (the "lagoons")..

7. Defendants completed the Mill conversion in November 2020 and began high volume production in February 2021. To facilitate the conversion, the Mill stopped sending foul condensate to a steam stripper and incinerator and instead sent all foul condensate to the lagoons. This foreseeably resulted in an eight to ninefold increase the amount of foul condensate piped to the open-air lagoons, causing a condition where hydrogen sulfide and other dangerous air

pollutants and contaminants evaporated into the air and dispersed to the surrounding communities.

8. Despite the ongoing negative effects of Defendants' activities, on April 5, 2021, Defendants submitted to the South Carolina Department of Health and Environmental Control ("DHEC"), an application requesting the removal of a permit production limit, to allow for an increase in the production rate from the Mill.

9. Upon information and belief, DHEC has not acted on that permit application nor granted Defendants permission to increase production.

10. As the Mill began high volume production, people living and working within a 30-mile radius of the Mill experienced and complained of strong, foul odors and physical reactions to exposure to excessive amounts of hydrogen sulfide and other pollutants and contaminants.

11. DHEC received "an unprecedented number of complaints … related to odor," and immediately began investigating the odors. By May 7, 2021, DHEC received more than 17,000 complaints of noxious odors.

12. On May 7, 2021, the South Carolina Department of Health and Environmental Control ("DHEC") issued its Determination of Undesirable Levels and Order to Correct Undesirable Level of Air Contaminants, *In re: New-Indy Catawba, LLC* (attached hereto as Exhibit A), wherein it found that "the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property" and ordered Defendants to take actions to remedy the unlawful air pollution released from the Mill. In DHEC's order, it determined the odor is injurious to the welfare and quality of life and interfering with use and enjoyment of property in the area. . Plaintiffs incorporate by reference the Findings of Fact in DHEC's Determination of Undesirable Levels and Order to Correct Undesirable Level of Air Contaminants, *In re: New-Indy Catawba, LLC*, (DHEC May 7, 2021) as though fully set forth herein.

13. On May 13, 2021, the Environmental Protection Agency ("EPA"), via its Regional Administrator for EPA Region 4, issued its Clean Air Act Emergency Order, *In re New-Indy Catawba d/b/a New-Indy Containerboard* (EPA Reg'l Dir. May 11, 2021) (attached hereto as Exhibit B) ordering Defendants to take actions to remedy the unlawful air pollution released from the Mill. Plaintiffs incorporate by reference each of the Findings of Fact in the Clean Air Act Emergency Order, *In re New-Indy Catawba d/b/a New-Indy Containerboard* (EPA Reg'l Dir. May 11, 2021) as though fully set forth herein.

14. Defendants discharge up to 25 million gallons of wastewater per day in the Catawba River, which includes tens of thousands of pounds of ammonia and nitrate. The Catawba Riverkeeper has reported the presence of "chunky foam" in areas downstream of the Mill's wastewater discharge since the fall of 2020, which was the same time that Defendants began switching from making bleached paper to brown paper. In addition, the EPA had cited Defendants for being non-compliant with the Clean Water Act each quarter between April 1, 2020 to December 31, 2020 (the most recent quarter reported).

15. The interim orders by DHEC and EPA do not compensate for people's past, present, and future harm caused by Defendants' wrongful actions, and they fail to require Defendants to take immediate and adequate measures to eliminate their pollution of the air and to stop discharging inadequately treated wastewater to the Catawba River.

16. Plaintiffs bring this proposed class action on behalf of themselves and all other persons who, from November 1, 2020 to the present (the "Class Period"), owned, leased, resided on property or had a beneficial interest in property up to 20 miles from the Mill (the "Class Area").

17. Since the filing of the original complaint on June 8, 2021, interest in this litigation has continued to grow. As of the date of this amended complaint, Plaintiffs' counsel has been

retained by over 1,300 clients, with nearly 1,000 more retainer agreements currently out for signature. Plaintiffs in the *Kennedy*, *White*, and *Landsdown* actions have all joined reached agreements for the dismissal of *Landsdown* without prejudice and consolidation of *White* and *Kennedy* under this Amended Complaint.

JURISDICTION AND VENUE

18. This action seeks recovery for injuries to the Plaintiffs' and Class's health, real property, and personal property resulting from Defendants' wrongful and tortious actions and omissions, which occurred at and around the Mill in York County, South Carolina, and caused damages to Plaintiffs in York County and the Class Area.

19. At all times relevant herein, Defendant NI Catawba has purposefully availed itself of the privilege of conducting business in the State of South Carolina, has transacted business in the State of South Carolina, contracted to purchase and operate the Mill in the State of South Carolina, regularly caused its Mill to be operated in the State of South Carolina, and this action arises out of business transacted in, contracts to be performed in whole or in part within South Carolina, as well as a tortious actions and/or omissions committed in whole or in part within South Carolina, and which occasioned and inflicted injuries upon Plaintiffs and the proposed Class Members, Plaintiffs' and the proposed Class Members' claims arise out of or relate to Defendant NI Catawba's activities and contacts with the State of South Carolina, and specific personal jurisdiction over NI Catawba is therefore proper under one or more provisions of S.C. Code Ann. § 36-2-803, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

20. At all times relevant herein, Defendant NI Containerboard has purposefully availed itself of the privilege of conducting business in the State of South Carolina, has transacted business

in the State of South Carolina, has contracted to purchase and operate the Mill in the State of South Carolina, lobbied local governmental officials for tax breaks, has regularly caused its Mill to be operated in the State of South Carolina, has between March 15, 2019 and the present, directly procured materials and equipment, needed for the operation of the Mill within South Carolina, under its own name; has contracted and otherwise arranged for such materials and equipment to be shipped to and delivered within South Carolina, at the Mill's location at 5300 Cureton Ferry Road, Catawba, SC 29704; and a portion of those materials and equipment needed for the Mill's operations were delivered to NI Containerboard within South Carolina, after passing through the Port of Charleston, such that NI Containerboard, through its own activities, has purposefully availed itself of the privilege of conducting activities within the State of South Carolina and established contacts with the forum via its activities related to, *inter alia*, the Mill's operations. This action arises out of business transacted in, contracts to be performed in whole or in part within South Carolina, as well as a tortious actions and/or omissions committed in whole or in part within South Carolina, and which occasioned and inflicted injuries upon Plaintiffs and the proposed Class Members, Plaintiffs' and the proposed Class Members' claims arise out of or relate to Defendant NI Containerboard's activities and contacts with the State of South Carolina, and specific personal jurisdiction over NI Containerboard is therefore proper under one or more provisions of S.C. Code Ann. § 36-2-803, as well as the Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America.

21. The Court has personal jurisdiction over Defendants because the claims asserted in this action arise out of and relate to Defendants' respective and collective purposeful contacts with South Carolina.

22. This Court has jurisdiction pursuant to the Class Action Fairness Act ("CAFA"),

28 U.S.C. § 1332(d). CAFA jurisdiction is appropriate because there are 100 or more Class Members and the aggregate amount in controversy exceeds five million dollars ($5,000,000.00), exclusive of interest and costs.

23. Independent of and in addition to original jurisdiction under CAFA, this Court has original jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds seventy-five thousand dollars ($75,000.00).

24. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial portion of the events or omissions giving rise to Plaintiffs' claims took place in this judicial District, and because much of the property that is the subject of this action is situated in the District.

PARTIES

PLAINTIFFS

25. Plaintiff Kenny N. White is a citizen of North Carolina. He resides at 9932 Mitchell Glen Drive in Charlotte, North Carolina. His residence is 14.3 miles from the Mill. He owns his residence and has owned his residence throughout the Class Period. White has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

26. Plaintiff Tracie Nickell is a citizen of South Carolina. She resides at 4114 Lesslie Highway, Catawba, South Carolina. Their residence is 2.5 miles from the Mill. They own their residence and has owned their residence throughout the Class Period. Nickell has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

27. Plaintiff Amanda Swagger is a citizen of South Carolina. She resides at 3176

Greenwood Road, Rock Hill, South Carolina. Her residence is 5.6 miles from the Mill. Swagger has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

28. Plaintiff John Hollis is a citizen of South Carolina. He resides at 200 Halifax Drive, Indian Land, South Carolina. His residence is 7.5 miles from the Mill. He owns his residence and have owned his residence throughout the Class Period. Hollis has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

29. Plaintiff Terri Kennedy owns and lives on property located at 362 Cotton Field Road, Indian Land, South Carolina ("Kennedy"). She lives approximately seven miles northeast from the Mill. She, with her husband, has owned her property during the Class Period. Kennedy has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

30. Plaintiff Enrique Lizano owns and lives on property located at 6046 Drave Lane, Fort Mill, South Carolina 29720. He lives approximately 7 miles north from the Mill. He, with his wife, has owned his property during the Class Period. Lizano has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

31. Plaintiff Melda Gain owned and lived on property located at 722 Kathy Dianne Drive, Indian Land, South Carolina 29707. She lives approximately 7 miles north from the Mill. She, with her husband, has owned their property during the Class Period. Gains has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

32. Plaintiff Krista Manus-Cook owned and lived on property located at 1275 Mooreland Wood Drive, Lancaster, South Carolina 28729. She lives approximately 3 miles northeast from the Mill. She has owned her property during the Class Period. Manus-Cook has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

33. Plaintiff Jean Hovanec owned and lived on property located at 1292 West Rebound Road, Lancaster, South Carolina 29720. She lives approximately 2 and ½ miles east from the Mill. She has owned her property during the Class Period. Hovanec has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

34. Plaintiff Kathleen Moran owned and lived on property located at 2054 Hamil Ridge Drive, Waxhaw, North Carolina 28173. She lives approximately 9 miles northeast from the Mill. She has owned her property during the Class Period. Moran has suffered injuries and damages as a result of the hydrogen sulfide and other pollutants and contaminants wrongfully emitted by Defendants.

35. The smell of rotten eggs seep into Plaintiffs' homes, often waking them up in the middle of the night. The odor comes in waves, three to five times a week. The awful and unpredictable odor prevents Plaintiffs and their families from the use and enjoyment of their homes and properties. Plaintiffs suffered health effects including, among other things, headaches, bloody noses, sinus issues, and persistent nausea. Plaintiffs have sought or will be seeking medical treatment for these conditions. Plaintiffs' damages include but are not limited to those alleged below in paragraphs 149 through 171.

DEFENDANTS

36. Defendant New-Indy Catawba LLC, d/b/a New-Indy Containerboard, is a limited liability company organized under the laws of Delaware, with its main office in Catawba, South Carolina. It is the operator of the Mill, it is registered to do business in South Carolina, and its registered agent is Corporation Services Company, 508 Meeting Street, West Columbia, South Carolina 29169.

37. Defendant New-Indy Containerboard, LLC is a limited liability company organized under the laws of Delaware with its main office in Ontario, California. New-Indy Containerboard, LLC is the parent of New-Indy Catawba LLC. Defendant New-Indy Containerboard, LLC's registered agent is CSC Lawyers Incorporating Services, 2710 Gateway Oaks Dr., Suite 150 N, Sacramento, CA 95833.

38. Both Defendants are parties to the Asset Purchase Agreement (the "APA") with Resolute FP US Inc. ("Resolute") by which Defendants purchased the Mill. *See* Exhibit C, APA.[1] The parties signed the APA on or about October 2, 2018. Under the APA, NI Catawba was identified as the "Purchaser" and NI Containerboard was identified as "Parent," with both Defendants referred to collectively as the "Buyer Parties." *See* Exhibit C, APA, preamble.

39. NI Containerboard was formed in Delaware in 2012. NI Catawba was formed in Delaware on September 11, 2018, less than a month before the APA was signed, and registered to do business in South Carolina on September 27, 2018, just days before the APA was signed. NI Catawba's application to transact business in South Carolina listed its principal office as One Patriot Place, Foxborough, Massachusetts and was signed by Michael Quattromani who is the CFO of the Kraft Group. This shows that NI Catawba was a new, asset-less entity set up and funded by NI Containerboard with the sole purpose of serving as the entity to hold title to the Mill.

[1] Only an unsigned version is publicly available on the SEC's website.

40. The negotiations and drafting of the APA started before NI Catawba was formed. On October 23, 2017, NI Containerboard entered into a Confidentiality Agreement with Resolute regarding NI Containerboard's interest in acquiring the Mill. *See* Exhibit C, APA, §11.5.1. Then, on March 16, 2018, NI Containerboard entered into an Escrow Agreement with Seller (and without NI Catawba) related to the Confidentiality Agreement and initial deposit for acquiring the Mill. *See* Exhibit C, APA, §10.1 (definitions). Upon information and belief, NI Containerboard conducted all negotiations with Resolute, including negotiations that occurred in South Carolina. Upon information and belief, NI Containerboard and/or its duly authorized agents performed on-site due diligence of the Mill in South Carolina, contracted with engineers and other professionals in South Carolina to perform due diligence, hired legal representation in South Carolina to assist in the negotiation and drafting of the APA, and lobbied local and state government officials. For example, in May 2018, S&ME, Inc. performed a Phase 1 evaluation of the Mill for New-Indy JV LLC, sending it to One Patriot Place, Foxborough, Massachusetts, which identified dozens of recognized environmental conditions at the Mill. All these contacts, and others to be uncovered in discovery, are examples of NI Containerboard purposefully availing itself of the privilege of conducting business in South Carolina, all of which set in motion Defendants' acquisition and then operation of the Mill.

41. The APA shows that NI Containerboard provided the money, financial backing, and authorization for Defendants to acquire the Mill. NI Containerboard paid the initial deposit, and upon information and belief, the signing deposit, under the APA. *See* Exhibit C, APA, §1.11.1. Upon information and belief, NI Containerboard provided all the funds for the purchase of the Mill. *See* Exhibit C, APA, §9.3; *Id.* §§2.3.1, 2.4.2 (NI Containerboard promising to deliver funds at closing and written instructions to an escrow agent to release deposits). In addition to providing

the funding, NI Catawba also guaranteed payment and agreed to joint and several indemnity obligations, acting a surety for NI Catawba. *See* Exhibit C, APA, §§5.16, 9.3. NI Containerboard, not NI Catawba, had final say over whether to proceed to closing. *See* Exhibit C, APA, §7.1.

42. After Defendants acquired the Mill, it was NI Containerboard, not NI Catawba, that took credit:

> "New-Indy Containerboard is excited about our acquisition of the pulp and paper mill located in Catawba, South Carolina. Our intent is to convert the existing facility from the production of communication paper products to containerboard grades. We want to thank the York County Council and the South Carolina Department of Commerce for the valuable assistance they provided during the purchase process. Their support is critical to the facility's continued growth and success, and we look forward to a close and long- lasting relationship with both of these entities," New-Indy Containerboard COO Rick Hartman said. (dated December 13, 2019). https://www.paperage.com/2019news/12_13_2019new_indy_converting_catawba_mill.html

43. NI Containerboard and NI Catawba are parties to a credit agreement with lender JP Morgan Chase that has a maximum principal indebtedness of $1.5 Billion, which is secured in part by a mortgage on the Mill. *See* Exhibit D, JP Morgan Mortgage, York County Record Book-17377-336. Michael Quattromani, CFO of the Kraft Group, signed the mortgage on behalf of NI Catawba.

44. NI Containerboard exercises total control over all aspects of NI Catawba's operation of the Mill, NI Catawba the agent of NI Containerboard. NI Containerboard owns 100% of the membership interests of NI Catawba. *See* Exhibit C, APA, §4.1.1. NI Containerboard formed NI Catawba just days before signing the APA, with NI Containerboard having done all the work to get the Mill under contract. After Defendants acquired the Mill, NI Containerboard has control and dominated NI Catawba's operations by: a) making NI Containerboard and other Kraft/Schwarz officials the managers of NI Catawba; b) financing the conversion and operation of the Mill; c) making day-to-day decisions regarding the conversion and operation of the Mill; and

d) handling the marketing and public relations of NI Catawba.

45. At all relevant times, NI Catawba acted within the scope of its agency with NI Containerboard as principal and intended NI Catawba's actions serve the interests of NI Containerboard, with NI Catawba's actions directed, authorized, or known by NI Containerboard.

46. As an example of the control and direction NI Containerboard exercises over NI Catawba, throughout DHEC's investigation of the Mill's wrongful emissions, the written communications posted on DHEC website have been with Tony Hobson.[2] According to Mr. Hobson's LinkedIn page, he describes himself as the Vice President of Manufacturing at NI Containerboard, based in California. https://www.linkedin.com/in/tony-hobson/. His page contains no reference to any role with NI Catawba. Mr. Hobson has issued formal responses to DHEC on "New-Indy Containerboard LLC" letterhead, signing his name and identifying his role, similarly to that on his LinkedIn profile, as "Vice President of Manufacturing." Thus, NI Containerboard is controlling NI Catawba's management of this critical, bet-the-company relationship with regulators.

47. In addition to Tony Hobson, also involved in communications with the EPA were Daniel Mallet and Peter Cleveland, who at that time were identifying themselves as the Environmental Manager for NI Containerboard and the Technical Manager of NI Containerboard, respectively. Peter Cleveland's LinkedIn page presently identifies him as the "Technical Manager" of NI Containerboard. https://www.linkedin.com/in/petecleveland/. Daniel Mallett in April 2021 signed correspondence to DHEC on a letterhead bearing both NI Containerboard and NI Catawba.

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[2] https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation/new-indy-weekly-update-reports.

48. Between April and June 2021, Peter Cleveland and Daniel Mallet were speaking to citizens of South Carolina, including members of the Class, regarding the emissions from the Mill.

49. In each of Defendants' Public Notifications, issued on NI Containerboard's letterhead, Defendants directed inquires to "catawba.info@new-indycb.com" an email address created for the NI Containerboard webhost. Tony Hobson, Peter Cleveland, and Daniel Mallet all have "@new-indycb.com" email addresses.

50. Moreover, at a March 19, 2021 site visit at the Mill with DHEC regarding the Mill's emissions and odors, DHEC reported that Defendants' representatives told DHEC that the "corporate office" is managing compliance regarding consolidating contaminated sludge.

51. In addition, NI Catawba's management team consists of officials from NI Containerboard. Scott Conant is the notice party for both NI Containerboard and NI Catawba under the APA, with a mailing address in Ontario, California which is NI Containerboard's principal place of business (but not NI Catawba's), and the same email address for both companies that ends with new-indycb.com. In a declaration filed in the *White* case, he claims to be the CFO for NI Catawba. *See* 0:21-cv-01480-SAL, D.I. 21-1 ¶1. However, on Mr. Conant's LinkedIn page, he describes himself as the CFO of NI Containerboard, based in Ontario, California. https://www.linkedin.com/in/scott-conant-0848147b/. His page states he started that role in February 2017 which is 19 months before NI Catawba was formed. His page contains no reference to any role with NI Catawba.

52. Other NI Catawba management team members have held or continue to hold management positions with NI Containerboard, as well as with Kraft Group, LLC and Schwarz Partners LP. *See* https://newindycontainerboard.com/senior-management-team/. For example, Thomas E. Bennett signed a declaration in the *White* case stating that he is the Corporate Secretary

of NI Containerboard (*See* 0:21-cv-01480-SAL, D.I. 21-2 ¶1), but his LinkedIn page describes himself as CFO of Schwarz Partners with no mention of NI Containerboard. https://www.linkedin.com/in/tom-bennett-b570213b/. Plaintiffs believe discovery will uncover more examples of many executives serving in management roles across the New Indy, Kraft, and Schwarz enterprise.

53. NI Containerboard advertises for open positions at the Mill on its "Careers" tab of its website, advertising "[a]t New-Indy, you are part of a team committed to being the supplied of choice for recycled containerboard and dedicated to delivering the highest quality products and services to our customers. . . which is why we have implemented robust training and development programs for our employees that follow structured career path options." https://newindycontainerboard.com/careers/.

54. Upon information and belief, NI Containerboard controls the hiring of employees to work at the Mill.

55. Upon information and belief, NI Containerboard directly employs officials at the Mill. For example, the official government website for William "Bump" Roddey, the representative for District 4 on the York County, South Carolina's County Council, notes that "Councilman Roddey is employed with New-Indy Containerboard LLC," that "[i]n 2020 Roddey moved into a new role with the company now serving as a Chemical & Pulping Specialist," and that "New-Indy is one of several company's [sic] own [sic] by the Schwarz Partners, LP and the Kraft Group LLC." https://www.yorkcountygov.com/398/District-4.

56. It was not until June 2021 that Defendants launched a new website specific to NI Catawba: newindycatawba.com. A review of the existence of the "newindycatawba.com" webpage demonstrates it was newly established, and first able to be captured as existing by a digital

archive of the internet, "The WayBack Machine," on June 1, 2021.

57. During the same month of June 2021, Tony Hobson, who had previously identified himself as the Vice President of Manufacturing for NI Containerboard, began identifying himself instead as "Mill Manager" of NI Catawba.

58. Upon information and belief, NI Catawba is a mere instrumentality and alter ego of NI Containerboard and this the Court should pierce the corporate veil of NI Containerboard because: a) NI Catawba was and is grossly undercapitalized, having acquired the Mill with NI Containerboard's money and then deficiently converted an aging facility that presents NI Catawba with huge liabilities; b) NI Catawba fails to observe corporate formalities by mixing management teams, using NI Containerboard as its mouthpiece, and being under complete control of NI Containerboard; c) being insolvent because of its huge loan obligations to JP Morgan Chase and faced with massive liabilities as a result of its wrongful conduct that is a basis for this action; d) sending all or substantially all revenue to NI Containerboard; e) having no independent executives; f) being a façade for the operations of NI Containerboard; and g) other facts that only Defendants have control or possession of and which are not publicly available, to be uncovered in discovery.

FACTUAL BACKGROUND

Defendants Convert the Mill, Increase Production, and Change Wastewater Management

59. Defendants operate the Mill at 5300 Cureton Ferry Road in Catawba, South Carolina.

60. A population of approximately 625,000 people live within a 20-mile radius of the Mill, which includes York, Lancaster, and Chester Counties in South Carolina, and Union, and Mecklenburg Counties in North Carolina.

61. The Mill is located approximately 10 to 11 miles south and southwest of Indian

Land, South Carolina and Waxhaw, North Carolina, respectively. The Catawba Indian Nation Reservation is located less than 4 miles north of the Mill.

62. The Mill operates under Title V Operating Permit #2440-0005, an air pollution permit which was issued by DHEC on May 7, 2019, became effective on July 1, 2019, and expires on June 30, 2024. The Mill also operates under National Pollutant Discharge Elimination System (NPDES) Permit No. SC0001015, a wastewater discharge permit issued by DHEC.

63. After applying for and receiving on July 23, 2019 a state construction permit from DHEC authorizing manufacturing conversions (Construction Permit #2440-0005-DF), Defendants shut the Mill down between September of 2020 and November of 2020, to convert manufacturing operations from communication paper products (bleached paper) to containerboard grades (unbleached cardboard or brown paper).

64. To obtain the construction permit and authorization from DHEC to perform the work to convert the Mill, Defendants provided DHEC projections about how the modifications and operational changes could result in an increase in hydrogen sulfide emissions. DHEC relied on those projections when it decided to issue a minor construction air permit, believing the increased emissions would be below a "significant net increase" threshold. DHEC has found those projections to be inaccurate and that the actual emissions were much higher, producing "undesirable levels of air contaminants" that "are injurious to human health or welfare or are unreasonably interfering with enjoyment of life or use of property" against South Carolina law and regulations. *See* Exhibit A, DHEC Order, pages 3, 6, 8.

65. Prior to the conversion, Defendants sent more than half of the volume of their foul condensate steam, which contained hydrogen sulfide, methyl mercaptan, methanol, and other pollutants, to the steam stripper. *See* Exhibit B, EPA Order, ¶9. Defendants were using the steam

stripper and incinerator, which are located *inside* the Mill to control its hazardous air emissions, which also resulted in the removal of hydrogen sulfide and other pollutants and contaminants from the Mill's air emissions. Exhibit B, EPA Order, ¶9. The maximum capacity of Defendants' steam stripper is approximately 430 gallons per minute ("gpm") of foul condensate. Exhibit B, EPA Order, ¶34. Defendants were piping the remainder of its foul condensate to the Aeration Stabilization Basin ("ASB") located *outside* of the Mill, at a rate of approximately 90 gpm. Exhibit B, EPA Order, ¶9.

66. After the conversion, when the Mill resumed manufacturing operations in November 2020 (with low production rates), and began higher (but not full) production rates in February 2021, it began sending all of its foul condensate steam to the ASB in the wastewater treatment facility at approximately 720-800 gpm, which is almost twice the maximum capacity of the steam stripper. Exhibit B, EPA Order, ¶10. Hydrogen sulfide and other pollutants and contaminants were volatilized and emitted from the ASB to the ambient air. Exhibit B, EPA Order, ¶10. This practice likely leads to passive air stripping of hydrogen sulfide and other pollutants and contaminants into the ambient air given the high volatility of hydrogen sulfide and the other pollutants and contaminants in the foul condensate. Exhibit B, EPA Order, ¶10.

67. On April 5, 2021, despite knowing that their operations were emitting dangerous amounts of hydrogen sulfide and other pollutants and contaminants into the community, Defendants submitted a permit application to DHEC requesting authorization to *increase* its operations. Exhibit B, EPA Order, ¶11.

Adverse Health Effects of the Pollutants

68. Hydrogen sulfide is a flammable, colorless gas. It is a component of the Total Reduced Sulfur ("TRS") chemical mixture associated with the pulp and paper industry and has a

"rotten egg" odor. People usually can smell hydrogen sulfide at low concentrations in air ranging from .5 to 300 parts per billion ("ppb").

69. Inhalation exposures to elevated concentrations of hydrogen sulfide have been shown to cause various adverse health effects. The Center for Disease Control ("CDC") Information Center's guidance states that exposure to low concentrations of hydrogen sulfide can cause irritation to the eyes, nose, or throat, difficulty breathing for some asthmatics, and headaches, poor memory, tiredness, and balance problems. Pulmonary manifestations can include "bronchial and/or lung hemorrhage."

70. Repeated or prolonged exposure to hydrogen sulfide has been reported to cause low blood pressure, headache, nausea, loss of appetite, weight loss, ataxia, eye-membrane inflammation, and chronic cough. Neurologic symptoms, including psychological disorders, with chronic exposure pose more serious consequences to children because of the potential latency period. Exposure to hydrogen sulfide may pose additional risks to pregnant women, with "increased risk of spontaneous abortion." "High-dose exposures may cause insufficient cardiac output, irregular heartbeat, and conduction abnormalities." *Medical Management Guidelines for Acute Chemical Exposure Hydrogen Sulfide*, https://www.atsdr.cdc.gov/mhmi/mmg114.pdf

71. Methyl mercaptan (CASRN 74-93-1; CH_4S) also known as methanethiol, is a highly toxic, extremely flammable, colorless gas with a smell similar to rotten cabbage. Methyl mercaptan has an odor threshold of 2 ppb. Further, vapors of liquified methyl mercaptan gas are heavier than air and spread along the ground. Methyl mercaptan is highly irritating when it contacts moist tissues such as the eyes, skin, and upper respiratory tract. It can also induce headache, dizziness, nausea, vomiting, coma, and death.

72. Epidemiological, experimental, toxicological, and other studies have investigated

the relationship between inhalation exposure to hydrogen sulfide and adverse health effects. In 2010, the National Research Council of the National Academics evaluated the state-of-the-science and published AEGLs ("Acute Exposure Guideline Levels") for hydrogen sulfide. The evaluation reported three tiers of AEGLs. The AEGL-I concentrations are defined as the airborne concentration … of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects."

73. AEGL-I concentrations are derived for different averaging periods. For hydrogen sulfide, the 10-minute, 30-minute, and 60-minute AEGL-I concentrations are 750 ppb, 600 ppb, and 510 ppb, respectively. These values were all derived from a study that reported headaches among adults with asthma following acute inhalation exposures to hydrogen sulfide.

74. The CDC's Agency for Toxic Substances and Disease Registry (ATSDR) has established an acute Minimal Risk Level ("MRL") for hydrogen sulfide. An MRL is an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse health effects over a specified duration of exposure. For hydrogen sulfide, the acute MRL for continuous exposure from 1 day to 14 days is only 70 ppb.

75. On information and belief, the MRL is not the "safe level" of hydrogen sulfide. More vulnerable persons such as pregnant women, infants, and aged individuals, as well as those with underlying respiratory and other health concerns, can experience adverse acute and chronic health effects.

76. Between April 24-27, 2021, EPA personnel took hydrogen sulfide samples from the air at 12 locations near the Mill, ranging in distance from 0.38 miles to 3.56 miles. One second hydrogen sulfide concentrations in the air ranged from 13.6 ppb to 943 ppb and averaged from

1.73 ppb to 669 ppb over the duration of the sampling period (30-62 minutes). Seven of the 12 samples exceeded the MRL as averaged over the sampling duration and one exceeded the AEGL for hydrogen sulfide. The EPA's findings are described in the EPA's May 13, 2021 Order. *See* Exhibit B, EPA Order, ¶¶ 21-31.

"Unprecedented" Complaints; Regulators Determine New-Indy is Source of Pollutants

77. Residents in Fort Mill, Indian Land, Rockhill, and Lancaster, South Carolina. and in Charlotte, Matthews, Pineville, and Waxhaw, North Carolina (Lancaster and York Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina), have complained of strong odors emanating from the Mill and reported health effects to DHEC. DHEC's online database, which was created on March 12, 2021, allows specific information to be reported in a descriptor field. The reported health effects as of May 13, 2021 included nausea (approximately 740 complaints including those that reported exposure to a "nauseating" odor), headaches including migraines (approximately 650 complaints), nose or throat irritation (approximately 370 complaints), and eye irritation (approximately 360 complaints). Other reported symptoms include coughing, difficulty breathing, asthma "flare ups," and dizziness. As of April 27, 2021, in the approximately five weeks since the DHEC online database was created, the database received approximately 14,000 of such complaints, an "unprecedented" amount. *See* Exhibit B, EPA Order, ¶14. Just over a week later, as of May 7, 2021, the total number of complaints climbed to over 17,000. *See* Exhibit A, DHEC Order, ¶5. Some of the complaints are from residents as far as 30 miles away from the Mill. *See* Exhibit B, EPA Order, ¶14. In contrast, in all of 2020, DHEC received approximately five complaints about the Mill. *See* Exhibit B, EPA Order, ¶14.

78. Residents have also documented on DHEC's online database a wide range of impacts to quality of life, personal comfort, and wellbeing. This includes hundreds of instances of

lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. For example, as of May 13, 2021, many residents noted: that odors are noticeable inside their homes (more than 2,000 complaints); that they were woken at night due to the odors (more than 600 complaints); and that they did not want to go outside due to the odors (more than 400 complaints). A sampling of specific quality of life impacts include: "It [the odors] is preventing our ability to enjoy our home and community," "We basically cannot enjoy our life," and "We are prisoners in our own smelly home." Exhibit B, EPA Order, ¶15.

79. By April 9, 2021, DHEC was actively investigating the source of the strong odors reported in York and Lancaster Counties. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the Mill, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina.

80. EPA Region 4 also maintains a database to keep track of complaints submitted by residents who live near the Mill. During March and April of 2021, the EPA logged 310 complaints. Some complaints reported odors and a subset included information on health impacts. As of May 13, 2021, the most frequently cited symptoms included in the EPA database were headache (80 complaints), burning eyes (52 complaints), nausea (40 complaints), and throat irritation (20 complaints). These are the same four health impacts that were reported most frequently in the DHEC online database.

81. During an onsite inspection on April 15, 2021, EPA inspectors wore 4-gas monitors for personal safety that were set to alarm at a low threshold of 10 ppm (10,000 ppb) of hydrogen sulfide. One inspector experienced the following hydrogen sulfide readings with the 4-gas monitor while onsite at the Mill:

a. At 11:07 a.m., on the top of the Post-Aeration Tank, near the guardrail overlooking

the tank contents, the 4-gas monitor hydrogen sulfide alarm triggered and read 15.9 ppm (15,900 ppb).

b. At 12:41 p.m., about 50 feet from Aerator 6, the 4-gas monitor hydrogen sulfide reading was 6.9 ppm (6,900 ppb). The 4-gas monitor also read hydrogen sulfide of 3.1 ppm (3,100 ppb) at 12:49 p.m., and 4.9 ppm (4,900 ppb) at 12:52 p.m.

c. At approximately 4:47 p.m., a hydrogen sulfide alarm on the 4-gas monitor triggered while the employee was near the Evaporator Tank #1. The above 10 ppm reading wasn't recorded, but shortly after the employee left the area, the 4-gas monitor showed a reading of 6.9 ppm (6,900 ppb). Exhibit B, EPA Order, ¶20(c).

82. On April 24, 25, 26, and 27, 2021, EPA inspectors also detected hydrogen sulfide from on-site and nearby locations downwind of the Mill. *See* Exhibit B, EPA Order, ¶¶21-31.

83. EPA inspectors reported experiencing a distinct and strong odor while at the Mill and while conducting sampling in nearby areas, including Catawba Indian Nation Reservation, Indian Land, Riverchase Estates, and other surrounding communities. The EPA inspectors reported noticing odors at the same time as when the Geospatial Measurement of Air Pollution mobile lab measured airborne hydrogen sulfide. They also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when hydrogen sulfide was being detected. Exhibit B, EPA Order, ¶30.

84. DHEC's analysis assessing the location of an air emitting source using odor complaints, wind direction, and EPA Region 4's May 5, 2021 report identify the Mill as the main, if not only, source of hydrogen sulfide causing the symptoms residents had reported in the surrounding communities. Exhibit B, EPA Order, ¶32.

85. Many of the EPA recorded samples showed hydrogen sulfide concentrations

greater than AEGL-I. One sampling event on April 26, 2021 southeast of the Mill near the Riverchase Estates development measured a hydrogen sulfide concentration that was already greater than 750 ppb, indicating that elevated concentrations occurred for an unknown duration before the sampling period began. *See* Exhibit B, EPA Order, ¶38.

86. Over 40 years ago, the EPA determined that sulfur compound air emissions from pulp and paper mills, like the Mill here, can adversely affect the welfare of the public. *See* Kraft Paper Mills, Standards of Performance for New Stationary Sources, 41 Fed. Reg. 42012 (Sept. 24. 1976) ("TRS [total reduced sulfur] emissions from kraft pulp mills are extremely odorous, and there are numerous instances of poorly controlled kraft mills creating public odor problems ... Kraft pulp mills are a major source of TRS compounds ...TRS emissions from kraft pulp mills are composed primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide ... TRS compounds can have an adverse effect on public welfare ... The emissions from each pulp mill surveyed in the study affect an average of 44,000 persons over an area of approximately 100 square miles ..."). On information and belief, at all relevant times New-Indy was aware of the risks its operations posed.

87. The DHEC online database reports demonstrate that residents near the Mill experience many adverse impacts beyond health effects, including the odor-related quality of life impacts alleged above.

88. Based on Plaintiffs' own investigation and reports and data that continue to be added to DHEC's and EPA's websites, Defendants' wrongful and egregious emissions of hydrogen sulfide and other pollutants and contaminants continue to occur on a daily if not hourly basis, causing harm and damages to thousands of people who live and work in this region.

89. Since Plaintiffs filed their Complaint in June 2020, DHEC has updated its reporting

of citizen complaints from 17,000 through May to 29,928 as of August 8, 2021. This shows the wrongful emissions and resulting damages from Defendants' Mill is ongoing and unabated. DHEC's website includes graphics showing complaints made in March, April, May, and June. https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation.

Plaintiffs' Ongoing Investigation Has Uncovered More Problems

90. Plaintiffs' investigation has included reviewing new documents obtained in response to Freedom of Information Act requests, conducting public records searches, performing assessments by consultants and experts, conducting over 1,500 client interviews with interviews continuing daily, capturing and reviewing drone videos of the Mill and Catawba River, and utilizing other tools and resources. This has uncovered more problems at the Mill and with Defendants' operations, including:

a. Starting up the converted Mill without adequate steam stripper capacity to destroy hydrogen sulfide and other TRS compounds in the foul condensate;

b. Starting up the converted Mill with a malfunctioning and compromised wastewater treatment plant that was not capable of converting hydrogen sulfide and other TRS compounds to innocuous substances but instead released them to the atmosphere and surrounding communities;

c. Continuing to operate the Mill at full production capacity with knowledge that the steam stripper and wastewater treatment plant were not adequate to prevent hydrogen sulfide, TRS and other odor-causing chemicals to be released to the surrounding communities;

d. Monitoring air emissions at the Mill's fence-line and in the communities for

only hydrogen sulfide while their own consultant's report acknowledged that less than ten percent of the TRS chemicals emitted to the air and to the communities from the wastewater treatment was hydrogen sulfide;

e. Installing only three fence-line hydrogen sulfide monitors to assess 6 miles around the Mill, leaving large gaps of coverage;

f. Having only five community hydrogen sulfide monitors currently assessing an area of more than 30 square miles, leaving an additional 235 square miles from where thousands of odor complaints have been lodged with DHEC completely unmonitored, and an additional 233 square miles where at least one complaint was filed with DHEC without any monitoring (*see* Exhibit E, Figure showing Air Monitoring Stations and Odor Complaints);

g. Continuing to use unlined wastewater treatment plant lagoons and holding ponds that appear to be leaking massive amounts of dissolved solids, sulfate and organic compounds to the groundwater that flows into the adjacent Catawba River;

h. Purchasing the Mill in December 2018 with full knowledge that there were at least 40 recognized environmental conditions on the Mill's property that would require investigation and potential cleanup, including dioxin-laden sludges in wastewater sludge lagoons and holding ponds, an industrial landfill with elevated concentrations of 1,1 dichloroethane in the groundwater, another landfill that had uncovered drums and odors, and a sludge lagoon with observed seepage. Defendant entered into a contract with DHEC in December 2018 agreeing to assess and remediate these and other environmental conditions on

the Mill property. On information and belief, Defendants have not remediated these recognized environmental conditions and they have or will result in hazardous and toxic substances contaminating the air, groundwater, and the Catawba River; and

i. Continuing to violate its NPDES Permit that governs its wastewater treatment plant and discharge to the Catawba River.

Defendants' Wrongful Conduct

91. If Defendants properly designed, operated, maintained, and managed the Mill, including its wastewater treatment plant, after the conversion, the Mill's systems would collect, capture, and destroy the hydrogen sulfide and other pollutants and contaminants produced by operation of the Mill to prevent their escape into the ambient air, water, and surrounding community.

92. Defendants have failed to adequately collect, capture, and destroy the hydrogen sulfide and other pollutants and contaminants generated at the Mill, improperly allowing emissions of the hydrogen sulfide and other pollutants and contaminants to escape the Mill and invade the homes and properties of the Plaintiffs and the Class members, causing them harm and damages.

93. Defendants have a duty to control the Mill's emission of the hydrogen sulfide and other pollutants and contaminants. As such, Defendants must operate and maintain the Mill in a way that adequately captures, controls, and mitigates the emission of the hydrogen sulfide and other pollutants and contaminants by implementing reasonably available mitigation, elimination, and control systems.

94. Defendants have failed to utilize and/or employ adequate mitigation strategies, processes, and technologies to prevent and control the hydrogen sulfide and other pollutants and

contaminants from escaping the boundaries of the Mill and impacting the Catawba River, the surrounding properties, and people within the Class Area.

95. Defendants' wrongful actions and omissions include, but are not limited to:

a) Utilizing inadequate systems when manufacturing their products, including the mismanagement of raw ingredients and byproducts;

b) Operating and maintaining a manufacturing process that inadequately captures, controls, and/or mitigates the hydrogen sulfide and other pollutants and contaminants.

c) Failing to use proper or adequate equipment to abate emissions of hydrogen sulfide and other pollutants and contaminants, such as steam strippers, incinerators, and wastewater treatment processes;

d) Failing to adequately treat and destroy the exhaust produced through commercial operations prior to emitting it into the ambient air;

e) Failing to develop and/or implement an adequate odor prevention and abatement plan;

f) Failing to utilize other odor prevention, elimination, and mitigation measures and technology available to New-Indy; and

g) Increasing production levels while knowing the Mill does not have the equipment, systems, or measures in place to adequately manage the resulting higher levels of wastes, including foul condensate that contains the hydrogen sulfide and other pollutants and contaminants.

h) Other failures revealed during discovery.

96. As a result, the Plaintiffs' and putative Class's properties have been, and continue to be, physically invaded by noxious odors and polluted wastewater from the Mill.

97. These hydrogen sulfide and other pollutants and contaminants have interfered with activities in the surrounding areas, and they have precluded the use and enjoyment of private and public spaces in those areas and caused harm and damages to people within the Class Area.

CLASS ACTION ALLEGATIONS

98. EPA and DHEC have been cataloging and mapping citizen complaints starting in March 2021. The number of complaints is "unprecedented" amount. *See* Exhibit A, DHEC Order, ¶5.

99. DHEC's website includes "odor report maps" showing, month by month, the location of residents who filed a report with DHEC.[3]

March 2021

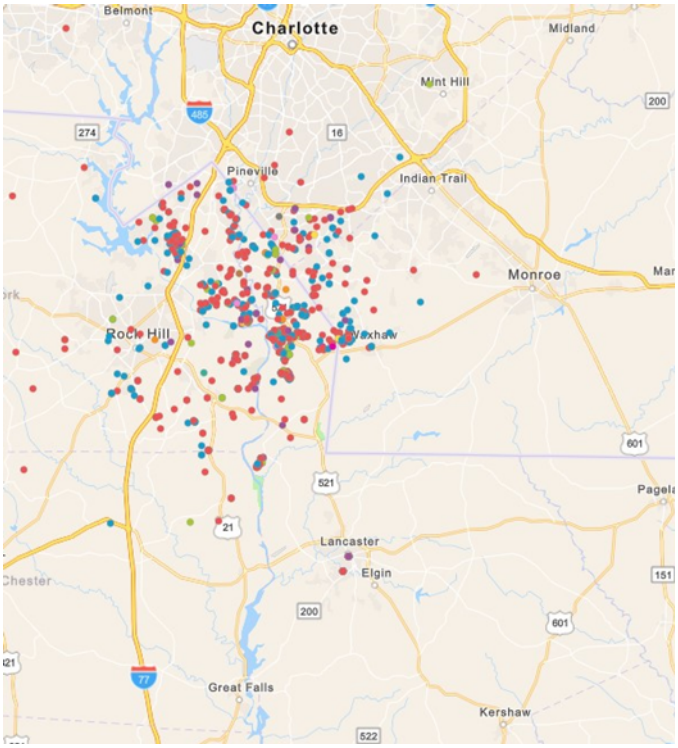

Figure 1, Exhibit F.

[3] https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation

April 2021

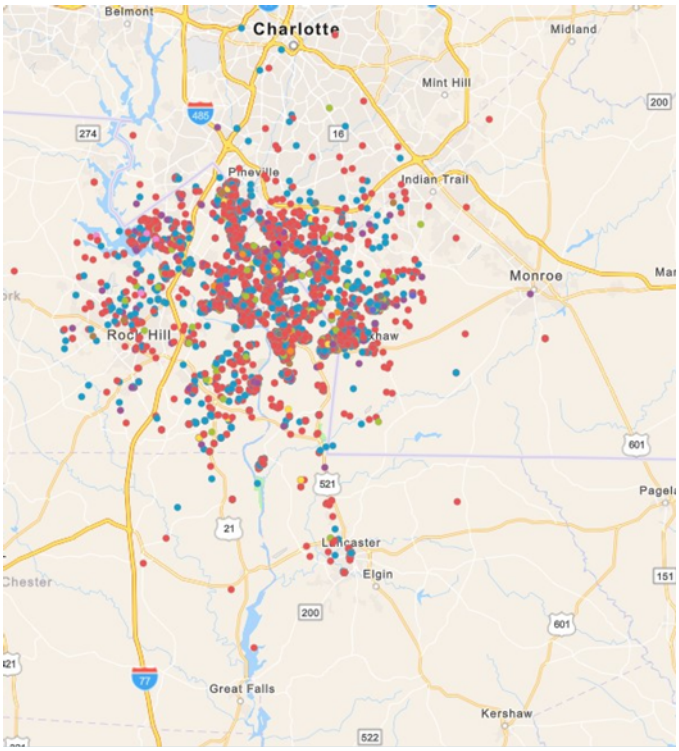

Figure 2, Exhibit F.

May 2021

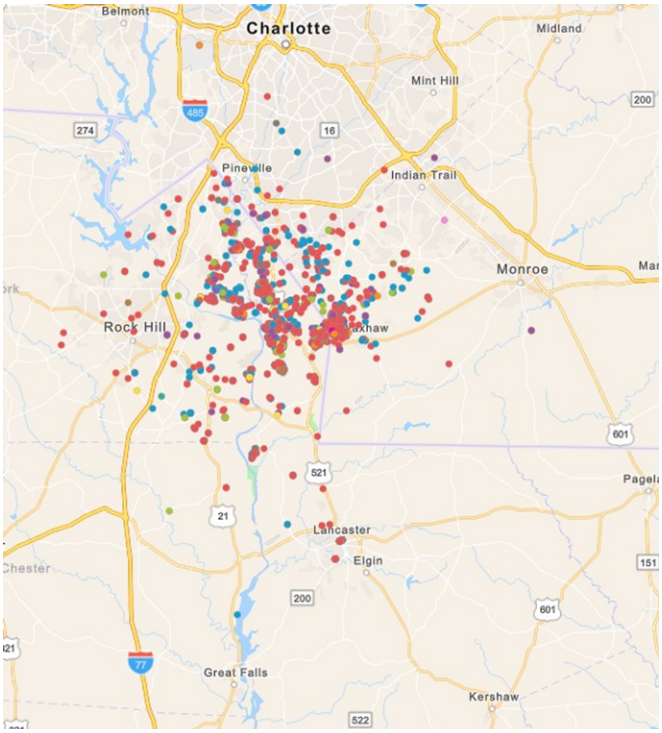

Figure 3, Exhibit F

June 2021

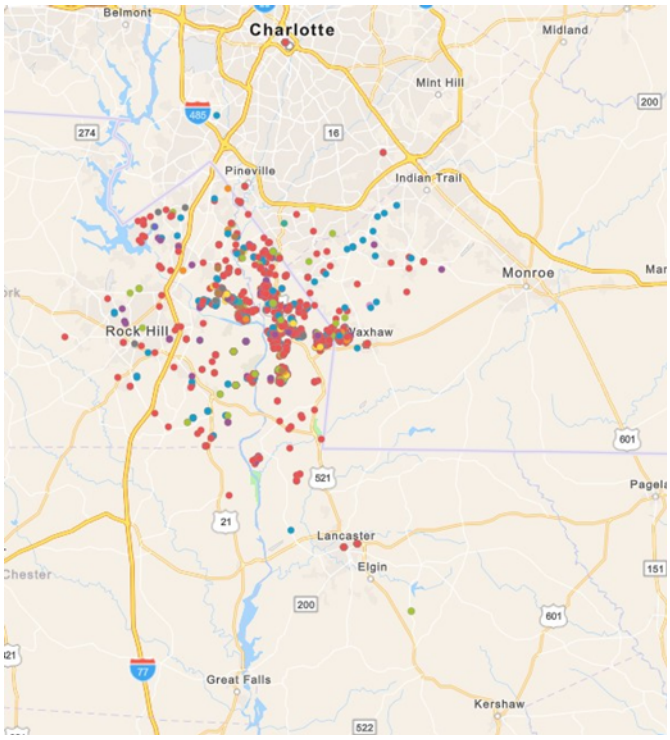

Figure 4, Exhibit F

July 2021

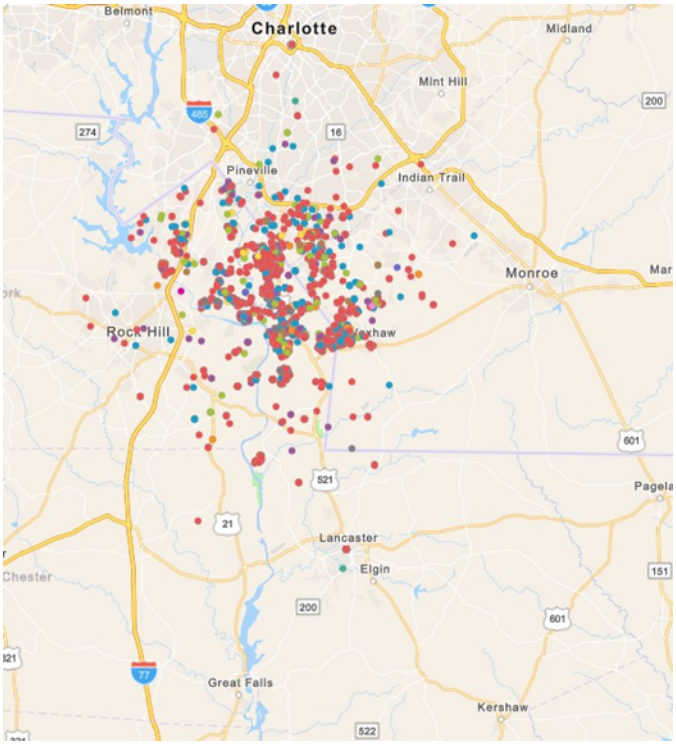

Figure 5, Exhibit F

100. While the EPA has reported that complaints have been lodged by residents as far

as 30 miles away from the Mill, the vast majority of complaints fall within 20 mile radius of the Mill. *See* Exhibit B, EPA Order, ¶1.

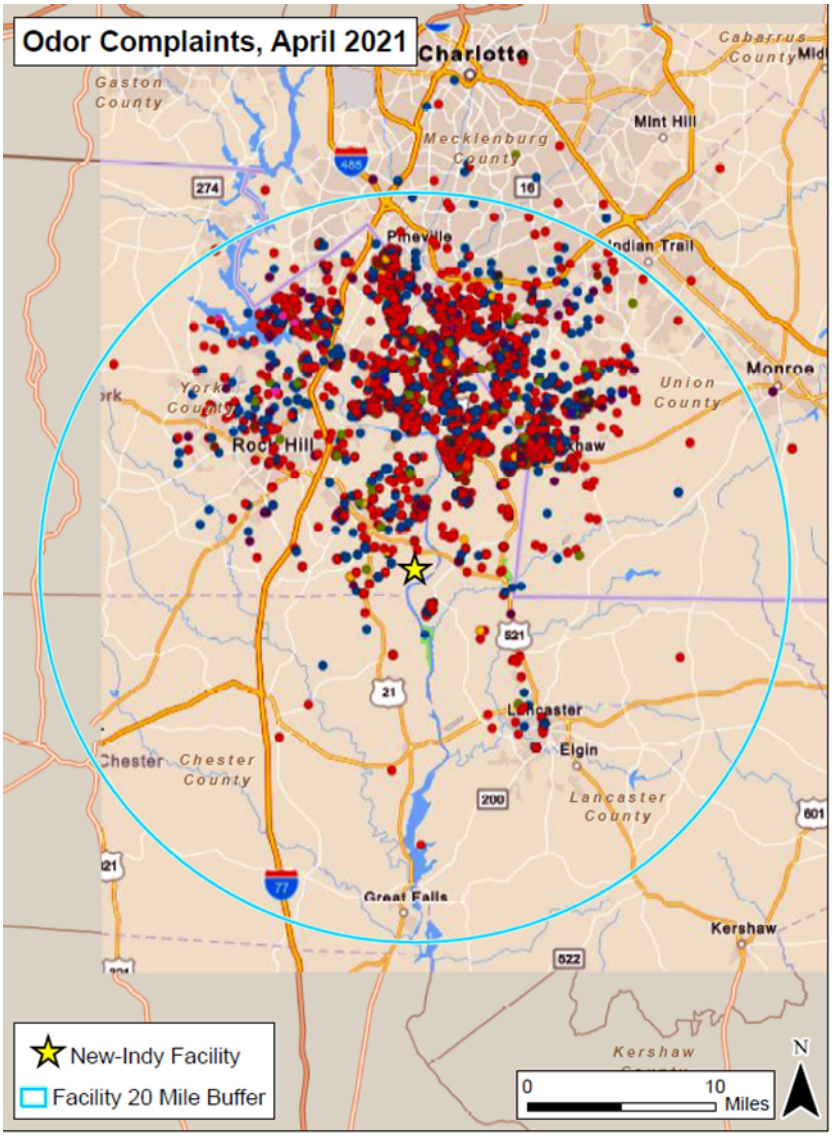

Figure 6, Exhibit F

101. Plaintiffs bring this action as a class action under Fed. R. Civ. P. 23 on behalf of the following Class:

All persons who, from November 1, 2020 to the present, owned, leased, resided on property, or had a beneficial interest in property, up to 20 miles from the Mill (the "Class Area").

Excluded from the Class are (1) any person with an ownership interest in Defendants; (2) any current or former officer or director of Defendants; (3) any current or former employee of Defendants for any potential exposure during their employment; (4) persons who have entered into separate settlement agreements with Defendants related to claims similar to those claims made in this action; (5) the legal representatives, successors, or assigns of Defendants; and (6) any federal, state, or local governmental agencies and any judges who have decided some or all issues in the case, any persons related to a judge in a manner that would disqualify the judge from hearing the case, and any chambers staff working for the assigned judge or other courthouse staff who perform tasks relating to this matter.

102. A class definition defined by a radius of 20 miles from the plant bears a strong relationship with the location of resident complaints submitted to DHEC, and is consistent with the likely dispersion of pollutants from the Defendants' mill.

103. Plaintiffs reserve the right to revise the Class definition and Class Area based on facts developed through the continued litigation of this action, including expert investigation and discovery from, among other sources, Defendants, DHEC, and the EPA, as well as air monitoring and modeling data. In particular, the class definition may amended, expanded or contracted in certain regions based upon expert evaluation of prevailing wind patterns, emissions factors obtained through discovery and other relevant considerations. Additionally, as this problem is ongoing in nature, the class definition may require future revision based upon the Defendants' continued emissions.

104. This action is proper for Class treatment under Fed. R. Civ. P. 23. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are

informed and believe that there are many thousands of Class members. Approximately 625,000 people are estimated to live within 20 miles of the Mill. Thus, the Class members are so numerous that individual joinder of all Class members is impracticable.

105. Common questions of law and fact arise from Defendants' conduct described herein.

106. Such questions are common to all Class members and predominate over any questions affecting individual Class members. These include:

a. Defendants' production of hydrogen sulfide and other noxious air and water pollutants and contaminants, and Defendants' release of those pollutants and contaminants into the ambient air and the Catawba River;

b. Defendants' violation of applicable federal and state laws, regulations, and permits relating to hydrogen sulfide and other noxious air and water pollutants and contaminants;

c. Findings and determinations made by the EPA regarding Defendants' operation of the Mill;

d. Finding and determinations made by DHEC regarding Defendants' operation of the Mill;

e. Enforcement actions by EPA and by DHEC against Defendants;

f. Whether Defendants' actions constitute actionable misconduct as set forth in this complaint;

g. Whether, and to what extent, injunctive relief should be imposed on Defendants to prevent such conduct in the future;

h. Whether, and to what extent, Class members have suffered and continue to suffer damages that include contamination of their air and water, requiring upgrades, changes,

and additions to the Mill's wastewater treatment facilities, property, methods, testing, monitoring, and operations, as well as remediation of all affected air and water.

i. Whether the Class members have sustained damages as a result of Defendants' wrongful conduct; and

j. The appropriate measure of damages or other relief.

107. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs and Class members sustained similar injuries arising out of Defendants' wrongful conduct. The injuries of the Class members were caused directly by Defendants' wrongful conduct.

108. In addition, the factual background of Defendants' misconduct is common to all Class members and represents a common misconduct resulting in injury to all Class members. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of Class members and are based on the same legal theories.

109. Plaintiffs will fairly and adequately represent and pursue the interests of the Class. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class members. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class members.

110. Plaintiffs have retained competent and experienced environmental class action attorneys to represent her interests and those of the Class members. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to litigate this class action adequately and vigorously. Plaintiffs and counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by vigorously seeking the maximum possible recovery

for them.

111. The prerequisites of maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(1) are met, as the prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings or incompatible standards of conduct for Defendants. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

112. The prerequisites of maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Defendants have acted and refused to act on grounds that apply generally to the Class as a whole, and Plaintiffs seek, inter alia, equitable remedies with respect to the Class as a whole. As such, final injunctive and declaratory relief with respect to Defendants is appropriate for the Class as a whole.

113. The prerequisites to maintaining a class action pursuant to Fed. R. Civ. P. 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. It is desirable for the efficiency of the parties and the Court to concentrate the litigation of the claims in this forum and provide for single adjudications of common issues. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein.

FIRST CAUSE OF ACTION
PRIVATE NUISANCE

114. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

115. Plaintiffs bring these claims on behalf of themselves and the other members of the Class for an injunction and damages for private nuisance under South Carolina law.

116. Defendants have failed to operate the Mill pursuant to, and in compliance, with the requisite licenses, permits, certifications, authorizations and standards applicable under state and federal law.

117. Plaintiffs' properties, as well as those of the proposed Class Members been contaminated by the aforementioned discharges, releases, and emissions of pollutants, contaminants, and other harmful substances by Defendants.

118. The Defendants' operation of the Mill has directly and proximately caused contamination of Plaintiffs' and the proposed Class Members' properties, air and waterways with pollutants, contaminants, and other harmful substances.

119. The Defendants' operation of the Mill has, via the contamination of Plaintiffs' and the proposed Class Members' properties, air and waterways with pollutants, contaminants, and other harmful substances, directly and proximately inflicted material injury and great annoyance upon Plaintiffs' and the proposed Class Members.

120. The Defendants' operation of the Mill has directly and proximately caused contamination of Plaintiffs' and the proposed Class Members' properties air and waterways with pollutants, contaminants, and other harmful substances and constitutes an unreasonable and substantial invasion of Plaintiffs' and the proposed Class Members' use and enjoyment of their properties in that they can no longer use and enjoy their properties and air for the same purposes and to the same extent as they could prior to the contamination caused by Defendants.

121. The Defendants' operation of the Mill has directly and proximately caused contamination of Plaintiffs' and the proposed Class Members' properties and air with pollutants, contaminants, and other harmful substances and constitutes an unreasonable and substantial invasion of Plaintiffs' and the proposed Class Members' health and comfort in the use and

enjoyment of their properties.

122. The contamination of Plaintiffs' and the proposed Class Members' properties and air with pollutants, contaminants, and other harmful substances, constitutes an unreasonable and substantial interference with Plaintiffs' and the proposed Class Members' health and comfort Plaintiffs' and the proposed Class Members' use and enjoyment of their properties in that they can no longer use and enjoy their properties and air for the same purposes and to the same extent as they could prior to the contamination caused by Defendants.

123. The pollution and contamination constitute a nuisance, which has resulted in the injuries and damages to Plaintiffs and proposed Class Members described herein.

124. Defendants' conduct is the legal and actual cause of the intentional, unreasonable, negligent, and/or reckless invasion of Plaintiffs' interests in the private use and enjoyment of their property.

125. Plaintiffs and Class members therefore are entitled to recover compensatory damages, consequential damages, punitive damages, attorneys' fees and costs, an injunction enjoining New Indy's conduct, and any other relief the Court deems appropriate.

SECOND CAUSE OF ACTION
NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS, & WILLFUL CONDUCT

126. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

127. Defendants are liable for common law negligence as they have breached duties and thereby directly and proximately caused the pollution and contamination of Plaintiffs' and the proposed Class Members' properties, including where Plaintiffs and the proposed Class Members live frequent, and/or otherwise enjoy beneficial interests.

128. Defendants are liable for common law negligence as they have breached duties and

polluted and contaminated Plaintiffs' and the proposed Class Members' properties, directly and proximately causing damage to those properties.

129. Defendants are liable for common law negligence as they have breached duties and polluted and contaminated Plaintiffs' and the proposed Class Members' properties, directly and proximately causing personal injuries to Plaintiffs and the proposed Class Members.

130. Defendants have been designated as the discharging source of undesirable level of air and water pollutants and contaminants, and as responsible party for the contamination of property where Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests, and as such, Defendants knew or should have known that their failure to use reasonable care in controlling, monitoring, maintaining and operating the Mill and in collecting, using, storing, disposing of, and causing to be disposed of chemicals, pollutants, contaminants and other harmful substances, would create and has created actual harm to the persons, animals, and lands of others, including from the foul condensate stream to the ASB in the wastewater treatment facility and the environment in and around the site.

131. Defendants knew or should have known that there existed and still exists, a certainty of harm to others, including Plaintiffs, that would result from the disposing, discharging, depositing, releasing, and allowing the release of these chemicals, pollutants, contaminants, and other harmful substances, from the foul condensate stream of waste water into the ambient air, water, and the environment in and around the community, area, and region in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property. At all times material herein, each Defendant was under a duty to act with due and reasonable care as imposed by law.

132. At all times relevant, each Defendant had the strictest duty of care to conduct itself

in a safe and reasonable manner.

133. At all times relevant, each Defendants owed a duty of care to Plaintiffs and the proposed Class Members to prevent the generation and emission of harmful pollutants, consistent with industry standards and other requirements discussed herein, including but not limited to Kraft Paper Mills, Standards of Performance for New Stationary Sources, 41 Fed. Reg. 42012 (Sept. 24. 1976), and to ensure that its systems and networks, and the personnel responsible for them, adequately prevented the creation and emission of harmful pollutants onto the properties of the Plaintiffs and Class members.

134. At all times relevant, each Defendant also owed duties to Plaintiffs and the proposed Class Members through, *inter alia,* the following statutes, regulations, standards and permits:

a. Pursuant to S.C. Regulation 61-62.5, Standard 7, Defendants owed a duty to not implement Facility modifications or operational changes at the Mill which would result in a "significant net increase" of hydrogen sulfide emissions;

b. Pursuant to the Mill's National Pollutant Discharge Elimination System (NPDES) Permit No,. SC0001015, Defendants owed a duty to use best management practices normally associated with the proper operation and maintenance of a wastewater treatment plant, any sludge storage or lagoon areas, transportation of sludges, and all other related activities to ensure that an undesirable level of odor does not exist; and

c. Pursuant to 42 U.S.C. §§ 7401, 7602, 7603 and 7604, Defendants owed a duty to not operate the Mill in a manner which directly caused the emission of hydrogen sulfide and other airborne contaminates into the ambient air at levels which

adversely affected the comfort, well-being and health of Plaintiffs and the proposed Class Members.

124. Each Defendant violated its duty of care negligently by failing to act with reasonable care by operating the Mill and preventing the pollution and contamination.

125. Both Defendants violated their respective duties of due care, and said violations were grossly negligent, willful and wanton, reckless, and calculated to cause grievous bodily harm to human beings and property, including Plaintiffs, with Defendants conscious of how their respective and collective conduct invaded Plaintiffs' rights and would likely cause the foreseeable and resulting injuries and damages.

126. Plaintiffs and the proposed Class Members have in the past and will in the future sustain damages as a result of Defendants' respective and collective negligence, gross negligence, willful and wantonness, and recklessness in failing to prevent the contamination of their properties by negligently failing to contain and properly remediate the pollutants, contaminants, and other harmful substances.

127. As a proximate result of Defendants' carelessness and negligence, the aforesaid conduct caused severe injury to Plaintiffs and the proposed Class Members and thereby directly and proximately caused Plaintiffs and proposed Class Members to sustain damages and injuries as herein alleged.

128. Defendants each had and still have a clear duty to prevent the pollution and contamination, to subsequently ameliorate the effects of the pollution and contamination in the community and waters of the State, and lastly, to prevent further and continuing pollution and contamination of Plaintiffs' air and waters of the State.

129. Defendants knew that their increased production, production changes, facility

modifications, and other operational changes would result in increased hydrogen sulfide emissions from the Mill into the air and the increased discharge of wastewater into the Catawba River.

130. Defendants knew that their current steam stripper was insufficient to handle the concentrations of foul condensate being produced by Defendants' production, production changes, facility modifications, and other operational changes.

131. However, Defendants have failed to act with the due care owed to Plaintiffs and the proposed Class Members, thereby violating the aforementioned duties owed to Plaintiffs and the proposed Class Members, directly and proximately causing harm to by:

a. Creating an unreasonable interference with Plaintiffs' and the Class Members' use of their properties;

b. Physically invading and harming Plaintiffs' and the Class Members' properties;

c. Physically harming Plaintiffs and the Class Members themselves; and;

d. In such other particulars as the evidence may show.

135. Plaintiffs are entitled to recover general, special, and punitive damages as a result of the negligence, gross negligence, willful and wantonness, and recklessness of Defendants' acts and omissions, inclusive of, but not limited to, the damages delineated in this complaint for personal injury and fear of illness, economic and property damage, loss of enjoyment of life, an injunction enjoining New Indy's conduct, and remediation.

THIRD CAUSE OF ACTION
NEGLIGENCE *PER SE*

136. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

137. Defendants have negligently violated the Federal Clean Air Act, the Federal Clean

Water Act, the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, related federal and state regulations, and related federal and state permits.

138. All times relevant, each Defendant owed duties to Plaintiffs and the proposed Class Members through, *inter alia*, the following statutes, regulations, standards and permits:

a. Pursuant to S.C. Regulation 61-62.5, Standard 7, Defendants owed a duty to not implement Facility modifications or operational changes at the Mill which would result in a "significant net increase" of hydrogen sulfide emissions;

b. Pursuant to the Mill's National Pollutant Discharge Elimination System (NPDES) Permit No,. SC0001015, Defendants owed a duty to use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any sludge storage or lagoon areas, transportation of sludges, and all other related activities to ensure that an undesirable level of odor does not exist; and

c. Pursuant to 42 U.S.C. §§ 7401, 7602, 7603 and 7604, Defendants owed a duty to not operate the Mill in a manner which directly caused the emission of hydrogen sulfide and other airborne contaminates into the ambient air at levels which adversely affected the comfort, well-being and health of Plaintiffs and the proposed Class Members.

139. Plaintiffs and Class Members are members of the classes of persons the foregoing statutes and regulations are intended to protect.

140. The essential purposes of these statutes are to protect from the same or similar kind of harm inflicted upon Plaintiffs and Class members as a direct and proximate result of Defendants' breach of those statutory and regulatory duties.

141. Since the Plaintiffs are members of the public that utilize the air covered by the Federal Clean Air Act, Clean Water Act, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and related federal and state regulations, and federal and state permits, they are clearly protected.

142. Therefore, Defendants owed and continue to owe Plaintiffs and the Cass Members a duty of care not to contaminate their air, water and property, the most basic of human necessities and resources.

143. Defendants each have clearly breached this duty of care by failing to halt the production of pulp, containerboard, linerboard, brown paper, white paper, and other materials that produce hazardous, irritating, noxious, corrosive, sensitizing, odorous, extremely flammable and contaminating substances into the air, water, and surrounding environment. Instead, Defendants have continued their increased production of products to continue their increase in profits. Consequently, the second element of negligence *per se* is satisfied.

144. Defendants have further clearly breached their respective duty of care by (1) discharging pollutants, contaminants, and/or other harmful substance(s) into the ambient air and waterways that cause an undesirable level; (2) discharging into the environment of the State organic or inorganic matter, that is outside of compliance with a permit issued by DHEC; (3) making a new outlet or source and/or increasing the discharge from existing outlets or sources of air and water pollutants, contaminants, and other harmful substances into the ambient air and waters of the State, without first making an application to do so to DHEC; (4) failing to halt the discharge of air and water pollutants, contaminants, and other harmful substances into the environment of the State, in such a manner or quantity as to cause pollution; (5) violating federal laws including the Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act, as

amended by the Resource Conservation and Recovery Act and related regulations; and (6) violating their federal and state permits; consequently, the second element of negligence *per se* is further satisfied.

145. Defendants are liable under negligence *per se* for violating the Act, federal laws including the Clean Air Act, Clean Water Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and related regulations, and their federal and state permits.

146. Defendants have failed to cure their wrongful conduct.

147. Defendants have continued to operate their new outlet and/or increased discharge from existing outlets into the ambient air and waters of the State, without making an application and receiving the required permits to do so.

148. Plaintiffs and the proposed Class Members are entitled to recover general, special, and punitive damages as a result of the negligence *per se* arising from Defendants' conduct inclusive of, but not limited to, the damages delineated in this complaint for personal injury and fear of illness, economic and property damage, loss of enjoyment of life, an injunction enjoining New Indy's conduct, and remediation.

ECONOMIC DAMAGES AND PROPERTY DAMAGE

149. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

150. Plaintiffs at all times herein mentioned, had interest or title in their properties and the right to quiet and useful enjoyment thereof, as well as their surrounding living environment, including the air and water.

151. As a direct and proximate result of the wrongful conduct of Defendants, pollutants,

contaminants, and other harmful substances have infiltrated and irreparably damaged Plaintiffs' interest in their properties.

152. As a direct and proximate result of said wrongful conduct, Plaintiffs have suffered economic damages including, but not limited to, the loss of use of property, denial of useful and quiet enjoyment of property, diminution in the fair market value of the property, impairment of the salability of property, property damage, and losses related to the pollution and contamination, all of which have caused said property to be stigmatized.

PERSONAL INJURY AND FEAR OF ILLNESS

153. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

154. As a further direct and proximate result of the Defendants' negligence, Plaintiffs and the proposed Class Members have suffered, and will continue to suffer, pain, discomfort, anxiety, fear, worries, stress, and mental and emotional distress, in an amount to be set forth according to proof at trial.

155. Plaintiffs are informed, believe, and therefore allege that they have and/or will suffer personal injury and medical expenses due to their exposure to the contaminated air and water.

156. The levels of certain pollutants and contaminants emitted by and released by Defendants, including hydrogen sulfide and methyl mercaptan, that have invaded the air and water in the community, area, and region in which Plaintiffs live, work, visit, frequent, and/or otherwise enjoy, ultimately contaminating the air and water, have been medically proven to lead to certain types of illness.

157. Plaintiffs and the proposed Class Members have been and continue to be exposed

to such illness-causing pollutants and contaminants through breathing and being generally exposed to the contaminated air and water.

158. Plaintiffs' and the proposed Class Members emotional stress, worries, and anxieties about developing illness due to New-Indy's tortious conduct are proven to be reasonable, and thus, compensable.

REMEDIATION

159. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

160. As a direct and proximate result of the wrongful conduct of Defendants, Plaintiffs have suffered and continue to suffer damages that include contamination of Plaintiffs' air and water, requiring upgrades, changes, and additions to the Mill's air pollution control and wastewater treatment facilities, property, methods, testing, monitoring, and operations, as well as remediation of all affected air and water.

LOSS OF ENJOYMENT OF LIFE

161. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

162. Damages for the loss of enjoyment of life are separate and apart from pain and suffering damages and compensate Plaintiffs for limitations on their ability to participate in and derive pleasure from the normal activities of "daily life" or their inability to pursue "talents, recreational interests, hobbies, or avocations." In the past, courts have held that the diminishment of pleasure resulting from the loss of use of one of the senses qualifies as loss of the enjoyment of life. *See Boan v. Blackwell* 343 S.C. 498, 501 (S.C. 2001).

163. As a result of Defendants' aforementioned tortious conduct, Plaintiffs cannot safely

breathe the air around them; they cannot experience, enjoy, or use the water around them; they cannot go about their normal lives; and they cannot live on and enjoy their homes, property, yards, and the outdoors as a result because they are subject to toxic, noxious odors, and do not have clear, clean air or water.

164. As a direct and proximate result of Defendants' conduct alleged herein, Plaintiffs have lost the enjoyment of residing in their own homes, as well as living in and enjoying their communities and environment.

PRELIMINARY AND PERMANENT INJUNCTION
TO CEASE POLLUTION AND REMEDIATE THE ENVIRONMENT

165. Each and every allegation of this complaint is incorporated herein as fully as if repeated verbatim.

166. An injunction should issue to prevent Defendants from producing, releasing, spraying, emitting, dispersing, discharging, or otherwise engaging in conduct that causes a release or emission of hydrogen sulfide and other pollutants, contaminants, and harmful substances into areas in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property, by entering an Order requiring Defendants:

a. To immediately cease and desist, or substantially reduce, the production of containerboard and other paper products;

b. To immediately cease and desist the production, release, spray, emission, discharge and/or dispersion of hydrogen sulfide and other pollutants, contaminants, and harmful substances from the Mill into the air and/or water surrounding, in, or adjacent to areas Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property;

c. To immediately become compliant with any and all applicable federal, state,

and local laws, regulations, permits, licenses, and orders related to of the production, release, spray, emission, discharge and/or dispersion of hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent to the area in which Plaintiffs and the proposed Class Members, work, visit, frequent, and/or otherwise enjoy beneficial interests in property.;

d. To immediately make, perform, conduct, or otherwise engage in any and all the construction, renovations and/or operational changes to the Mill necessary to become compliant with any and all applicable federal, state, and local laws, statutes, ordinances, regulations, permits, licenses, and orders related to of the production, release, spray, emission, discharge and/or dispersion of hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent to the area Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property., and to correct, remedy, cease, and counteract all pollution and contamination caused by the Mill's operation to date; and

e. To perform any other act or action that the discovery may reveal to address New-Indy's conduct causing pollution and contamination by the Mill's operations.

167. To obtain an injunction, Plaintiffs must demonstrate that the relief requested is reasonably needed to preserve the parties' rights during the litigation and that they (1) would suffer irreparable harm if the injunction is not granted; (2) that they will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law.

168. Plaintiffs and the proposed Class Members will suffer irreparable harm if an injunction does not issue in that they will:

a. Continue to suffer any and all adverse health effects caused by Defendants'

production, release, spray, emission, discharge and/or dispersion of hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent to in the area in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property; and

b. Continue to suffer the loss of the use and enjoyment of their property caused by Defendants' nuisance and trespass related to the Mill's production, release, spray, emission, discharge and/or dispersion of hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent the area in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property..

169. Plaintiffs will likely succeed on the merits of their claim because:

a. Defendants are liable under negligence *per se* for violating federal and state air, water and waste pollution control laws and regulations including the Clean Air Act, Clean Water Act, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as well as federal and state permits issued under such laws and regulations;

b. As a result of Defendants' negligence, gross negligence, willful and wantonness, and recklessness in failing to prevent the pollution and contamination of the State's air and waters used by Plaintiffs and the proposed Class Members and by negligently failing to contain and properly remediate the source of such pollution, and the proposed Class Members have sustained damages and injuries as herein alleged;

c. Defendants' pollution and contamination constitutes a nuisance, which has resulted in the injuries and damages to Plaintiffs and Plaintiffs' properties described herein;

d. Defendants have engaged in an intentional, unreasonable, negligent, and/or reckless invasion of Plaintiffs' and the proposed Class Members' interests in the private use and enjoyment of their property, constituting a trespass as described herein; and

170. Absent a Court Order enjoining Defendants' conduct, Plaintiffs and the proposed Class Members have no adequate remedy to immediately prevent Defendants from the producing, releasing, spraying, emitting, discharging and/or dispersing hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent to the area in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property, as legal relief in the form of money damages is insufficient to prevent the Defendants from continuing their conduct.

171. Plaintiffs are entitled to preliminary and permanent injunctive relief, enjoining Defendants from the producing, releasing, spraying, emitting, discharging and/or dispersing hydrogen sulfide and other pollutants, contaminants, and harmful substances into the air and/or water surrounding, in, or adjacent to the area in which Plaintiffs and the proposed Class Members live, visit, frequent, and/or otherwise enjoy beneficial interests in property.

PRAYER FOR RELIEF

Accordingly, Plaintiffs request the following relief, on behalf of themselves and the proposed Class Members:

1. Injunctive relief as stated in the Third Cause of Action;

2. Diminution in value of the Plaintiffs' and proposed Class Members' properties;

3. Costs associated with the cleanup of the Plaintiffs' and Class Members' properties and restoring them to a condition free of contamination;

4. Past and future out of pocket expenses in procuring air filtering, air cleaning, water

filtering, and water supply services, products, and resources;

5. Past and future physical pain and suffering, disease, and illness;

6. Past and future reasonable and necessary medical expenses, including costs for future medical surveillance necessary to detect latent medical conditions caused by the Defendants' conduct;

7. Full compensation for the inconvenience, annoyance, and damage to Plaintiffs' quality and enjoyment of life;

8. Past and future mental suffering associated with the fear, stress, and anxiety arising out of the increased risk of developing illness and disease in the future as a result of Plaintiffs exposure to pollutants, contaminants, and other harmful substances;

9. Past and future mental suffering associated with the fear of contracting illness;

10. Punitive damages as provided by S.C. Code Ann. § 15-32-510

11. Pursuant to Fed. R. Civ. P. 23, certification of the proposed Class and designation of Plaintiffs as representatives of the proposed Class and Plaintiffs' counsel as Class Counsel; and

12. Any and all other damages which have arisen or may arise in the future which are presently unnamed.

JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all issues raised in the Complaint, pursuant to Fed. R. Civ. P. 38.

DATED: December 15, 2021

Respectfully submitted,

MOTLEY RICE, LLC

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EXHIBIT A

dhec
Healthy People. Healthy Communities

By USPS and Electronic Mail

Tony Hobson
Vice President of Manufacturing
New Indy Containerboard
3500 Porsche Way, Suite 150
Ontario, CA 91764

Re: New-Indy Catawba LLC - Determination of Undesirable Levels - Order to Correct Undesirable Level of Air Contaminants

Dear Mr. Hobson,

Enclosed please a Determination of Undesirable Levels - Order to Correct Undesirable Level of Air Contaminants issued to New-Indy Catawba LLC, 5300 Cureton Ferry Road, Catawba, SC and dated May 7, 2021. Please note all requirements and deadlines.

Sincerely,

Renee G. Shealy, Chief
Bureau of Environmental Health Services

ec: Myra C. Reece, Director, Environmental Affairs

Enclosures

THE STATE OF SOUTH CAROLINA
BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

IN RE: NEW-INDY CATAWBA, LLC

YORK COUNTY

DETERMINATION OF UNDESIRABLE LEVELS

ORDER TO CORRECT
UNDESIRABLE LEVEL OF AIR CONTAMINANTS

PLEASE TAKE NOTICE:

New-Indy Catawba, LLC, ("New-Indy") operates a kraft pulp and paper mill located at 5300 Cureton Ferry Rd, Catawba, SC, in York County ("Facility). The South Carolina Department of Health and Environmental Control ("Department" or "DHEC") has determined the Facility is a source of an undesirable level of air contaminants of such quantity, characteristics and duration as to be injurious to human health or welfare or which unreasonably interfere with enjoyment of life or use of property.

This determination is based on the following:

1. The Facility operates under Title V Operating Permit #2440-0005 that was issued on May 7, 2019, became effective on July 1, 2019, and expires on June 30, 2024. New-Indy was issued Construction Permit #2440-0005-DF on July 23, 2019, in accordance with state and federal air quality regulations and standards, to allow the Facility to modify its processes to convert from bleached paper production to brown paper production. The construction permit was revised on May 13, 2020, to allow the Facility to hard pipe its condensates to the wastewater treatment plant. 40 CFR 63, Subpart S, allows this hard piping as a compliance option. The Facility reported to DHEC that it began to make brown paper on February 1, 2021.

2. The MACT standard allows hard piping of all the condensates to wastewater treatment plant as a compliance option. New-Indy projected in its construction permit application that the Facility modifications and other operational changes could result in an increase in hydrogen sulfide emissions from the Facility. The projected increase in hydrogen sulfide emissions provided by New-Indy was below the "significant net increase" threshold as outlined in S.C. Regulation 61-62.5, Standard 7, and therefore allowed DHEC to issue a minor construction air permit for the change.

3. Hydrogen sulfide is a flammable, colorless gas. It is a component of Total Reduced Sulfur (TRS) chemical mixture associated with the pulp and paper industry and has a "rotten egg" odor. People usually can smell hydrogen sulfide at low concentrations in air ranging from 0.0005 to 0.3 parts per million (ppm). The Center for Disease Control (CDC) Information Center guidance states that exposure to low concentrations of hydrogen sulfide may cause irritation to the eyes, nose, or throat, difficulty in breathing for some asthmatics and may also cause headaches, poor memory, tiredness, and balance problems.

4. In February, after receiving odor complaints of noxious, foul smelling odors in York and Lancaster counties, in the vicinity of the Facility, described as rotten egg and chemical odors, DHEC immediately began an investigation to determine the source of the odors.

5. By early March 2021, the number of odor complaints from Lancaster, York and adjoining North Carolina counties increased dramatically. On March 12, 2021, DHEC set up a public web page to provide updates on its odor investigation and provided a form for residents to report the location of and description of observed odors. To date, DHEC has received more than 17,000 complaints of noxious odors from persons living in York and Lancaster counties in South Carolina and in North Carolina. This is an unprecedented number of complaints received by the agency related to odor.

6. Complaints indicate the odor is injurious to the welfare and quality of life and is interfering with use and enjoyment of property. There are many reports of injurious health impacts such as reports of headaches, nausea, skin and eye irritation caused by the air contaminants and noxious odors. It has also been reported that symptoms subside when either the odor subsides, or the person leaves the area where the odor is located.

7. DHEC staff have also observed strong, offsite, foul odors in the vicinity of the Facility and several miles away from the Facility that are characteristic of hydrogen sulfide emissions from kraft pulp and paper facilities. On February 22, 23 and 24, 2021, the Department conducted air, wastewater and landfill inspections at the Facility, and has continued its odor investigation to date. DHEC has also investigated other possible sources of odor in the York and Lancaster area, including other air emissions sources, wastewater treatment plants and regulated landfills in the vicinity.

8. As part of its investigation, DHEC conducted a back-trajectory analysis to determine whether the Facility or other area facilities were the source of contaminants causing the odor issues in the vicinity of York and Lancaster counties in South Carolina, and adjoining areas of North Carolina. A back-trajectory analysis is used to track the origin of air masses and establish source-receptor relationships. Using meteorological data, the study traces parcels of air from where odors are reported back to the source.

9. In DHEC's back trajectory study, the Facility was located near, directly in, or under the upstream air trajectory on 25 of the 34 back trajectories that were analyzed. Based on the

information collected during the ongoing odor investigation and back trajectory analysis, DHEC did not identify other significant sources of the reported odors and determined that the Facility was the significant source of the noxious odors reported in the York and Lancaster area.

10. In a letter to the New-Indy dated April 7, 2021, DHEC notified New-Indy as follows:

> Based on the results of our investigation, it appears that New-Indy Catawba LLC located at 5300 Cureton Ferry Road, Catawba, SC 29704 is a significant contributor to the reported odors in the York and Lancaster area. At this time, we have not identified any other significant sources of the reported odors. While regulatory compliance determinations based on the inspections are still pending, we respectfully request that New-Indy Catawba LLC fully evaluate its operations and identify and take corrective actions on any potential sources that could be contributing to the odors currently being investigated in York and Lancaster counties.
>
> The wastewater treatment plant processes should be evaluated to determine if operation and maintenance of the system is appropriate based on the current operations. The attached wastewater inspection report identifies several deficiencies that should be addressed immediately. The facility's manuals and plans should be updated to reflect current operations and updated documents submitted by April 20, 2021. This includes the odor abatement plan.
>
> On March 26, 2021, we requested information related to current sludge management operations at the facility. You submitted October 2014 and March 2017 documents in response to this request. Please provide recent information that addresses current sludge management including but not limited to how you are facilitating the proper operations of the wastewater system and a description of how you are moving the legacy containing sludge to lagoon 4 and meeting the obligations under the Voluntary Cleanup Contract.
>
> The recent modifications related to the shut-down of the air stripper and the hard piping of the foul condensate tank to the WWTP at the facility should be evaluated to determine if they are contributing to the odors in the community….
>
> Additionally, the recent change in operation from making bleached paper to brown paper appears to have increased the overall TRS and

H2S emissions from the facility. Any increases in stack emissions, changes in operation of pollution control equipment, and any uncontrolled emissions should be evaluated to determine if these changes are contributing to the odors in the community.

11. On April 16, 2021, New-Indy submitted a letter to DHEC stating that it had retained a consultant to conduct an "expedited screening analysis" during the periods of March 16 through 18 and 23 through 25, 2021. This report was submitted on April 16, 2021; however, no full evaluation of the Facility's operations was submitted to DHEC. Though requested by DHEC's April 7 letter, New-Indy has not updated its operating manuals and plans to reflect current operations.

12. New-Indy's failure to update its odor abatement plan when it initiated modified operations from bleached paper production to brown paper production may be in contravention of its wastewater permit. The Facility's National Pollutant Discharge Elimination System (NPDES) Permit No. SC0001015 includes the following provision:

> 3. Odor Control Requirements
>
> The permit holder shall use best management practices normally associated with the proper operation and maintenance of a sludge wastewater treatment site, any sludge storage or lagoon areas, transportation of sludges, and all other related activities to ensure that an undesirable level of odor does not exist.
>
> a. In accordance with R.61-9.504.50 (Odor Control Requirements were added to Regulation 61-9 on December 26, 2003), the permittee shall prepare an odor abatement plan for the industrial sludge treatment sites, any sludge storage or lagoon areas, and land application or land disposal sites. The permittee has one year from the effective date of this permit to prepare the plan.
>
> (1) Operation and maintenance practices which are used to eliminate or minimize undesirable odor levels in the form of best management practices for odor control;
> (2) Use of treatment processes for reduction of undesirable odors;
> (3) Use of setbacks;
> (4) Contingency plans and methods to address odor problems for the different type of disposal/application methods used.

b. The Department may review the odor abatement plan for compliance with R.61-9.504.50. The Department may require changes to the plan as appropriate.

c. The permittee shall not cause, allow, or permit emission into the ambient air of any substance or of substances in quantities that an undesirable level of odor is determined to result unless preventative measures of the type set out below are taken to abate or control the emission to the satisfaction of the Department. Should an odor problem come to the attention of the Department through field surveillance or specific complaints, the Department may determine, in accordance with section 48-1-120 of the Pollution Control Act, if the odor is at an undesirable level by considering the character and degree of injury or interference to:
   (1) The health or welfare of the people;
   (2) Plant, animal, freshwater aquatic, or marine life;
   (3) Property; or
   (4) Enjoyment of life or use of affected property.

d. Should the Department determine that an undesirable level of odor exists, the Department may require:
   (1) The permittee to submit a corrective action plan to address the odor problem,
   (2) Remediation of the undesirable level of odor within a reasonable timeframe, and
   (3) In an order, specific methods to address the problem.

e. If the permittee fails to control or abate the odor problems addressed in this section within the specified timeframe, the Department may revoke disposal/application activities associated with the site or the specific aspect of the sludge management program.

f. **The odor abatement plan shall be updated and maintained as necessary throughout the life of the permit.** (emphasis added).

13. On April 24-27, the US Environmental Protection Agency (EPA) conducted geospatial monitoring of hydrogen sulfide near the Facility to identify sources of the odor in the nearby vicinity. EPA data confirms concentrated levels of hydrogen sulfide were detected on-site and off-site downwind from the facility. This validates the determination that the Facility is a source of noxious air contaminants at undesirable levels.

14. In correspondence dated May 5, 2021, New-Indy informed DHEC of steps taken to address the issues being discussed with the Department. To ensure prompt action by New-Indy to correct the undesirable levels of air contaminants, DHEC is issuing this corrective Order.

WHEREAS, Section 48-1-10(18) of the South Carolina Pollution Control Act, defines an "Undesirable level" as the "presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in sufficient quality and of such characteristics and duration as to be injurious to human health or welfare, or to damage plant, animal or marine life, to property or which unreasonably interfere with enjoyment of life or use of property."

WHEREAS, Section 48-1-120 of the South Carolina Pollution Control Act, Determination and correction of undesirable level, provides:

> If the Department shall determine that an undesirable level exists, it shall take such action as necessary to control such condition.
>
> The Department shall grant such time as is reasonable for the owner or operator of a source to correct the undesirable level, after taking all factors into consideration that are pertinent to the issue.
>
> In making its order and determinations, the Department shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions involved including, but not limited to:
>
> (a) The character and degree of injury to, or interference with, the health and physical property of the people;
> (b) The social and economic value of the source of the undesirable levels;
> (c) The question of priority of location in the area involved; and
> (d) The technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from such source.
>
> If the undesirable level is not corrected within the required time, then the Department shall issue an order to cease and desist from causing such emissions.

WHEREAS, based upon the facts set forth herein and taking into account all the considerations required by Section 48-1-120, the Department has determined that undesirable levels of air contaminants from operations of the Facility exist, such undesirable levels are injurious to human health or welfare or are unreasonably interfering with enjoyment of life or use of property, and such undesirable levels must be corrected.

IT IS THEREFORE ORDERED THAT New-Indy shall complete the following to ensure the prompt correction of undesirable air contaminants:

1. On or before May 17, 2021, develop a plan to provide expeditious public notification to the Department and surrounding communities prior to conducting any activities onsite that may increase odors offsite, even if the activities are intended to ultimately reduce odors.

2. On or before May 17, 2021, update and submit to the Department for approval the Notification of Intent to Conduct Performance Testing and Test Protocol to comply with 40 CFR 63, Subpart S, dated April 14, 2021, for the condensate collection and treatment system to reflect the restart of the steam stripper and to modify the sampling methods to include methanol, hydrogen sulfide (H2S) and methyl mercaptan. The updated notification, test protocol and test report must be submitted to Michael Shroup at shroupmd@dhec.sc.gov. This test must be completed no later than July 31, 2021, to comply with 40 CFR 63, Subpart S.

3. On or before June 1, 2021, complete an evaluation conducted in consultation with a nationally recognized organization, such as the National Council for Air and Stream Improvement (NCASI), to fully evaluate the current operations and processes at the Facility to identify all potential sources that could be contributing to the odors and elevated levels of H2S on and off Facility property. The evaluation must include the recent change in operation from making bleached paper to brown paper, the wastewater treatment plant operations, the recent modifications related to the steam stripper and the hard piping of the foul condensate tank to the wastewater treatment plant, any increases in stack emissions, any changes in operation of pollution control equipment, and any uncontrolled emissions to determine if these changes are contributing to the odors in the vicinity of the Facility.

4. On or before June 1, 2021, submit to the Department for approval a Quality Assurance Project Plan (QAPP) to conduct onsite and offsite H2S monitoring. Coordinate development of the QAPP with the Department to agree on the monitoring objectives. Implement the QAPP upon Department approval. Submit the QAPP to David Graves at gravesda@dhec.sc.gov. Operate and maintain air monitoring stations and associated data collection equipment for hydrogen sulfide (H2S) at representative locations as approved by the Department. New-Indy shall allow the Department access to the monitors to collect data and to data collected by New-Indy.

5. On or before June 1, 2021, submit to the Department for approval a site-specific test plan to conduct stack or vent testing to verify estimated increases in air emissions from making the switch from bleached paper to brown paper and restarting the steam stripper. This test plan shall detail all testing methods to be used to perform testing and evaluation of total reduced sulfur (TRS), H2S, and sulfur dioxide (SO2) emissions. New-Indy shall coordinate with Bureau of Air Quality (BAQ) to be onsite to observe all tests. Testing shall be commenced by June 15, 2021 and completed by June 30, 2021. Tests shall include TRS, H2S, and SO2 emission from the following stacks or vents to verify emission estimates:

    - Paper machine 2 and 3 vents
    - Kraft non condensable gases (NCG) system including evaporator sets

- Pulp dryer
- Steam Stripper inlet and outlet and combustion boiler outlet

Within fifteen (15) days after completion of the stack and vent testing and condensate sampling outlined above, conduct a facility-wide air dispersion modeling analysis for TRS, H2S and SO2 emissions. Include area source modeling for possible fugitive emission sources and wastewater pond, basins, and other wastewater systems. All test notifications, protocols and test reports shall be submitted to Michael Shroup at shroupmd@dhec.sc.gov.

6. On or before June 15, 2021, submit to the Department a report of the evaluation conducted in Step 3 above and, for review, comment, and approval; a corrective action plan (CAP) (developed and stamped by a South Carolina-registered Professional Engineer (PE)) and a schedule of implementation, which addresses operational issues identified in the above-referenced evaluation as contributing to the odor. The schedule of implementation shall include specific dates or timeframes for initiation and the completion of each action and details as to how each action addresses the odor and operational issues noted above. The schedule of implementation of specific corrective action steps proposed under the CAP will be evaluated by the Department and comments provided to New-Indy within five calendar days. New-Indy shall address all comments by the Department and submit a final approvable CAP within five calendar days of Department comment. Upon Department approval, the schedules(s) and corrective actions contained within the CAP shall be incorporated into and become an enforceable part of this Order.

7. On or before June 15, 2021, and to the extent not included in Step 6 above, submit to the Department, for review, comment and approval, a corrective action plan (CAP) (developed and stamped by a South Carolina-registered Professional Engineer (PE)) and a schedule of implementation, which addresses operational issues at the Facility wastewater treatment plant that may be causing or contributing to odor and elevated levels of H2S. This CAP shall include, but not be limited to, a comprehensive evaluation of the wastewater treatment plant to determine if adequate and appropriate facultative waste treatment is occurring in the aerated stabilization basin (ASB) and the potential for odors resulting from the discharge of foul condensate into the wastewater treatment plant. The CAP shall address the significant fiber and sludge accumulation and foam occurring in the ASB and identify their respective source(s). Additionally, the CAP shall include a study of the microbial concentration in the ASB to determine if there is an adequate microbial population to aid in the reduction of foam on the ASB. The schedule of implementation shall include specific dates or timeframes for initiation and the completion of each action and details as to how each action addresses the odor and wastewater treatment system operational issues noted above. The schedule of implementation of specific corrective action steps proposed under the CAP will be evaluated by the Department and comments provided to New-Indy within five calendar days. New-Indy shall address all comments by the Department and submit a final approvable CAP within five calendar days of Department comment. Upon Department approval, the schedules(s) and corrective actions contained within the CAP shall be incorporated into and become an enforceable part of this Order.

8. On or before the close of business each Friday submit a written weekly update regarding the implementation of this Order to Renee Shealy at shealyrg@dhec.sc.gov.

9. Allow unrestricted access to Department personnel or contractors for oversight of all activities.

10. Unless otherwise noted herein, the Department's point of contact for all matters related to this Order will be:

Renee Shealy
2600 Bull Street
Columbia, SC 29201
803-896-8994
shealyrg@dhec.sc.gov

IT IS FURTHER ORDERED that failure to comply with this Order may subject New-Indy to further action by the Department pursuant to its authority under the Pollution Control Act, S.C. Code Ann. 48-1-10 *et seq*. The Department reserves all authority to take administrative, civil, emergency, or other action, including imposition of penalties, related to the operation of the Facility, including, but not limited to, matters addressed herein.

IT IS FURTHER ORDERED that the execution date of this Order is the date this Order is signed by the Director of Environmental Affairs.

AND IT IS SO ORDERED.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

By Myra C Reece
Myra Reece, Director, Environmental Affairs

DATE: May 7, 2021

South Carolina Board of Health and Environmental Control

Guide to Board Review

Pursuant to S.C. Code Ann. § 44-1-60

The decision of the South Carolina Department of Health and Environmental Control (Department) becomes the final agency decision fifteen (15) calendar days after notice of the decision has been mailed to the applicant, permittee, licensee and affected persons who have requested in writing to be notified, unless a written request for final review accompanied by a filing fee in the amount of $100 is filed with Department by the applicant, permittee, licensee or affected person.

Applicants, permittees, licensees, and affected parties are encouraged to engage in mediation or settlement discussions during the final review process.

If the Board declines in writing to schedule a final review conference, the Department's decision becomes the final agency decision and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court within thirty (30) calendar days after notice is mailed that the Board declined to hold a final review conference. In matters pertaining to decisions under the South Carolina Mining Act, appeals should be made to the South Carolina Mining Council.

I. Filing of Request for Final Review

1. A written Request for Final Review (RFR) and the required filing fee of one hundred dollars ($100) must be received by Clerk of the Board within fifteen (15) calendar days after notice of the staff decision has been mailed to the applicant, permittee, licensee, or affected persons. If the 15th day occurs on a weekend or State holiday, the RFR must be received by the Clerk on the next working day. RFRs will not be accepted after 5:00 p.m.
2. RFRs shall be in writing and should include, at a minimum, the following information:
   - The grounds for amending, modifying, or rescinding the staff decision;
   - a statement of any significant issues or factors the Board should consider in deciding how to handle the matter;
   - the relief requested;
   - a copy of the decision for which review is requested; and
   - mailing address, email address, if applicable, and phone number(s) at which the requestor can be contacted.
3. RFRs should be filed in person or by mail at the following address:
   South Carolina Board of Health and Environmental Control
   Attention: Clerk of the Board
   2600 Bull Street
   Columbia, South Carolina 29201
   Alternatively, RFR's may be filed with the Clerk by facsimile (803-898-3393) or by electronic mail (boardclerk@dhec.sc.gov).
4. The filing fee may be paid by cash, check or credit card and must be received by the 15th day.
5. If there is any perceived discrepancy in compliance with this RFR filing procedure, the Clerk should consult with the Chairman or, if the Chairman is unavailable, the Vice-Chairman. The Chairman or the Vice-Chairman will determine whether the RFR is timely and properly filed and direct the Clerk to (1) process the RFR for consideration by the Board or (2) return the RFR and filing fee to the requestor with a cover letter explaining why the RFR was not timely or properly filed. Processing an RFR for consideration by the Board shall not be interpreted as a waiver of any claim or defense by the agency in subsequent proceedings concerning the RFR.
6. If the RFR will be processed for Board consideration, the Clerk will send an Acknowledgement of RFR to the Requestor and the applicant, permittee, or licensee, if other than the Requestor. All personal and financial identifying information will be redacted from the RFR and accompanying documentation before the RFR is released to the Board, Department staff or the public.
7. If an RFR pertains to an emergency order, the Clerk will, upon receipt, immediately provide a copy of the RFR to all Board members. The Chairman, or in his or her absence, the Vice-Chairman shall based on the circumstances, decide whether to refer the RFR to the RFR Committee for expedited review or to decline in writing to schedule a Final Review Conference. If the Chairman or Vice-Chairman determines review by the RFR Committee is appropriate, the Clerk will forward a copy of the RFR to Department staff and Office of General Counsel. A Department response and RFR Committee review will be provided on an expedited schedule defined by the Chairman or Vice-Chairman.
8. The Clerk will email the RFR to staff and Office of General Counsel and request a Department Response within eight (8) working days. Upon receipt of the Department Response, the Clerk will forward the RFR and Department Response to all Board members for review, and all Board members will confirm receipt of the RFR to the Clerk by email. If a Board member does not confirm receipt of the RFR within a twenty-four (24) hour period, the Clerk will contact the Board member and confirm receipt. If a Board member believes the RFR should be considered by the RFR Committee, he or she will

respond to the Clerk's email within forty-eight (48) hours and will request further review. If no Board member requests further review of the RFR within the forty-eight (48) hour period, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Final Review Conference. Contested case guidance will be included within the letter.
NOTE: If the time periods described above end on a weekend or State holiday, the time is automatically extended to 5:00 p.m. on the next business day.

9. If the RFR is to be considered by the RFR Committee, the Clerk will notify the Presiding Member of the RFR Committee and the Chairman that further review is requested by the Board. RFR Committee meetings are open to the public and will be public noticed at least 24 hours in advance.
10. Following RFR Committee or Board consideration of the RFR, if it is determined no Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, stating the Board will not hold a Conference. Contested case guidance will be included within the letter.

II. Final Review Conference Scheduling

1. If a Conference will be held, the Clerk will send a letter by certified mail to the Requestor, with copy by regular mail to the applicant, permittee, or licensee, if not the Requestor, informing the Requestor of the determination.
2. The Clerk will request Department staff provide the Administrative Record.
3. The Clerk will send Notice of Final Review Conference to the parties at least ten (10) days before the Conference. The Conference will be publically noticed and should:
   - include the place, date and time of the Conference;
   - state the presentation times allowed in the Conference;
   - state evidence may be presented at the Conference;
   - if the conference will be held by committee, include a copy of the Chairman's order appointing the committee; and
   - inform the Requestor of his or her right to request a transcript of the proceedings of the Conference prepared at Requestor's expense.
4. If a party requests a transcript of the proceedings of the Conference and agrees to pay all related costs in writing, including costs for the transcript, the Clerk will schedule a court reporter for the Conference.

III. Final Review Conference and Decision

1. The order of presentation in the Conference will, subject to the presiding officer's discretion, be as follows:
   - Department staff will provide an overview of the staff decision and the applicable law to include [10 minutes]:
     - Type of decision (permit, enforcement, etc.) and description of the program.
     - Parties
     - Description of facility/site
     - Applicable statutes and regulations
     - Decision and materials relied upon in the administrative record to support the staff decision.
   - Requestor(s) will state the reasons for protesting the staff decision and may provide evidence to support amending, modifying, or rescinding the staff decision. [15 minutes] *NOTE: The burden of proof is on the Requestor(s)*
   - Rebuttal by Department staff [15 minutes]
   - Rebuttal by Requestor(s) [10 minutes]
     Note: Times noted in brackets are for information only and are superseded by times stated in the Notice of Final Review Conference or by the presiding officer.
2. Parties may present evidence during the conference; however, the rules of evidence do not apply.
3. At any time during the conference, the officers conducting the Conference may request additional information and may question the Requestor, the staff, and anyone else providing information at the Conference.
4. The presiding officer, in his or her sole discretion, may allow additional time for presentations and may impose time limits on the Conference.
5. All Conferences are open to the public.
6. The officers may deliberate in closed session.
7. The officers may announce the decision at the conclusion of the Conference or it may be reserved for consideration.
8. The Clerk will mail the written final agency decision (FAD) to parties within 30 days after the Conference. The written decision must explain the basis for the decision and inform the parties of their right to request a contested case hearing before the Administrative Law Court or in matters pertaining to decisions under the South Carolina Mining Act, to request a hearing before the South Carolina Mining Council.. The FAD will be sent by certified mail, return receipt requested.
9. Communications may also be sent by electronic mail, in addition to the forms stated herein, when electronic mail addresses are provided to the Clerk.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

EXHIBIT B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

May 13, 2021

SENT VIA ELECTRONIC MAIL

Mr. Tony Hobson
Vice President of Manufacturing
New Indy Catawba, LLC d/b/a/ New Indy Containerboard
5300 Cureton Road
Catawba, South Carolina 29704
tony.hobson@new-indycb.com

Re: Clean Air Act Section 303 Emergency Order

Dear Mr. Hobson:

Pursuant to Section 303 of the Clean Air Act, 42 U.S.C. § 7603, the U.S. Environmental Protection Agency is issuing the enclosed Emergency Order (Order), requiring New Indy Containerboard to comply with the requirements of said Order, at its facility located at 5300 Cureton Ferry Road in Catawba, York County, South Carolina.

If you have any questions regarding this matter, please contact Todd Russo, Chief, Air Enforcement Branch, at (404) 562-9194 or by email at russo.todd@epa.gov, or have your attorney contact Marirose J. Pratt, at (404) 562-9023 or by email at pratt.marirose@epa.gov.

Sincerely,

John Blevins
Acting Regional Administrator

Enclosures

cc:
Daniel Mallett, Environmental Manager
New Indy Containerboard
dan.mallett@new-indycb.com

Pete Cleveland, Technical Manager
New Indy Containerboard
pete.cleveland@new-indycb.com

Rhonda B. Thompson, Chief
Bureau of Air Quality, SC DHEC
thompsrb@dhec.sc.gov

Micheal Abraczinskas, Director
Division of Air Quality, NC DEQ
Michael.abraczinskas@ncdenr.gov

Leslie Rhodes, Division Director
Mecklenburg County Air Quality, LUESA
Leslie.rhodes@mecklenburgcountync.gov

Scott Hansen, Environmental Director
Catawba Indian Nation
Scott.hansen@catawba.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

In the matter of **New-Indy Catawba, LLC d/b/a New-Indy Containerboard.** 5300 Cureton Ferry Road Catawba, South Carolina 29704 Respondent. Proceeding under Section 303 of the Clean Air Act, 42 U.S.C. § 7603	**CLEAN AIR ACT EMERGENCY ORDER**

STATEMENT OF AUTHORITY

This emergency order ("Order") is issued to New-Indy Catawba, LLC ("Respondent") pursuant to the authority granted to the Administrator of the United States Environmental Protection Agency ("EPA") by Section 303 of the Clean Air Act ("CAA" or "the Act"), 42 U.S.C. § 7603, to protect public health or welfare, or the environment. The authority to issue this Order has been delegated by the Administrator of EPA to the Regional Administrator for EPA Region 4 ("Regional Administrator") by Delegation No. 7-49. This Order is issued by the Regional Administrator.

Section 303 of the Act provides that:

> [T]he Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance

and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

PARTIES BOUND

1. This Order applies to and is binding upon Respondent, its officers, directors, employees, agents, trustees, receivers, successors, assigns, and all other persons, including but not limited to firms, corporations, limited liability companies, subsidiaries, contractors, consultants, and lessees acting under or on behalf of Respondent in connection with the implementation of this Order.

2. Respondent shall be responsible and liable for conducting the activities specified pursuant to this Order, regardless of who performs the activities. Respondent shall be liable for the conduct of employees, agents, contractors, consultants, or lessees to satisfy the requirements of this Order.

3. No change in the ownership of the facility affected by this Order or the ownership or corporate status of Respondent shall in any way alter, diminish, or otherwise affect the responsibilities of Respondent under this Order. Respondent shall provide a copy of this Order to any successor(s) during the pendency of this Order.

FINDINGS OF FACT

The Regional Administrator makes the following Findings of Fact:

4. Prior to issuing this Order, EPA consulted with representatives of the State of South Carolina's Department of Health and Environmental Control ("DHEC"), of York County, South Carolina, and of Mecklenburg County, North Carolina to confirm the accuracy of the information upon which this Order is based.

5. Respondent is a limited liability corporation registered to do business in South Carolina.

6. Respondent operates a pulp and paper mill located at 5300 Cureton Ferry Road in Catawba, South Carolina (the "facility"). A population of approximately 1,696,019 people live within a 30-mile

radius of the facility, which includes portions of York, Lancaster, and Chester Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina.

7. The facility is located approximately 10-11 miles south and south west of Indian Land, South Carolina and Waxhaw, North Carolina, respectively. The Catawba Indian Nation Reservation is located less than 4 miles north of the facility.

8. After applying for and receiving on July 23, 2019, a state construction permit authorizing manufacturing conversions (Construction Permit # 2440-0005-DF), the Respondent shut the facility down between September of 2020 and November of 2020, to convert manufacturing operations from communication paper products (bleached paper) to containerboard grades (unbleached cardboard or brown paper).

9. Prior to the conversion, Respondent sent more than half of the volume of its foul condensate stream, which contained hydrogen sulfide, methyl mercaptan, methanol, and other chemicals, to the steam stripper. Respondent was using the steam stripper and incinerator to control its hazardous air emissions, which also resulted in the removal of hydrogen sulfide and other chemicals from facility air emissions. The Respondent was piping the remainder of its foul condensate to the Aeration Stabilization Basin ("ASB") at a rate of approximately 90 gallons per minute ("gpm").

10. After the conversion, when the facility resumed manufacturing operations in November 2020 (with low production rates), and began higher (but not full) production rates in February 2021, it began sending all of its foul condensate stream to the ASB in the wastewater treatment facility (at approximately 720-800 gpm), where hydrogen sulfide, methyl mercaptan, methanol and chemicals can be volatilized and emitted to the ambient air. This practice is likely to lead to passive air stripping of hydrogen sulfide into the ambient air given the high volatility of hydrogen sulfide.

11. On April 5, 2021, DHEC received a permit application from the Respondent requesting the removal of a permit production limit to allow for an increase in the production rate at the facility. DHEC has not yet acted on that permit application.

12. Hydrogen sulfide is a flammable, colorless gas that smells like rotten eggs. People usually can smell hydrogen sulfide at low concentrations in ambient air ranging from 0.0005 to 0.3 parts per million ("ppm") (0.5 to 300 parts per billion ("ppb")).

13. Inhalation exposures to elevated concentrations of hydrogen sulfide have been shown to cause various adverse health effects. These include, but are not limited to, headache, nausea, difficulty breathing among people with asthma, and irritation of the eyes, nose, and throat. Whether effects occur and their severity depends on the magnitude of exposure, the duration of exposure, and the frequency of exposure.

14. Residents in Fort Mill, Indian Land, Rockhill, and Lancaster, South Carolina, and in Charlotte, Matthews, Pineville, and Waxhaw, North Carolina (Lancaster and York Counties in South Carolina, and Union and Mecklenburg Counties in North Carolina), have complained of strong odors emanating from the facility and reported health effects to DHEC. In DHEC's online database, which was created on March 12, 2021, and allows specific information to be reported in a descriptor field, the reported health effects have included nausea (approximately 740 complaints, including those that reported exposure to a "nauseating" odor), headaches including migraines (approximately 650 complaints), nose or throat irritation (approximately 370 complaints), and eye irritation (approximately 360 complaints). Less frequently reported symptoms include coughing, difficulty breathing, asthma "flare ups," and dizziness. As of April 27, 2021, in the approximately five weeks since the DHEC online database was created, the database received approximately 14,000 such complaints, some from residents as far as 30 miles away from the facility. In all of 2020, DHEC received approximately five complaints about the facility.

15. Residents have also documented on DHEC's online database a wide range of impacts to quality of life, personal comfort, and wellbeing. This includes hundreds of instances of lost sleep, a desire to stay indoors to avoid odors, and stress and anxiety. For example, many residents noted: that odors are noticeable inside their homes (more than 2,000 complaints); that they were woken at night due to the odors (more than 600 complaints); and that they did not want to go outside due to the odors (more than 400 complaints). A sampling of specific quality of life impacts include: "It [the odors] is preventing our ability to enjoy our home and community," "We basically cannot enjoy our life," and "We are prisoners in our own smelly home."

16. By April 9, 2021, DHEC was actively investigating the source of the strong odors reported in York and Lancaster Counties. DHEC personnel reported experiencing off-site odors on Highway 5, as it crosses the Catawba River near the facility, and in neighborhoods several miles away, in Rock Hill, Lancaster, and Indian Land, South Carolina.

17. EPA Region 4 also maintains a database to keep track of complaints submitted by residents who live near the facility. During March and April of 2021, EPA logged 310 complaints. Some complaints reported odors and a subset included information on health impacts. The most frequently cited symptoms included in the EPA database were headache (80 complaints), burning eyes (52 complaints), nausea (40 complaints), and throat irritation (20 complaints). These are the same four health impacts that were reported most frequently in the DHEC online database.

18. On April 14, 2021, at 10:00 a.m., EPA met with the Respondent via video conference to discuss the chronology of facility operational changes since Respondent's acquisition of the facility in December of 2018, including the period the facility was shut down between September and November of 2020, and the change from steam stripping the foul condensate stream to biological treatment when the facility restarted operations in November of 2020. EPA asked the Respondent what would be needed to restart the steam stripper, and Respondent committed to looking into this question.

19. On April 15, 2021, while at the facility, EPA discussed with Respondent its foul condensate stream, including diagrams of the point of generation of the foul condensate and the foul condensate operational path through the facility. The EPA again asked the Respondent for information on when it would be able to restart the steam stripper, and the Respondent committed to providing information to EPA by the following week.

20. During the onsite inspection on April 15, 2021, duly authorized EPA Region 4 inspectors wore 4-gas monitors for personal safety that were set to alarm at a low threshold of 10 ppm (10,000 ppb) of hydrogen sulfide. One inspector experienced the following hydrogen sulfide readings with the 4-gas monitor while onsite at the facility:

a. At 11:07 a.m., on the top of the Post-Aeration Tank, near the guardrail overlooking the tank contents, the 4-gas monitor hydrogen sulfide alarm triggered and read 15.9 ppm (15,900 ppb).

b. At 12:41 p.m., about 50 feet from Aerator 6, the 4-gas monitor hydrogen sulfide reading was 6.9 ppm (6,900 ppb). The 4-gas monitor also read hydrogen sulfide of 3.1 ppm (3,100 ppb) at 12:49 p.m., and 4.9 ppm (4,900 ppb) at 12:52 p.m.

c. At approximately 4:47 p.m., a hydrogen sulfide alarm on the 4-gas monitor triggered while the employee was near the Evaporator Tank #1. The above 10 ppm reading wasn't recorded, but shortly after the employee left the area, the 4-gas monitor showed a reading of 6.9 ppm (6,900 ppb).

21. On April 24, 25, 26 and 27, 2021, EPA inspectors also detected hydrogen sulfide from on-site and nearby locations downwind of the facility using the EPA Region 5 Geospatial Measurement of Air Pollution ("GMAP") mobile laboratory described in EPA Other Test Method 33A ("OTM 33A")[1].

[1] OTM 33A is available on EPA's website here: https://www.epa.gov/emc/emc-other-test-methods#Other%20Test%20Methods.

22. Region 5's GMAP uses a spectroscopy analyzer to measure hydrogen sulfide concentrations. The collected data are integrated with global positioning system ("GPS") location information and meteorological parameters, when available, under a common time stamp using the specially designed Mobile Emission Monitoring ("MEM") software to quantify air pollutant concentrations and source trajectories.

23. Between April 24 and 27, 2021, EPA used the GMAP platform to perform 15 stationary measurements of airborne hydrogen sulfide, one of which was a non-detect measurement. During these events, the GMAP system was not moving and continuously sampled air for durations ranging from five (5) minutes to 129 minutes. Table 1 summarizes the stationary measurement results, except for the non-detect measurement. With one exception, all samples were collected in the morning hours, at various times between 3:30 a.m. and 9:30 a.m. As the exception, the first sample shown in Table 1 was collected in the evening hours, at 7:45 to 8:45 p.m.

Table 1. Stationary Hydrogen Sulfide Sampling Results

Date	Location	Approximate Distance From Facility[2]	Sample Duration (Minutes)	Hydrogen Sulfide Concentrations (ppb)	
				Highest One-Second Average	Average Over Sample Duration
4/24/2021	Highway 5 & Catawba River	0.38 miles N	60	473.37	281.13
4/24/2021	Riverside Rd & Confab Ln	0.67 miles SE	30	14.01	3.82
4/25/2021	Riverside Rd and Confab Ln	0.63 miles SE[3]	62	387.41	173.22
4/25/2021	Facility parking lot	NA	129	66.64	6.73
4/25/2021	Cobble Stone Way & Sherman Drive (Riverchase Estates)	1.61 miles NE	30	102.63	65.85
4/25/2021	Riverside Rd & Quail Point Farm Rd	0.4 miles SE of WWTP[4]	34	12.25	2.64
4/25/2021	Cureton Ferry Rd	0.4 miles N	47	13.16	1.73

[2] Sample locations are estimated distances from specific unit operations at the facility, such as the holding ponds or the aeration basins.
[3] The EPA Region 5 May 5, 2021 GMAP Report for New Indy Containerboard incorrectly identifies this stationary location as approximately 0.64 miles NE, rather than SE of the facility.
[4] This stationary source sample was taken approximately 0.4 miles southeast of the Catawba Wastewater Treatment Plant.

4/26/2021	Riverside Rd and Confab Ln	0.64 miles SE	60	943.74	669.44*
4/26/2021	Riverchase Estates Entrance	1.53 miles SE	30	219.20	187.9
4/26/2021	Townsend Rd (Riverchase Estates)	1.64 miles SE	30	193.11	110.19
4/27/2021	Highway 5 & Catawba River	0.40 miles N	30	501.82	315.19
4/27/2021	Catawba Reservation, Iswa Headstart School	3.56 miles N	30	140.56	120.75
4/27/2021	NE edge of facility aeration basin	NA	38	3,592.60	842.01*
4/27/2021	NE edge of facility aeration basin	NA	5	3,155.78	975.87*

* Hydrogen sulfide concentrations greater than acute exposure guidance 1 levels ("AEGL-1").

24. Between April 24 and 27, 2021, EPA used the GMAP platform to collect 84 mobile transect measurements of airborne hydrogen sulfide. On April 24, mobile transect samples were primarily collected during the evening hours (i.e., later than 7:00 p.m.). On the other three sampling dates, mobile transect samples were collected primarily during morning hours.

25. During each mobile transect, duly authorized EPA field personnel drove the GMAP mobile air monitoring vehicle to various locations onsite at the facility and in the surrounding communities, while continuously sampling ambient air for hydrogen sulfide. The duration of mobile transect sampling events varied, as did the distance covered during these sampling events and the speed with which the monitoring vehicle traveled.

26. Table 2 summarizes the mobile transect sampling results.

Table 2. Mobile Transect Hydrogen Sulfide Sampling Results

Monitoring Area	**Number of Mobile Transect Samples with Hydrogen Sulfide Levels in the Selected Concentration Ranges (ppb)**			
	>1,000	**>500 and <1,000**	**>100 and <500**	**<100**
Onsite locations	7	3	7	5
<1 mile offsite	0	5	14	11
1-5 miles offsite	0	0	11	7
>5 miles offsite	0	0	0	14

27. Table 2 shows that one-second average hydrogen sulfide concentrations greater than 1,000 ppb were observed in seven samples collected within the facility boundary. Hydrogen sulfide concentrations generally decreased with downwind distance from the facility.

28. A common feature among multiple mobile transects collected near the facility was that the sample duration included times with elevated hydrogen sulfide concentrations and times with hydrogen sulfide concentrations between 0 and 10 ppb. This pattern indicates that the GMAP vehicle likely drove through a hydrogen sulfide plume during the corresponding sampling events.

29. The summary in Table 2 is limited to the times when, and locations where, EPA collected the 84 mobile transect samples. Elevated hydrogen sulfide concentrations may have also occurred at times when, and locations where, EPA was not collecting measurements.

30. The same two EPA personnel conducted all four days of the GMAP sampling. The two employees reported experiencing a distinct and strong odor while at the facility and while conducting sampling in offsite areas, including Catawba Indian Nation Reservation, Indian Land, Riverchase Estates, and other surrounding communities. The EPA employees reported noticing odors at the same time as when the GMAP measured airborne hydrogen sulfide. The two employees also reported experiencing headaches, itchy eyes, and nausea while the odor was present, and when hydrogen sulfide was being detected. The employees reported the symptoms as being particularly distressing whenever they sampled at the facility and during the early morning hour-long sampling episode conducted on April 26, 2021. The EPA employees reported that these more distressing symptoms typically resolved within approximately one hour after leaving areas with significant odors.

31. EPA monitored at and around the other potential sources of hydrogen sulfide in the area, the Lancaster and Union County Wastewater Treatment Plants, and detected significantly lower hydrogen sulfide concentrations at those locations, as identified in Table 3.

Table 3. Wastewater Treatment Plant Sampling Results

Date	Location	Approximate distance from facility[5]	Hydrogen Sulfide Concentrations (ppb)
			Highest One-Second Average
4/27/2021	Union County Wastewater Treatment Plant	10.46 miles N	10.46
4/26/2021	Lancaster Wastewater Treatment Plant	9.58 miles S	9.88

32. DHEC's April 4, 2021 back trajectory analysis, which is an assessment of the location of an air emitting source using odor complaints and wind direction, and EPA Region 5's May 5, 2021 GMAP Report for New Indy Containerboard facility identify the Respondent's facility as the main, if not only, source of hydrogen sulfide causing the symptoms residents had reported in the surrounding communities.

33. On April 19, 21, and 28, EPA and Respondent exchanged emails regarding restarting the steam stripper.

34. On May 3, 2021, at 9:30 a.m., EPA and Respondent met via conference call to discuss the Respondent's plans to restart the steam stripper. During that conference, the Respondent stated that it was awaiting approval from DHEC to restart the stripper. DHEC provided approval later that day, and Respondent restarted the steam stripper slowly over the night into the day of May 4, 2021. However, the maximum capacity of the steam stripper is approximately 430 gpm of foul condensate, which is inadequate to accommodate the approximately 800 gpm of foul condensate being produced, as reported by Respondent.

35. Epidemiological, experimental, toxicological, and other studies have investigated the relationship between inhalation exposure to hydrogen sulfide and adverse health effects. In 2010, the National Research Council of the National Academies evaluated the state-of-the-science and published AEGLs for hydrogen sulfide. The evaluation reported three tiers of AEGLs. The AEGL-1 concentrations are

[5] Sample locations are estimated distances from specific unit operations at the facility, such as the holding ponds or the aeration basins.

defined as "the airborne concentration…of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects." It is further noted that these effects are transient and reversible after exposures cease.

36. AEGL-1 concentrations are derived for different averaging periods. For hydrogen sulfide, the 10-minute, 30-minute, and 60-minute AEGL-1 concentrations are 750 ppb, 600 ppb, and 510 ppb, respectively. These values were all derived from a study that reported headaches among adults with asthma following acute inhalation exposures to hydrogen sulfide. Stationary sampling results from the GMAP were compared to AEGL-1 concentrations with similar or identical averaging periods, as the stationary measurements may represent exposure concentrations for workers or residents in the areas where samples were collected.

37. As identified in Paragraph 23, Table 1, three of fifteen stationary samples had hydrogen sulfide concentrations greater than AEGL-1, a concentration "above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects."

38. The highest recorded offsite hydrogen sulfide average concentration (669.44 ppb in a 60-minute sample) among the 15 GMAP stationary sampling events occurred on April 26, 2021. This sampling event started shortly after 4:00 a.m., at which point the instantaneous hydrogen sulfide concentration was already greater than 750 ppb, indicating that elevated concentrations occurred for an unknown duration before the sampling period began. The sampling event occurred southeast of the facility, near the location of the Riverchase Estates development. The DHEC online database includes 14 records of odors detected between 4:00 a.m. and 6:00 a.m. on this date, including multiple complaints submitted by residents who live in close proximity to where the GMAP sample was collected. On one street in the Riverchase Estates development, a resident reported that the odor was "causing coughing;" and on

another street in this development, residents reported being woken up by the odors and "very intense" odor found throughout a home. Health complaints were also reported by residents who live further away.

39. In addition to the health impacts as identified above, over 40 years ago, EPA determined that sulfur compound air emissions from pulp and paper mills can adversely affect the welfare of the public. Kraft Paper Mills, Standards of Performance for New Stationary Sources, 41 Fed. Reg. 42012 (Sept. 24, 1976) ("TRS [total reduced sulfur] emissions from kraft pulp mills are extremely odorous, and there are numerous instances of poorly controlled kraft mills creating public odor problems … Kraft pulp mills are a major source of TRS compounds …TRS emissions from kraft pulp mills are composed primarily of hydrogen sulfide, methyl mercaptan, dimethyl sulfide and dimethyl disulfide … TRS compounds can have an adverse effect on public welfare … The emissions from each pulp mill surveyed in the study affect an average of 44,000 persons over an area of approximately 100 square miles …").

40. The DHEC online database reports demonstrate that residents near the facility experience many adverse impacts beyond the health impacts identified in this Order, including the notable odor-related quality of life impacts mentioned in Paragraph 15.

41. On May 7, 2021, DHEC issued the Respondent a Determination of Undesirable Levels and an Order to Correct Undesirable Level of Air Contaminants ("DHEC Order"). The DHEC Order requires the Respondent to: conduct a full evaluation of its current operations and processes at the facility to identify potential sources of the odor and elevated levels of hydrogen sulfide on and off facility property; conduct onsite and offsite monitoring of hydrogen sulfide at representative locations approved by DHEC; conduct stack or vent testing of its air emissions; and develop corrective action plans for its air and wastewater emissions. As of the date of the DHEC Order, DHEC had received more than 17,000 complaints about the Respondent on its online database. The DHEC order does not require actions to

immediately address an imminent and substantial endangerment to public health or welfare or the environment.

CONCLUSIONS OF LAW

EPA concludes the following:

42. Respondent is a "person" within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e), against whom an Emergency Order may be issued under Section 303 of the Act, 42 U.S.C. § 7603.

43. In its current state, the facility is a "pollution source" or "combination of sources" within the meaning of Section 303 of the Act, 42 U.S.C. § 7603.

44. Hydrogen sulfide is an "air pollutant" within the meaning of Sections 302(g) and 303 of the Act, 42 U.S.C. §§ 7602(g) and 7603.

45. Respondent is "causing or contributing" to the emission of air pollutants within the meaning of Sections 302(g) and 303 of the Act, 42 U.S.C. §§ 7602(g) and 7603, by emitting hydrogen sulfide from the facility into the ambient air.

46. EPA is in receipt of evidence that the facility's operations are emitting hydrogen sulfide into the ambient air, and that operating the facility, as described above, if allowed to continue, is presenting an imminent and substantial endangerment to public health or welfare or the environment.

47. EPA field sampling personnel, DHEC personnel, and the public have reported experiencing symptoms consistent with elevated hydrogen sulfide exposures. Among the EPA field sampling personnel, the health impacts occurred at times when, and locations where, the highest hydrogen sulfide concentrations were measured, and resolved soon after the workers left the areas with noticeable odors. All of this information, combined with the AEGL-1 documented exceedances, provides compelling evidence that emissions from the Respondent's facility are causing adverse public health and welfare impacts among exposed populations.

48. By emitting hydrogen sulfide from the facility into the ambient air in levels that result in the human health symptoms described above, and that adversely affect personal comfort and well-being, Respondent is affecting the public health and welfare within the meaning of Sections 101(b), 302(h) and 303 of the Act, 42 U.S.C. §§ 7401(b), 7602(h) and 7603.

49. Issuance of this Order is necessary to assure prompt protection of public health or welfare or the environment because it is not practicable to wait for the commencement of a civil action in United States District Court to assure prompt protection before further air emissions of hydrogen sulfide are released from the facility.

50. The Regional Administrator has found that the hydrogen sulfide air emissions from the facility, as described above, if allowed to continue, is presenting an imminent and substantial endangerment to public health or welfare or the environment, and is therefore appropriate for the issuance of an Order under Section 303 of the Act, 42 U.S.C. § 7603.

51. The Regional Administrator is vested with the authority of the Administrator under Section 303 of the Act, 42 U.S.C. § 7603.

ORDER

52. Based on the foregoing, and pursuant to Section 303 of the Act, 42 U.S.C. § 7603, in order to abate or prevent an imminent and substantial endangerment to public health or welfare or the environment, the Regional Administrator hereby orders Respondent, its agents, employees, successors, and assigns, to address the endangerment posed by the air emissions of hydrogen sulfide from the facility by not exceeding a facility fence-line average concentration (identified below) as follows:

a. Within one (1) business day of receipt of this Order, Respondent shall submit to EPA in writing a statement explaining whether Respondent intends to and is able to comply with this Order.

b. Upon receipt of this Order, Respondent must immediately begin taking steps to minimize air emissions of hydrogen sulfide to not exceed a facility fence-line average concentration of 600 ppb over a rolling 30-minute period and 70 ppb over a rolling seven (7) day period (on a daily calendar basis) as established through continuous monitoring. Any exceedance of these facility fence-line concentrations, during the pendency of this Order, shall constitute a violation of this Order.

c. As soon as possible, but not later than 5:00 p.m. on Tuesday, May 18, Respondent shall provide a draft of the timeline and a detailed summary of the measures to be taken to comply with this Order ("Remedial Plan"). The following elements, at a minimum, shall be included and addressed in the Remedial Plan:

    i. Proposed procedures for operating the facility to meet the hydrogen sulfide concentrations specified in Paragraph 52.b, and supporting documentation;

    ii. Proposed Quality Assurance Project Plan for data collection and analysis to determine if Respondent is meeting the fence-line hydrogen sulfide concentrations specified in Paragraph 52.b, and supporting documentation; and

    iii. Proposed plans for addressing safety procedures, shutdown procedures, and access restrictions while work is performed, and supporting documentation.

d. As soon as possible, but not later than twelve noon on Monday, May 24, Respondent shall submit the final Remedial Plan, addressing any comments received from EPA on the draft Remedial Plan, to EPA for review and approval.

e. As soon as possible, but not more than five (5) calendar days after receipt of EPA approval under paragraph 52.d., Respondent shall act in accordance with the Remedial Plan, as amended by comments received by EPA. If conditions require Respondent to modify the

final approved Remedial Plan, Respondent shall contact EPA immediately, and shall submit a proposed modification for EPA review and comment. Respondent shall not implement any modifications until receiving written EPA approval.

f. As soon as possible, but no later than 14 calendar days after receipt of this Order, Respondent shall install, and begin operating, continuous hydrogen sulfide fence-line monitors at the three locations identified in Attachment A. The locations may be adjusted with prior written approval by EPA. The monitors shall have a minimum detection limit of 10 ppb by volume (ppbV) or lower, shall have a span range up to 1,000 ppbV or higher, and shall be operated in accordance with the manufacturer's recommendations. The monitors shall also be equipped with wind speed and wind direction monitors. If the Respondent is already operating ambient air monitors for hydrogen sulfide on or offsite, Respondent shall provide to EPA daily documentation of such monitoring until such time as the monitoring required by this Paragraph is installed and operational. Nothing in the previous sentence shall be interpreted to extend the 14-calendar-day time frame specified above.

g. As soon as 24 hours of the fence-line monitoring data is available, Respondent shall: submit to EPA daily documentation of the previous 24 hours of monitoring data; immediately notify EPA (via email) of any exceedance of the fence-line hydrogen sulfide concentrations specified in Paragraph 52.b; and submit to EPA a summary report every seven (7) days documenting the results of the continuous monitoring required by Paragraph 52.b.

h. If Respondent intends to continue manufacturing operations at the facility following implementation of the Remedial Plan, no more than 45 calendar days after receipt of this Order, Respondent shall, after consulting with a toxicologist, submit to EPA in writing a long-term plan that identifies: (i) how Respondent's continued operations will avoid the endangerment identified by EPA in this Order; and (ii) what operational, production or

process changes to the facility are necessary to operate in accordance with recognized and generally accepted good engineering and good air pollution control practices.

i. Unless otherwise required by this Order, Respondent shall submit all notices, schedules, work plans, analyses, certifications and documentation (collectively, "notices") required by this Order to EPA through the CDX electronic system. Respondent shall register for the CDX electronic system and upload such notices at *https://cdx.epa.gov/epa_home.asp*. Any notice that cannot be uploaded, shall be transmitted via email, and if it cannot be transmitted via email, shall be provided in writing (and if any attachment is voluminous, it shall be provided on a disk, hard drive, or other equivalent successor technology) to the addresses below:

Kevin Taylor
Environmental Engineer
Air Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Taylor.Kevin@epa.gov

and

Marirose J. Pratt
Associate Regional Counsel
Air & EPCRA Law Office
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Pratt.marirose@epa.gov

ACCESS

53. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all areas subject to this Order, using equipment to gather information, for the purposes of inspecting conditions, activities, records, and, contracts related to the presence of hydrogen

sulfide at the facility and operation of the facility. Respondent shall allow EPA and its authorized representatives to enter the areas subject to this Order to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to carrying out this Order.

54. Nothing in this Order is intended to limit, affect, or otherwise constrain EPA's rights of access to property and records pursuant to applicable law.

RESERVATION OF RIGHTS

55. EPA reserves the right to take any necessary action to enforce this Order, including obtaining injunctive relief or civil or criminal penalties, in accordance with Section 113 of the CAA, 42 U.S.C. § 7413.

56. Be advised that issuance of this Order does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law that are available to address these and other violations. This Order does not resolve Respondent's liability for past violations of the Act or for any violations that continue from the date of this Order up to the date of compliance. At any time after the issuance of this Order, EPA may take any or all of the following actions: issue a further order requiring compliance with the Act; issue an administrative penalty order or bring a civil or criminal action seeking an injunction and penalties for each violation of this Order. *See* Sections 113(a)-(d) of the CAA, 42 U.S.C. §§ 7413(a)-(d); 40 C.F.R. Part 19; and 85 Fed. Reg. 83818 (Dec. 23, 2020).

57. Nothing in this Order shall limit the power and authority of EPA to take, direct or order all action necessary to protect public health or welfare or the environment to prevent, abate or minimize an imminent and substantial endangerment resulting from the emissions into the ambient air of hydrogen sulfide from the facility and operation of the facility. Further, nothing in this Order shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, or from taking other legal or equitable action as EPA deems appropriate and necessary, pursuant to the CAA, and any

other applicable law. Nothing herein shall be construed to prevent EPA from requiring Respondent to perform further actions pursuant to the CAA or other applicable law.

58. Neither EPA nor the United States, by the issuance of this Order, assumes any liability for any acts or omissions by Respondent or Respondent's employees, agents, contractors or consultants engaged to carry out any action or activity pursuant to this Order; nor shall EPA or the United States be held as a party to any contract entered into by Respondent or Respondent's employees, agents, contractors or consultants engaged to carry out the requirements of this Order.

EFFECTIVE DATE

59. This Order is effective immediately upon issuance by EPA. Although this Order is effective immediately, Respondent may contact EPA to confer about compliance with the Order by contacting Kevin Taylor of my staff at 404-562-9134.

60. This Order shall be effective for a period of not more than 60 days unless the United States files a civil action in the appropriate United States district court pursuant to Section 303 of the Act, 42 U.S.C. § 7603.

John Blevins
Acting Regional Administrator
Region 4
United States Environmental Protection Agency
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-8960

5-13-2021
Date

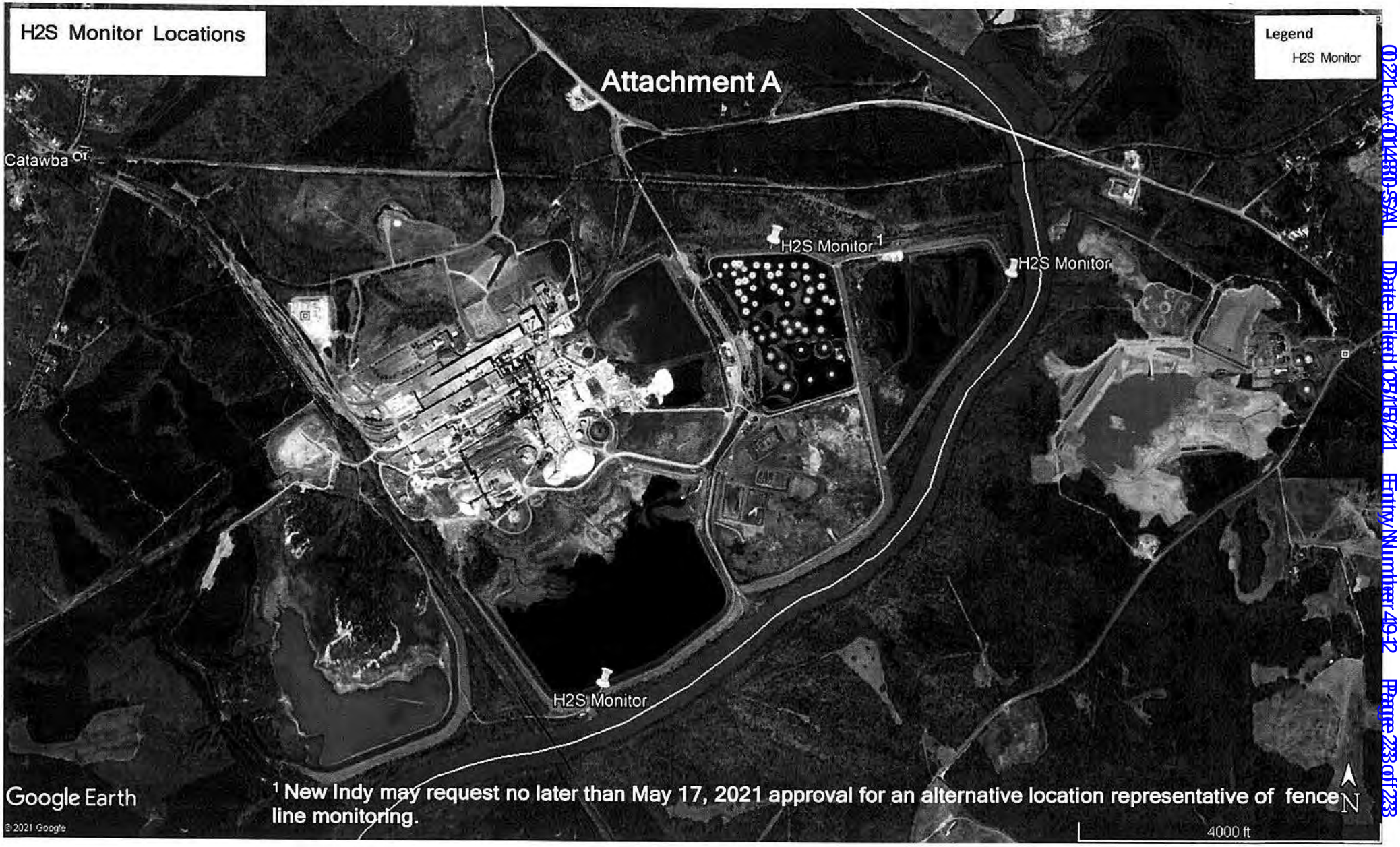

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Exhibit C

EX-2.1 2 d672019dex21.htm EX-2.1

Exhibit 2.1

ASSET PURCHASE AGREEMENT

BETWEEN

RESOLUTE FP US INC.

(as Seller)

NEW-INDY CONTAINERBOARD LLC

(as Parent)

AND

NEW-INDY CATAWBA LLC

(as Purchaser)

DATED AS OF OCTOBER 2, 2018

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Exhibits

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**") is entered into and made effective as of October 2, 2018 (the "**Effective Date**") by and between Resolute FP US Inc., a corporation organized and existing under the laws of the State of Delaware ("**Seller**"), New-Indy Containerboard LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Parent**") and New-Indy Catawba LLC, a limited liability company organized and existing under the laws of the State of Delaware and a wholly owned subsidiary of Parent ("**Purchaser**" and together with Parent, the "**Buyer Parties**"). Capitalized terms used in this Agreement shall have the meanings ascribed to them in Section 10.1.

WITNESSETH

WHEREAS, Seller desires to sell and assign to Purchaser, and Purchaser desires to acquire and assume from Seller, certain assets and liabilities of the Catawba Mill Business that Seller (or any of its Affiliates) owns or in which Seller (or any of such Affiliate of Seller) has a transferable interest, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Buyer Parties (each a "**Party**" and collectively, the "**Parties**") agree as follows:

1. PURCHASE AND SALE OF ASSETS AND ASSUMPTION OF LIABILITIES

1.1 Purchased Assets

Subject to and upon the terms and conditions set forth in this Agreement (including, for the avoidance of doubt, Section 1.2), at the Closing, Seller shall sell, transfer, and assign to Purchaser, and Purchaser shall purchase and accept from Seller, free and clear of any Liens (other than Permitted Liens), all of Seller's right, title and interest in, to and under all of the following rights, assets, and properties but excluding the Excluded Assets (collectively, the "**Purchased Assets**");

1.1.1 the accounts receivable and trade accounts due or accruing to Seller as of the Closing to the extent arising exclusively from the Catawba Mill Business, whether current or past due, and any security, claim, remedy or other right to receive payment of the foregoing (collectively, the "**Receivables**"), other than as provided in Section 1.2.11;

1.1.2 the inventory of finished goods (including goods in transit), raw materials, the Stock, mill stores, work in progress, packaging, supplies, components, consumables, logs, and other inventories (but excluding parts and other supplies constituting Owned Equipment) of the Catawba Mill Business as of Closing (the "**Inventory**");

1.1.3 the real property of the Catawba Mill Business described on Schedule 1.1.3, together with Seller's right, title and interest in and to all buildings, structures, fixtures and improvements thereon (including those under construction) and Seller's right, title and interest, if any, in and to all privileges, rights, easements and rights of way appurtenant thereto (the "**Owned Real Property**");

1.1.4 subject to Section 1.3, all rights of Seller under the Real Property Leases;

1.1.5 the machinery, equipment, parts, furniture, fixtures, materials, supplies, tools, leasehold improvements, telephone systems, computer systems, motor vehicles (including all tractors and trailers) and other items of tangible personal property (other than Inventory) or fixed assets, in each case, that are owned by Seller and are located in or on any Owned Real Property as of the Closing (the "**Owned Equipment**");

1.1.6 subject to Section 1.3, all rights of Seller under the equipment leases related to the Catawba Mill Business set forth on Schedule 1.1.6 (the "**Equipment Leases**" and the equipment with respect thereto being the "**Leased Equipment**");

1.1.7 the Intellectual Property set forth on Schedule 1.1.7, the goodwill and going concern value related thereto, and all income, royalties, damages and payments relating thereto (the "**Owned Intellectual Property**");

1.1.8 subject to Section 1.3, all rights under the intellectual property licenses set forth on Schedule 1.1.8 (the "**Intellectual Property Licenses**" and the Intellectual Property licensed pursuant thereto being the "**Licensed Intellectual Property**");

1.1.9 subject to Section 1.3, all rights of Seller under the customer orders generated by the Catawba Mill Business as of Closing (the "**Customer Orders**");

1.1.10 subject to Section 1.3, all rights of Seller under orders for supplies and services as of the Closing to the extent related exclusively to the Catawba Mill Business or all rights thereto that relate to the Catawba Mill Business if such orders relate only in part to the Catawba Mill Business (the "**Purchase Orders**");

1.1.11 subject to Section 1.3, the Contracts set forth on Schedule 1.1.11 (the "**Assigned Contracts**");

1.1.12 the Permits (including Environmental Permits) and Industry Certifications that are required for the conduct of the Catawba Mill Business as currently conducted or for the ownership and use of the Purchased Assets, in each case that are set forth on Schedule 1.1.12 and to the extent such Permits and Industry Certifications are assignable (the "**Assigned Permits**"); provided that, for the avoidance of doubt, the NRC Permit is an Assigned Permit subject to the terms of the Control Agreement;

1.1.13 all files, documents, papers, books and records of Seller, to the extent related to the Purchased Assets or Assumed Obligations, that are located at the Catawba Mill and/or the Chip Mill, including copies of personnel files relating to Employees, other than Employees' medical files, performance evaluations, proprietary pay grades and other documents that contain confidential Seller information or personal sensitive information relating to any Employee (the "**Acquired Books and Records**"). Seller and its Affiliates shall retain the right to use, and to retain original personnel files and copies of the other Acquired Books and Records;

1.1.14 the Pension Plan Transfer Amount, as determined in accordance with Section 6.4.3;

1.1.15 all rights of Seller under the Purchased Contracts and Instruments, including all deposits, credits, prepayments and security, but excluding all counterclaim and other rights to the extent related to Retained Obligations;

1.1.16 Seller's rights, claims, Actions and causes of action to the extent related to (a) any Purchased Assets to the extent arising post-Closing or (b) any Assumed Obligation, in each case other than as provided in Section 1.2.5;

1.1.17 all rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Asset (to the extent arising post-Closing) or Assumed Obligation, including any express or implied warranty by the manufacturers or sellers of any of the Equipment or component part thereof, in each case, except as provided in Section 1.2.5, except, in each case, to the extent such rights relate to the Retained Obligations;

1.1.18 all insurance benefits, including rights and proceeds, arising from or relating to the Assumed Obligations, including all rights to any claims thereunder as of the Closing, and any such rights relating to Purchased Assets, except to the extent that Seller has already borne the Liability which forms the basis of such claim or such claim relates to a Retained Obligation;

1.1.19 all goodwill and the going concern value of the Catawba Mill Business; and

1.1.20 all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible (but, except as otherwise included as Purchased Assets, not intangible), wherever located and whether now existing or hereafter acquired, to the extent used directly, solely and exclusively in the Catawba Mill Business, other than the Excluded Assets.

If any of the assets, properties or rights described above in this Section 1.1 is held by an Affiliate of Seller, then at or prior to the Closing, subject to the terms and conditions set forth herein, the Seller shall cause such Affiliate to sell, assign, transfer, convey and deliver to Seller, free and clear of any Liens (other than Permitted Liens), all of such Affiliate's right, title and interest in such assets, properties and rights, which shall be considered Purchased Assets for all purposes of this Agreement.

Notwithstanding the foregoing, the transfer of the Purchased Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Purchased Assets unless Purchaser expressly assumes that Liability pursuant to Section 1.4 or otherwise in this Agreement.

1.2 Excluded Assets

Notwithstanding anything to the contrary in this Agreement, the Purchased Assets do not include the rights, assets and properties of Seller that are not expressly described in Section 1.1 or any of the following rights, assets and properties (collectively, the "**Excluded Assets**"):

1.2.1 all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills, petty cash, cash on deposit and other cash equivalents, other marketable and non-marketable securities owned or held by Seller, and security deposits held in cash form;

1.2.2 all Contracts to which Seller is a party or by which Seller is bound other than the Purchased Contracts and Instruments;

1.2.3 the rights of Seller relating to rebates given to customers of the Catawba Mill Business, including the benefit of claims relating to prepaid rebates;

1.2.4 the Excluded Intellectual Property;

1.2.5 Seller's rights, claims, Actions and causes of action, whenever accruing, to the extent related to (a) any Excluded Asset or (b) any Retained Obligation (including, for the avoidance of doubt, all rights, claims, Actions and causes of action related to Receivables arising under all Contracts described in Section 1.2.2);

1.2.6 all Contracts of insurance to which Seller is a party or relating to any right, asset, property, business or operation of Seller, including all rights to any claims thereunder except as set forth in Section 1.1.18;

1.2.7 books and records that comprise (a) all corporate minute books and stock transfer books and the corporate seal of Seller, (b) Seller's permanent Tax records (including Tax Returns), (c) files and records that Seller is required to retain pursuant to any Law, judgment, order, injunction, decree, writ, permit or license of any Governmental Entity or any arbitrator, and (d) any files and records related to the Excluded Assets or Retained Obligations, attorney-client privileged documents (including emails), and other work product of Seller and its attorneys (including emails) directly relating to the negotiation or consummation of the transactions contemplated by this Agreement;

1.2.8 all Tax installment payments made by Seller and all refunds due to Seller of any Taxes or from any other Governmental Entity;

1.2.9 all accounts of Seller with banks and other financial institutions;

1.2.10 all of Seller's interests in any Benefit Plans, except for the Pension Plan Transfer Amount and as otherwise provided in Section 6;

1.2.11 all Receivables from any Affiliate of Seller;

1.2.12 the equity interests of any Person;

1.2.13 the rights of Seller under this Agreement and the other Operative Agreements;

1.2.14 all personal property, including all Owned Equipment, located in the Service Center as of the Closing that is not exclusively used or held for use in the Catawba Mill Business;

1.2.15 all assets located in or on any Owned Real Property or any Leased Real Property as of the Closing that do not belong to Seller, such as third-party goods on consignment and leased equipment; and

1.2.16 the assets, properties, and rights specifically set forth on Schedule 1.2.16.

1.3 Nonassignable Rights

Notwithstanding anything to the contrary in this Agreement, to the extent that any Purchased Asset is not assignable or transferable without the consent or waiver of, or the taking of any other action by, any third party (including any Governmental Entity) (a "**Nonassignable Right**"), or if the assignment or transfer thereof or the attempted assignment or transfer thereof would be ineffective, would impair Purchaser's rights under the Purchased Asset in question so that Purchaser would not in effect acquire the substantial benefit of all such rights, would constitute a breach under any applicable Contract or a violation of applicable Law, then this Agreement shall not constitute an assignment or transfer, or an attempted assignment or transfer thereof, until such consent or waiver has been obtained or such other action has been taken, and the following provisions shall be applicable for a period of one (1) year following the Closing:

1.3.1 Seller shall use its commercially reasonable efforts (which shall not require it to incur any financial obligation or any other onerous obligation) and Purchaser shall cooperate therewith, to obtain such consent or waiver or cause the taking of any required action, as applicable. To the extent that any such consent or waiver is not so obtained or any such action is not so taken on or prior to the Closing Date, Seller shall, to the extent reasonably possible and not prohibited by applicable Law or the applicable Contract or Permit, at Purchaser's sole cost and expense, (a) provide to Purchaser the benefits of any such Nonassignable Right, (b) cooperate in any reasonable and lawful arrangement requested by Purchaser designed to provide such benefits to Purchaser; and (c) at the reasonable request of Purchaser, enforce for the account of Purchaser any right of Seller arising from any such Nonassignable Right against such third party; provided however, with respect to any Contract that constitutes a Nonassignable Right hereunder, nothing in this Section 1.3 shall require Seller to (x) renew such Contract after the expiration or termination thereof in accordance with its terms or (y) enter into any new Contract with respect to the subject matter of such Nonassignable Right.

1.3.2 To the extent that Purchaser is provided the benefits pursuant to this Section 1.3 of any such Nonassignable Right, Purchaser shall perform for the benefit of the applicable third party, the obligations of Seller thereunder or in connection therewith and shall indemnify and hold Seller harmless against any such liability or obligations thereunder arising or to be performed on or after the Closing Date, other than with respect to any grossly negligent or bad faith acts or omissions of Seller. If such consent is subsequently obtained, the Purchased Asset will be deemed for purposes of this Agreement to have been transferred effective as of the Closing Date.

1.3.3 Notwithstanding anything contained herein to the contrary, the provisions of this Section 1.3 shall not apply to:

(a) any consent or approval required under any Antitrust Laws, which consent or approval shall be governed by Section 5.3;

(b) any consent or approval required pursuant to Section 7.2.4 unless and until Purchaser either provides a written waiver thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing; or

(c) any consent or approval required by the U.S. Nuclear Regulatory Commission ("**NRC**") required to transfer the NRC Permit, which shall be governed by the Control Agreement.

1.4 Assumed Obligations

In connection with the sale of the Purchased Assets pursuant to this Agreement, subject to and upon the terms and conditions set forth in this Agreement (including, for the avoidance of doubt, Sections 1.5 and 5.9), at the Closing, Purchaser shall assume and agree to pay, perform and discharge when due only the following Liabilities of Seller (or Seller's DB Pension Plan, as applicable) (collectively, the "**Assumed Obligations**"), and no other Liabilities:

1.4.1 all Liabilities of Seller under the Purchased Contracts and Instruments, provided that, except as otherwise provided herein, such Liabilities (other than customer claims) do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing;

1.4.2 all Liabilities of Seller included in determining the Adjusted Net Working Capital;

1.4.3 all accounts payable of the Catawba Mill Business (including, for the avoidance of doubt, (a) invoiced accounts payable and (b) accrued but uninvoiced accounts payable), in each case, that remain unpaid as of the Closing Date and that either are reflected on the Latest Financial Results or arose in the Ordinary Course of Business since the date of the Latest Financial Results or as otherwise not prohibited under Section 5.1, provided, that, such accounts payable are taken into account in determination of Adjusted Net Working Capital;

1.4.4 all Liabilities in respect of Taxes relating to the Purchased Assets for any Post Closing Period and for the portion of any Straddle Period beginning on or after the Closing Date and as set forth in Section 5.9;

1.4.5 all Liabilities relating to the Seller DB Pension Plan with respect to any Transferred Non-Union Employees and Union Employees whenever arising (subject to the terms of Section 6.4.7 with respect to Recall Employees) and all other Liabilities assumed by Purchaser pursuant to Section 6;

1.4.6 all Liabilities related to or arising out of the Purchased Assets, the condition, ownership, maintenance, or use of the Purchased Assets, or operations on or with respect to the Purchased Assets, by any Person, whether before, on, or after the Closing, in any way: (a) arising under or pursuant to, any past, present, or future Environmental Law or any Environmental Permit issued under any past, present, or future Environmental Law, including any violation, breach, or noncompliance with any such Environmental Law or any such Permit and including any contribution obligations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (b) arising out of or relating to the assessment, clean-up, removal, or other remediation of any Release of Hazardous Substance or other waste or materials of any kind; (c) arising out of or relating to any Release or other contamination or pollution of the environment; and (d) including Liabilities and obligations relating to or arising out of the events, facts, circumstances, and conditions disclosed on Schedule 3.18;

1.4.7 all Liabilities related to the Actions listed on Schedule 3.6.1 (except as otherwise noted on such schedule) or to the Assumed Obligations, whether the commencement of such Action is before or after the Closing Date, other than as provided in Section 1.5.7;

1.4.8 all Liabilities related to the Purchased Assets identified in Section 1.1.15;

1.4.9 all Liabilities for customer claims under any Customer Orders to the extent (a) taken into account in determination of Adjusted Net Working Capital or (b) asserted following the Closing, regardless of when the facts or circumstances underlying such claim arose; and

1.4.10 all OPEB Liabilities related to any Employees.

1.5 Retained Obligations

Notwithstanding anything to the contrary in this Agreement, Purchaser shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates other than the Assumed Obligations (the "**Retained Obligations**"). Seller shall, and shall cause each of its Affiliates (as applicable) to, pay and satisfy when due all Retained Obligations related to the Catawba Mill Business which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Retained Obligations shall include the following, except to the extent such Liabilities are included in determining the Adjusted Net Working Capital:

1.5.1 all Liabilities arising from or relating to the ownership, possession, operation of or use of the Purchased Assets or the conduct of the Catawba Mill Business prior to the Closing, except as expressly provided in Section 1.4 and elsewhere in this Agreement;

1.5.2 all Liabilities in connection with any accrued rebates given to customers of the Catawba Mill Business;

1.5.3 all Liabilities arising out of or related to the Excluded Assets except as expressly provided in Section 1.4;

1.5.4 all Liabilities of Seller pursuant to any Benefit Plans, except as expressly provided in Section 1.4.5, Section 1.4.10, and Section 6;

1.5.5 all Liabilities of Seller owed to an Affiliate of Seller;

1.5.6 except as otherwise provided herein, any and all liabilities and obligations of Seller for Taxes, including (a) for all taxable periods in respect of Taxes relating to the Excluded Assets; (b) for any Pre-Closing Period in respect of Taxes relating to the Purchased Assets and for the portion of any Straddle Period ending on the Closing Date as determined in accordance with Section 5.10.1; and (c) except as provided in Section 5.9, any Taxes that will arise as a result of the sale of the Purchased Assets or the consummation of any of the transactions contemplated by this Agreement or any other Transaction Document;

1.5.7 all Liabilities of Seller in connection with the Actions described in Section 1.2.5 or any other Action except as set forth in Section 1.4.7;

1.5.8 any product liability or similar claim that arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller prior to Closing, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products manufactured or sold or any service performed by Seller, in each case, prior to Closing, except, in each case, as expressly assumed as an Assumed Obligation;

1.5.9 any Liabilities of the Catawba Mill Business relating to or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that do not constitute part of the Purchased Assets, except, in each case, as expressly assumed as an Assumed Obligation;

1.5.10 except as otherwise specifically provided for in this Agreement or included in determining the Adjusted Net Working Capital, any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including any Liabilities associated with any claims for wages or other benefits, bonuses, workers' compensation, severance, retention, termination or other payments to the extent the same arose prior to Closing and is not otherwise addressed herein or included in the Adjusted Net Working Capital;

1.5.11 any accounts payable of the Catawba Mill Business that are not included in the Adjusted Net Working Capital, except as provided in Section 1.4.3;

1.5.12 any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same) that arose in respect of matters that occur prior to Closing, except for indemnification of such Persons by any Buyer Party pursuant to this Agreement or as otherwise provided in Section 6;

1.5.13 any Liabilities of the Purchased Contracts and Instruments that arise out of or relate to the breach by Seller of such Purchased Contracts and Instruments prior to Closing (other than customer claims);

1.5.14 any Liabilities for borrowed money associated with debt, loans or credit facilities of Seller;

1.5.15 any Liabilities the payment of which is secured by a Permitted Lien arising pursuant to clause (c), (f), or (g) of the definition thereof (except to the extent included in the calculation of Adjusted Net Working Capital); and

1.5.16 any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law, except as expressly assumed as an Assumed Obligation.

1.6 Purchase Price

In exchange for the sale of the Purchased Assets hereunder, in addition to the assumption of the Assumed Obligations, Purchaser shall pay (or cause to be paid), and Seller shall have the right to receive from Purchaser at the Closing, an amount equal to the Closing Purchase Price, subject to adjustment as set forth in Section 1.9 (the Closing Purchase Price, as it may be adjusted pursuant to Section 1.9, and including Purchaser's assumption of the Assumed Obligations, the "**Purchase Price**"). "**Closing Purchase Price**" means the following:

1.6.1 an amount equal to $260,000,000.00; *plus*

1.6.2 the amount (if any) by which the Estimated Net Working Capital exceeds the Target Net Working Capital; *minus*

1.6.3 the amount (if any) by which the Target Net Working Capital exceeds the Estimated Net Working Capital.

1.7 Stocktake. For purposes of determining the amount of Inventory included in Current Assets for purposes of calculating the Net Working Capital, the Parties recognize and agree that Purchaser may conduct a physical count of Inventory located at the Owned Real Property and in any warehouse at which Seller stores Inventory of the Catawba Mill Business within five (5) days after the Closing, and Seller shall be given at least two (2) Business Days' prior written notice of the date, time and location of each such count and shall be entitled to be present for and observe each such count. The results of any stocktake undertaken pursuant to this Section 1.7 shall determine the counts, measurements or other inputs used in the determination of Inventory in accordance with the past practices of the Catawba Mill Business as reflected in Schedule WC, and such calculation of Inventory in accordance therewith shall be used in the determination of the Final Net Working Capital.

1.8 Pre-Closing Statement

Subject to the satisfaction or waiver of all the conditions to the Closing set forth in Section 7 (other than those conditions which, by their terms, are to be satisfied or waived at the Closing, but subject to the satisfaction or waiver of these conditions at such time), at least three (3) Business Days prior to the anticipated Closing Date Seller shall prepare and deliver to Purchaser a certificate (the "**Pre-Closing Statement**"), signed by an authorized officer of Seller, setting forth Seller's good faith estimate of the Net Working Capital prepared in accordance with the example set forth on Schedule WC (such estimate, the "**Estimated Net Working Capital**"), together with reasonable supporting detail. The information and estimates contained in the Pre-Closing Statement shall be conclusive for determining the Closing Purchase Price to be paid at the Closing, absent manifest error. If, for any reason, the Closing Date is postponed, then the foregoing obligations shall again apply with respect to such postponed Closing Date.

1.9 Post-Closing Adjustment

1.9.1 Within ninety (90) days following the Closing Date, Purchaser shall prepare or cause to be prepared, and deliver to Seller a certificate (the "**Post-Closing Statement**") signed by an authorized officer of Purchaser and setting forth its determination of the Net Working Capital (the "**Final Net Working Capital**"), together with reasonable supporting detail; provided that the amount of Accrued Rebates to be included in the Final Net Working Capital shall be calculated and certified by Seller to Purchaser (the "**Accrued Rebates Calculation**") by the later of January 31, 2019 or forty-five (45) days after the Closing.

1.9.2 Within thirty (30) days after Seller's receipt of the Post-Closing Statement (the "**Review Period**"), Seller shall complete its review of the Final Net Working Capital reflected on the Post-Closing Statement, and Purchaser shall complete its review of the Accrued Rebates Calculation. If Seller wishes to dispute the Final Net Working Capital, or Purchaser wishes to dispute the Accrued Rebates Calculation, such Party shall deliver to the other Party, prior to the expiration of the Review Period, a written notice (each, an "**Objection Notice**") setting forth in reasonable detail the basis of such objection and the adjustment to the Final Net Working Capital that such Party believes should be made. Any items on the Post-Closing Statement not disputed in the Objection Notice(s) shall be irrevocably deemed to be accepted by the other Party. Each Party shall have fifteen (15) days after its receipt of an Objection Notice to review and respond in writing to such Objection Notice. If Seller and Purchaser are unable to resolve all of their disagreements with respect to the determination of the disputed items within thirty (30) days following a Party's written response to the Objection Notice (the "**Negotiation Period**"), they shall refer their remaining differences (the "**Contested Adjustments**") to KPMG (the "**CPA Firm**"), who shall, acting as an expert and not as an arbitrator, determine in accordance with this Agreement and, only with respect to the Contested Adjustments so submitted, whether and to what extent, if any, the Final Net Working Capital requires adjustment. The procedure and schedule under which any dispute with respect to any remaining Contested Adjustments shall be submitted to the CPA Firm shall be as follows:

(a) Each of Purchaser and Seller shall submit any Contested Adjustments to the CPA Firm in writing (with a copy to the other party), supported by any documents upon which it relies or as the CPA Firm reasonably requests.

(b) Purchaser and Seller each shall execute any retainer agreements and fund one-half of any customary retainer requested by the CPA Firm, provided that such expense shall thereafter be allocated between Purchaser and Seller in accordance with Section 1.9.4 and the applicable Party shall reimburse the other Party in accordance with such allocation, as applicable.

(c) Purchaser and Seller shall use their commercially reasonable efforts to cause the CPA Firm to deliver its written determination to Purchaser and Seller no later than the thirtieth (30th) day after the Contested Adjustments are referred to the CPA Firm pursuant to Section 1.9.2(a).

(d) Purchaser and Seller shall make readily available to the CPA Firm all relevant Acquired Books and Records, other books and records, and any work papers (including those of the Parties' respective accountants) relating to the Post-Closing Statement (including the Accrued Rebates Calculation) and all other items reasonably required by the CPA Firm. The CPA Firm's determination of each Contested Adjustment shall be only within the ranges submitted by Seller and Purchaser and shall be conclusive and binding upon Purchaser and Seller.

1.9.3 The "**Adjusted Net Working Capital**" shall be (a) the Final Net Working Capital, if no Objection Notice is delivered by either Party in accordance with Section 1.9.2, (b) the Final Net Working Capital, as adjusted in accordance with an Objection Notice, to the extent a recipient Party does not respond to any Objection Notice in accordance with Section 1.9.2, or (c) the Final Net Working Capital as adjusted by either (i) the agreement of Seller and Purchaser or (ii) the CPA Firm (it being understood, for the avoidance of doubt, that the CPA Firm may determine the adjustment to the Final Net Working Capital only with respect to the remaining Contested Adjustments submitted to the CPA Firm pursuant to this Section 1.9).

1.9.4 Any costs relating to the engagement of the CPA Firm shall be allocated between Purchaser and Seller so that Seller's share of such costs shall be in the same proportion that (x) the aggregate dollar amount of Contested Adjustments submitted to the CPA Firm that are unsuccessfully disputed by Seller bears to (y) the total dollar amount of all Contested Adjustments submitted to the CPA Firm, and Purchaser shall be responsible for the balance of such costs, if any. Seller and Purchaser shall each bear the fees of their respective counsel, accountants and other representatives incurred in connection with the determination of the Adjusted Net Working Capital.

1.9.5 If the Adjusted Net Working Capital is greater than the Estimated Net Working Capital, then Purchaser shall pay such excess to Seller (by wire transfer of immediately available funds to a bank account designated in writing by Seller) within ten (10) days following the date on which the Adjusted Net Working Capital is finalized in accordance with this Section 1.9. If the Estimated Net Working Capital is greater than the Adjusted Net Working Capital, then Seller shall pay such excess to Purchaser (by wire transfer of immediately available funds to a bank account designated in writing by Purchaser) within ten (10) days following the date on which the Adjusted Net Working Capital is finalized in accordance with this Section 1.9.

1.9.6 During the period commencing on the Closing Date and ending on the date on which the Adjusted Net Working Capital is finalized in accordance with this Section 1.9, each Party shall provide the other Party and its representatives reasonable access during normal business hours to (a) personnel of such Party, (b) with respect to Purchaser, the Acquired Books and Records, (c) with respect to Seller, books and records of the Catawba Mill Business not transferred to Purchaser at Closing, and (d) all relevant documentation prepared by such Party and/or such Party's representatives, in each case to the extent that they relate to the calculation of the Final Net Working Capital under the Post-Closing Statement (including the Accrued Rebates Calculation) or the final and binding determination of the Adjusted Net Working Capital in accordance with this Section 1.9 (including the Accrued Rebates Calculation), and any other document or information reasonably requested by such other Party or its representatives for the purpose of reviewing the Post-Closing Statement or the Accrued Rebates Calculation, preparing the Objection Notice and/or reaching a final and binding determination of the Adjusted Net Working Capital. Notwithstanding the foregoing, to the extent necessary for Purchaser to review the Accrued Rebates Calculation, any such information shall only be provided to non-Affiliate, third-party representatives of the Purchaser who have agreed (x) not to disclose such information or any part thereof to Purchaser or its Affiliates, (y) to otherwise protect and manage such information in accordance with applicable antitrust Laws, and (z) who have agreed to be bound by other customary confidentiality provisions with respect to such information.

1.9.7 Any payments made with respect to the adjustments under Section 1.9 shall be deemed to be, and each of Purchaser and Seller shall treat them as, adjustments to the Purchase Price for federal, state, local, and all other income Tax purposes.

1.10 Allocation of Purchase Price

Seller and Purchaser each acknowledges and agrees that the purchase and sale of the Purchased Assets is an "applicable asset acquisition" within the meaning of Section 1060(c) of the Code. The Closing Purchase Price (including for this purpose the Assumed Obligations and all other capitalized costs, as appropriate) shall be allocated among the Purchased Assets in accordance with Section 1060(c) of the Code, and Purchaser shall prepare such allocation and deliver a copy of such allocation to Seller within ninety (90) days after the Closing Date (the "**Allocation Schedule**"). Within twenty (20) Business Days after Seller's receipt of the Allocation Schedule, Seller shall complete its review and, if Seller wishes to dispute any items in the Allocation Schedule, Seller shall (prior to the expiration of such twenty (20) Business Day period) deliver to Purchaser a written notice setting forth in reasonable detail the basis of such objection and the adjustments to the Allocation Schedule that Seller believes should be made. Any items in the Allocation Schedule not disputed by Seller in such notice shall be irrevocably deemed to be accepted by Seller. If Purchaser does not agree to any items timely disputed by Seller in accordance with this Section 1.10, Purchaser shall refer such items to the CPA Firm to be resolved by using the same process and schedule set forth in Sections 1.9.2(a) through 1.9.2(d), *mutatis mutandis*, and by treating such items as Contested Adjustments for such purpose. The Allocation Schedule shall be modified by Purchaser to take into account any adjustment to the Closing Purchase Price pursuant to Section 1.9 (the Allocation Schedule, as so modified and as determined after resolution of any dispute in accordance with this Section 1.10, being referred to as the "**Adjusted Allocation Schedule**") and Purchaser shall provide a copy of the Adjusted Allocation Schedule to Seller. Seller and Purchaser each agrees to be bound by the Adjusted Allocation Schedule, to complete jointly within one hundred fifty (150) days after the Closing Date and to file separately Form 8594 with its federal income Tax Return consistent with the Adjusted Allocation Schedule for the tax year in which the Closing Date occurs, to file, or cause to be filed, all other Tax Returns in a manner consistent with the Adjusted Allocation Schedule and not to take any positions inconsistent therewith, unless otherwise required by Law. Not later than thirty (30) days prior to the filing of their respective IRS Forms 8594 relating to the Catawba Mill Business, each of Purchaser and Seller shall deliver to the other party a copy of its IRS Form 8594.

1.11 Escrow

1.11.1 Pursuant to the Confidentiality Agreement, Parent has delivered the Initial Deposit to the Escrow Agent to be held in an account (the "**Deposit Escrow Account**") in accordance with the Escrow Agreement. Each of Parent and Seller shall instruct the Escrow Agent to release the Initial Deposit plus any interest accrued thereon (the "**Initial Deposit Amount**") to the Closing Agent for delivery to Seller at the Closing as a credit against the Closing Purchase Price, subject to the terms hereof and the Escrow Agreement, provided that if this Agreement is terminated prior to the Closing for any reason, each of Purchaser and Seller shall promptly thereafter instruct the Escrow Agent to release the Initial Deposit Amount directly to Seller.

1.11.2 Within two (2) Business Days after the Effective Date, Purchaser shall deliver (or cause to be delivered) the Signing Deposit to the Escrow Agent to be held in the Deposit Escrow Account in accordance with the Escrow Agreement. Each of Purchaser and Seller shall instruct the Escrow Agent to release the Signing Deposit plus any interest accrued thereon (the "**Signing Deposit Amount**") to the Closing Agent for delivery to Seller at Closing as a credit against the Closing Purchase Price; provided, that, if (i) Seller breaches its obligations hereunder in any material respect prior to Closing or (ii) any of the conditions to Purchaser's obligation to effect the Closing hereunder is not satisfied by the End Date through no fault of any Buyer Party, each of Purchaser and Seller shall promptly thereafter instruct the Escrow Agent to release the Signing Deposit Amount to Purchaser; provided further, that if this Agreement is terminated or the Closing fails to occur by the End Date for any other reason, each of Purchaser and Seller shall, promptly following the date of such termination, instruct the Escrow Agent to release the Signing Deposit Amount directly to Seller.

2. **CLOSING**

2.1 Closing Date and Time

The closing of the purchase and sale of the Purchased Assets (the "**Closing**") shall take place at the offices of Palmetto Blue Title Agency, LLC, 200 Meeting St., Ste. 301, Charleston, SC, 29401 (the "**Closing Agent**"), with effect from 11:59 p.m. (Eastern time), on a date to be specified by the Parties (the "**Closing Date**"), which date shall be no earlier than November 30, 2018 and no later than the third (3rd) Business Day after the later of (a) the expiration of the VCC Period and (b) the satisfaction or waiver of the conditions set forth in Section 7 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time), unless another time, date or place is agreed to in writing by the Parties. Purchaser and Seller acknowledge and agree that the Closing may be effectuated by exchanging documents via facsimile, e-mail, portable document format (.pdf), and/or overnight courier. Time shall be of the essence for purposes of this Section 2.1.

2.2 Seller Deliveries

At the Closing, Seller shall deliver (or cause to be delivered) to Purchaser the following:

2.2.1 a bill of sale, substantially in the form attached hereto as Exhibit A (the "**Bill of Sale**"), duly executed by Seller;

2.2.2 the Acquired Books and Records, which shall be delivered constructively;

2.2.3 with respect to each parcel of Owned Real Property, a limited (special) warranty deed based on the property descriptions of record and a quit claim (no warranty) deed based on Purchaser's survey of the Owned Real Property, substantially in the forms attached hereto as Exhibit B (the "**Deed**"), duly executed by Seller; provided that during the Interim Period, Purchaser and Seller will work in good faith to reconcile any differences between the property descriptions set forth in Exhibit B and any such descriptions in Purchaser's title commitment;

2.2.4 subject to Section 1.3, the consents set forth on Schedule 2.2.4 (the "**Seller Material Consents**");

2.2.5 a non-foreign person affidavit as required by Section 1445 of the Code, substantially in the form attached hereto as Exhibit C, duly executed by Seller;

2.2.6 an assignment and assumption agreement, substantially in the form attached hereto as Exhibit D (the "**Assignment and Assumption Agreement**"), duly executed by Seller;

2.2.7 an assignment of lease agreement substantially in the form attached hereto as Exhibit E (the "**Lease Assignment Agreement**"), for each Real Property Lease, duly executed by Seller;

2.2.8 a lease with respect to the Service Center (the "**SC Lease**"), substantially in the form attached hereto as Exhibit F, duly executed by Seller;

2.2.9 a certificate from the Secretary of State of the State of Delaware and a certificate from the Secretary of State of the State of South Carolina, dated not more than five Business Days prior to the Closing Date, to the effect that Seller is in good standing in such jurisdictions;

2.2.10 a certificate of the Secretary or another officer of Seller certifying (a) that attached thereto are true, correct, and complete copies of the Organizational Documents of Seller, (b) that attached thereto are true, correct, and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery, and performance of this Agreement and the other Operative Agreements to which Seller is a party and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (c) the names and signatures of officers of Seller authorized to execute this Agreement, the other Operative Agreements, and any other documents to be delivered hereunder and thereunder;

2.2.11 a certificate, signed by a duly authorized officer of Seller, certifying to the effect that, as of the Closing Date, each of the conditions set forth in Sections 7.2.1 and 7.2.2 has been satisfied;

2.2.12 the standard form South Carolina Affidavit of True Consideration (to be attached to the Deed) establishing and confirming the true consideration paid for the Owned Real Property, duly executed by Seller;

2.2.13 any payoff letters or other written evidence, in form reasonably satisfactory to Purchaser, of the release in full of all Liens relating to the Purchased Assets (other than Permitted Liens and consents not required to be delivered pursuant to Section 2.2.4);

2.2.14 any and all customary affidavits or other certificates or documents reasonably required by Purchaser's title insurance company or Purchaser in order to insure title to the Owned Real Property and, if applicable, the Leased Real Property in accordance with this Agreement, in form and substance reasonably acceptable to Seller, including a name change affidavit to be recorded reflecting Seller's relation to its predecessor entities;

2.2.15 assignments of all Assigned Permits, subject to the terms of the Control Agreement in the case of the NRC Permit;

2.2.16 a Certificate of Tax Compliance from the South Carolina Department of Revenue or a Transferor Affidavit pursuant to S.C. Code Section 12-54-124;

2.2.17 a Withholding Tax affidavit;

2.2.18 the Sawmill Lease, duly executed by Seller;

2.2.19 the Control Agreement, duly executed by Seller;

2.2.20 an updated Schedule 10.1(f), reflecting all Recall Employees as of the Closing Date; and

2.2.21 such other agreements, documents and instruments as are contemplated to be delivered by Seller at Closing pursuant to this Agreement.

2.3 Parent and Purchaser's Deliveries to Seller

At the Closing, Parent or Purchaser, as applicable, shall deliver (or cause to be delivered) to Seller the following:

2.3.1 by wire transfer of immediately available funds to the Closing Agent for delivery to a bank account of Seller (such bank account to be designated in writing by Seller to Purchaser no later than two (2) Business Days prior to the Closing) an amount equal to (a) the Closing Purchase Price less (b) the sum of the Signing Deposit Amount and Initial Deposit Amount less (c) an amount equal to fifty percent (50%) of the cost of the premium under, and the related diligence fees and expenses of the insurance carrier for the Representation and Warranty Policy;

2.3.2 the Bill of Sale, duly executed by Purchaser;

2.3.3 the Assignment and Assumption Agreement, duly executed by Purchaser;

2.3.4 a Lease Assignment Agreement for each Real Property Lease, duly executed by Purchaser;

2.3.5 the SC Lease, duly executed by Purchaser;

2.3.6 evidence of replacement of guarantees, performance bonds, letters of credit, and other security instruments delivered by or on behalf of Purchaser or its Affiliates, effective as of the Closing Date, to replace all the guarantees, performance bonds, letters of credit and other security instruments delivered by Seller or its Affiliates and set forth on Schedule 2.3.6 and all other non-cash guarantees, performance bonds, letters of credit and security instruments that have been entered into by Seller or its Affiliates in connection with the Purchased Assets after the Effective Date (collectively, the "**Seller Security Instruments**");

2.3.7 a certificate from the Secretary of State or other appropriate official of each of Purchaser's and Parent's jurisdiction of formation, dated not more than five Business Days prior to the Closing Date, to the effect that each of Purchaser and Parent is in good standing (or the equivalent thereof) in such jurisdiction;

2.3.8 a certificate of the Secretary or another officer of Purchaser certifying (a) that attached thereto are true, correct, and complete copies of the Organizational Documents of Purchaser, (b) that attached thereto are true, correct, and complete copies of all resolutions adopted by the board of directors (or equivalent) of Purchaser authorizing the execution, delivery, and performance of this Agreement and the other Operative Agreements to which Purchaser is a party and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (c) the names and signatures of officers of Purchaser authorized to execute this Agreement, the other Operative Agreements, and any other documents to be delivered hereunder and thereunder;

2.3.9 a certificate of the Secretary or another officer of Parent certifying (a) that attached thereto are true, correct, and complete copies of the Organizational Documents of Parent (b) that attached thereto are true, correct, and complete copies of all resolutions adopted by the board of directors (or equivalent) of Parent authorizing the execution, delivery, and performance of this Agreement and the other Operative Agreements to which Parent is a party and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby, and (c) the names and signatures of officers of Parent authorized to execute this Agreement, the other Operative Agreements, and any other documents to be delivered hereunder and thereunder; and

2.3.10 a certificate, signed by a duly authorized officer of Purchaser, certifying to the effect that, as of the Closing Date, each of the conditions set forth in Sections 7.3.1 and 7.3.2 has been satisfied;

2.3.11 a copy of South Carolina Department of Revenue's Exemption Certificate ST-8 duly executed by Purchaser;

2.3.12 the Sawmill Lease, duly executed by Purchaser;

2.3.13 the Control Agreement, duly executed by Purchaser;

2.3.14 a Resale Certificate ST8-A duly issued to Purchaser by the State of South Carolina Department of Revenue; and

2.3.15 such other agreements, documents and instruments as are contemplated to be delivered by Purchaser at Closing pursuant to this Agreement.

2.4 Deliveries to the Escrow Agent

2.4.1 At the Closing, Seller shall deliver (or cause to be delivered) to the Escrow Agent, by wire transfer of immediately available funds, the Seller's Environmental Escrow Contribution to be held in the Environmental Escrow Account in accordance with the Escrow Agreement to secure claims for reimbursement made by Purchaser pursuant to Section 5.8.

2.4.2 At the Closing, Parent (on behalf of all Buyer Parties) and Seller shall deliver joint written instructions to the Escrow Agent, instructing the Escrow Agent to release the Initial Deposit Amount and Signing Deposit Amount to the Closing Agent to deliver to Seller.

3. **REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the disclosure schedules delivered by Seller to the Buyer Parties concurrently with the execution of this Agreement (each a "**Schedule**" and collectively, the "**Schedules**"), Seller represents and warrants to the Buyer Parties as follows:

3.1 Organization

Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as presently conducted. Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Catawba Mill Business as currently conducted makes such licensing or qualification necessary.

3.2 Power and Authority

Seller has the necessary corporate power and authority to execute and deliver this Agreement and the other Operative Agreements to which it is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each other Operative Agreement to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller and (assuming due authorization, execution and delivery by Purchaser) constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles. When each of the other Operative Agreements to which Seller is or will be a party has been duly executed and delivered by Seller, such Operative Agreement (assuming due authorization, execution and delivery by Purchaser) will constitute a legal and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles.

3.3 No Conflicts

3.3.1 Except as set forth on Schedule 3.3.1, the execution and delivery by Seller of this Agreement and the other Operative Agreements to which it is a party, the performance by Seller of its obligations under this Agreement and such Operative Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not:

(a) conflict with or result in a violation or breach of, or default under, any of the terms, conditions or provisions of Seller's Organizational Documents;

(b) conflict with or result in a violation or breach of any term or provision of any applicable Law in any material respect; or

(c) (A) (i) in any material respect conflict with or result in a violation or breach of, (ii) constitute a material default under or an event that, with or without notice or lapse of time or both, would constitute a material default under, (iii) except for requirements under the HSR Act, require Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of, or (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, any Assigned Contract or Assigned Permit; or (B) result in the creation or imposition of any Lien (other than Permitted Liens) upon any of the Purchased Assets.

3.3.2 Except as set forth in Schedule 3.3.2 and for any filings as may be required under the HSR Act, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Entity is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the other Operative Agreements and the consummation of the transactions contemplated hereby and thereby.

3.4 Financial Results; Absence of Changes; Capitalization

3.4.1 Attached hereto as Schedule 3.4.1 are true and complete copies of unaudited financial results of the Catawba Mill Business as at December 31, 2017 and the interim net asset balance sheet as of August 31, 2018 for the Catawba Mill Business (the "**Financial Results**"). Except as set forth in the notes thereto, the Financial Results fairly present in all material respects the net asset balance and operating income of the Catawba Mill Business as at the date thereof and for the periods covered thereby. The interim net asset balance sheet for the Catawba Mill Business as of August 31, 2018 are referred to herein as the "**Latest Financial Results**."

3.4.2 Except as set forth in Schedule 3.4.2, from the date of the Latest Financial Results, Seller has conducted the Catawba Mill Business in the Ordinary Course of Business and there has not occurred, with respect to the Catawba Mill Business, any:

(a) event, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) material change in any method of accounting or accounting practice for the Catawba Mill Business, except as required by GAAP;

(c) entry into any Contract that would constitute a Material Contract, other than any Purchase Order, Customer Order or any other Contract that will be performed or completed prior to Closing and entered into in the Ordinary Course of Business;

(d) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Latest Financial Results, except for the sale of Inventory or the disposal of damaged or obsolete equipment or materials, in each case, in the Ordinary Course of Business;

(e) cancellation of any debts or claims in an amount exceeding $200,000 individually;

(f) transfer or assignment of or grant of any license or sublicense under or with respect to any Owned Intellectual Property or Intellectual Property Licenses;

(g) material unrepaired damage, destruction or loss which has not be replaced, or any material unremedied interruption in use, of any Purchased Assets, whether or not covered by insurance;

(h) acceleration, termination, material modification to, cancellation of or the waiver of any material term of any Assigned Contract or Assigned Permit;

(i) material capital expenditures which would constitute an Assumed Obligation except as contemplated by the Five Year Capital Expenditure Plan made available in the Data Room;

(j) imposition of any Lien (other than Permitted Liens) upon any of the Purchased Assets;

(k) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any Employees, other than increases in the Ordinary Course of Business or as required by the terms of any written agreements or applicable Law, (ii) material change in the terms of employment for any Employee (other than changes applicable to all similarly situated Employees that do not result in any material increased Liability of Seller with respect thereto), or (iii) action to accelerate the vesting or payment of any compensation or benefit for any Employee of the Catawba Mill Business that is the general manager or a direct report of the general manager;

(l) hiring or promoting any person as or to (as the case may be) an Employee that is the general manager or a direct report of the general manager or hiring or promoting any employee below an Employee that is the general manager or a direct report of the general manager, in each case, except to fill a vacancy after the Effective Date of the mill manager position with the prior written approval of the Purchaser or of any other position in the Ordinary Course of Business;

(m) adoption, modification or termination, except as required by applicable Law, of any: (i) employment, severance, retention or other agreement with any Employee of the Catawba Mill Business that is the general manager or a direct report of the general manager, other than the mill manager position or (ii) collective bargaining or other agreement with a union, in each case whether written or oral;

(n) movement of any tangible personal property from the Owned Real Property into the Service Center unless such property (i) is, as of the Effective Date, exclusively related to the operation of the Service Center or (ii) consists of office or information technology equipment required for use by those employees transferred to the Service Center from the Catawba Mill; or

(o) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

3.5 No Undisclosed Liabilities

Except for Liabilities (a) set forth on the Latest Financial Results, (b) incurred since the date of the Latest Financial Results in the Ordinary Course of Business, (c) incurred in connection with the transactions contemplated hereby and by the other Operative Agreements, (d) arising from executory performance obligations under Purchased Contracts and Instruments, or (e) set forth on Schedule 3.5, there are no Liabilities of, relating to or affecting the Catawba Mill Business (to the extent it relates to the Purchased Assets and the Assumed Obligations and for which Purchaser will become liable at Closing) of the type that would be required to be set forth on the face of a balance sheet prepared in accordance with GAAP.

3.6 Legal Proceedings

3.6.1 Except as set forth on Schedule 3.6.1, there are no Actions pending or, to Seller's Knowledge, threatened against, relating to or affecting the Catawba Mill Business, the Purchased Assets, or the Assumed Obligations or that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

3.6.2 Seller is not subject to any Governmental Order which restricts in any material respect the operation of the Catawba Mill Business or which has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.6.3 There are no outstanding Governmental Orders against Seller with respect to the Catawba Mill Business that have not been satisfied or discharged. To Seller's Knowledge, no event has occurred or circumstance exists that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

3.7 Compliance With Laws

During the past five (5) years, Seller has complied, and is now complying, in all material respects with all Laws applicable to the conduct of the Catawba Mill Business as currently conducted or the ownership and use of the Purchased Assets. Notwithstanding the foregoing, the representations and warranties in this Section 3.7 do not apply to environmental matters, benefit plans and related matters, labor matters, real estate matters, intellectual property matters, Permits, and Tax matters, which are addressed in their entirety and exclusively elsewhere in this Section 3.

3.8 Tax Matters

3.8.1 Except as disclosed on Schedule 3.8.1, (a) Seller has timely filed, or there have been timely filed on Seller's behalf, all Tax Returns required to be filed with the appropriate Taxing Authorities in connection with, or relating to, the Catawba Mill Business or any of the Purchased Assets in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted to Seller) and all such Tax Returns were true, correct and complete in all material respects, and (b) all Taxes payable with respect to the Catawba Mill Business or any of the Purchased Assets have been timely paid.

3.8.2 There are no liens (other than Permitted Liens) on, nor have any claims been made in writing with respect to, any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

3.8.3 Seller has withheld and paid all Taxes (relating to the Catawba Mill Business or any of the Purchased Assets) required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, owner, or other third party, and all IRS Forms W-2 and 1099 required with respect thereto have been properly completed and timely (with extensions) filed.

3.8.4 None of the Purchased Assets is "tax-exempt use property" within the meaning of Section 168(h) of the Code.

3.8.5 Seller has not received written notice from a Taxing Authority of (a) any pending or, to Seller's Knowledge, threatened Tax audit, proceeding, dispute or claim or (b) any Tax deficiency (in each case, relating to the Catawba Mill Business or any of the Purchased Assets), which audit, proceeding, dispute, claim or deficiency is still pending or outstanding.

3.8.6 Seller has delivered to Purchaser correct and complete copies of (A) all applicable Tax Returns relating to the Catawba Mill Business or any of the Purchased Assets and (B) any statements of deficiencies relating to such Tax Returns assessed against or agreed to by Seller, in each case since December 31, 2013.

3.8.7 Seller has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency (in each case, relating to the Catawba Mill Business or any of the Purchased Assets), which waiver or extension is still in effect.

3.8.8 Seller has no liability for the Taxes (relating to the Catawba Mill Business or any of the Purchased Assets) of any Person as a transferee or successor, by Contract, or otherwise.

3.8.9 Seller is not a foreign person within the meaning of Treasury Regulation Section 1.1445-2(b).

3.9 Benefit Plans

3.9.1 Schedule 3.9.1 contains a true and complete list of all Benefit Plans. True and complete copies of all material plan documents relating to such Benefit Plans have been delivered or made available to Purchaser.

3.9.2 All contributions to Benefit Plans that were required to be made under such Benefit Plans as of the Effective Date have been made as of the Effective Date.

3.9.3 No Benefit Plan is (a) a "multiemployer plan" (within the meaning of Section 3(37) of ERISA), (b) a "multiple employer plan" within the meaning of (Section 413(c) of the Code), or (c) a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA). Each Benefit Plan that is intended to be qualified under Section 401 of the Code has been determined by the Internal Revenue Service to be and is so qualified and is covered by a favorable determination letter or opinion letter from the Internal Revenue Service and, to Seller's Knowledge, there is no reason why any such determination letter or opinion letter should be revoked and not be reissued.

3.9.4 Except as disclosed on Schedule 3.9.4, there are no pending Actions which have been asserted or instituted or, to Seller's Knowledge, threatened against the Seller DB Pension Plan, the assets of such plan or of any related trust or Seller, the plan administrator or any fiduciary of such Seller DB Pension Plan with respect to such plan (other than routine benefit claims). The Seller DB Pension Plan is not under audit or investigation by the IRS, DOL, or any other Government Entity and no such completed audit, if any, has resulted in the imposition of any material Tax, interest, or penalty. The Seller DB Pension Plan complies in all material respects with its terms and provisions of applicable Law, including ERISA and the Code. No nonexempt "prohibited transaction" within the meaning of ERISA or the Code, or breach of any duty imposed on "fiduciaries" pursuant to ERISA, has occurred with respect to the Seller DB Pension Plan.

3.9.5 The representations and warranties contained in this Section 3.9 are the only representations and warranties made by Seller with respect to Benefit Plans and related matters.

3.10 Real Property

3.10.1 Except as set forth on Schedule 3.10.1, the Owned Real Property constitutes all of the real property owned by Seller used or held for use in connection with the Catawba Mill Business as presently conducted. Seller has good, clear, record and marketable fee simple title to all of the Owned Real Property, free and clear of any and all Liens, except for Permitted Liens. To Seller's Knowledge, except as set forth on Schedules 3.10.1 and 3.10.3, (a) there is no actual or threatened condemnation proceeding against any of the Owned Real Property or pending or threatened real estate tax deficiency or reassessment against any of the Owned Real Property, (b) no Person other than Seller is occupying or using any of the Owned Real Property, (c) all improvements constituting part of the Owned Real Property have been completed and are in compliance in all material respects with all applicable Laws and Permits, (d) Seller possesses all Permits necessary to use and occupy the Owned Real Property for the Catawba Mill Business as presently conducted, (e) there is no violation of any Law or Permit issued with respect to any of the Owned Real Property that has not been corrected heretofore, and no such violation exists which could have an adverse effect on the operation or value of any of the Owned Real Property, (f) all water, sewer, gas, electric, telephone, drainage and other utilities required by Law or necessary for the current operation of the Owned Real Property are sufficient for the conduct of the Catawba Mill Business at the Owned Real Property as presently conducted, and (g) the Owned Real Property has legal and record vehicular and pedestrian access to a public way.

3.10.2 Seller has not granted any option to purchase the Owned Real Property or any right of first refusal or right of first offer or similar right to purchase the Owned Real Property to any Person.

3.10.3 Schedule 3.10.3 contains a true and complete list of all leases of real property (collectively, the "**Real Property Leases**") to which Seller is a party (as lessee, sublessee, lessor or sublessor) which relate to the Catawba Mill Business. Each of the Real Property Leases is in full force and effect and Seller has valid leasehold interests in all leased real property described in the applicable Real Property Lease (the "**Leased Real Property**"), free and clear of any and all Liens, except for Permitted Liens. A true, correct and complete copy of each of the Real Property Leases, as currently in effect, has been delivered or made available to Purchaser and none of the Real Property Leases has been modified in any respect, except to the extent that such modifications are disclosed by the copies delivered or made available to Purchaser. Except as otherwise noted on Schedule 3.10.3, the consummation of the transactions contemplated hereby will not cause a breach of or result in any default under, or require any consent, notice or waiver under, any Real Property Lease. All of the covenants to be performed by Seller under any such Real Property Lease have been fully performed in all material respects. To Seller's Knowledge, all of the covenants to be performed by any other party under any such Real Property Lease have been fully performed in all material respects by such Person. Seller has not received any notice of any default or event that with notice or lapse of time, or both, would constitute a default under any of the Real Property Leases and Seller and, to Sellers' Knowledge, each other party to a Real Property Lease, is in compliance in all material respects with all obligations of such party thereunder. Seller possesses all Permits necessary to use and occupy the Leased Real Property for the Catawba Mill Business as presently conducted. No condemnation proceeding is pending or, to Seller's Knowledge, threatened which would preclude or impair the use of any such property by Purchaser for the purposes for which it is currently used. Seller's possession and quiet enjoyment of each Leased Real Property under each Real Property Lease has not been disturbed in any material respect and there are no disputes pending with respect to any Real Property Lease.

3.10.4 Except as set forth on Schedule 3.10.1, the Owned Real Property and the Leased Real Property constitute all of the interests in real property used or held for use in connection with the Catawba Mill Business as presently conducted.

3.10.5 The representations and warranties contained in this Section 3.10 are the only representations and warranties made by Seller with respect to real property and related matters.

3.11 Condition and Sufficiency of Assets

Except as set forth on Schedule 3.11(a), the buildings, structures, furniture, fixtures, machinery, Equipment (including Equipment currently used to produce lightweight coated ("**LWC**") paper and southern bleached softwood kraft ("**SBSK**") pulp), vehicles and other items of tangible personal property (other than Inventory) included in the Purchased Assets are, in all material respects (or, in the case of the Purchased Assets listed on Schedule 3.11(b) in all respects), structurally sound, in good operating condition and repair (subject to normal wear and tear), and are adequate for the uses to which they are being put, and none of such buildings, structures, furniture, fixtures, machinery, Equipment, vehicles or other items of tangible personal property is currently in need of material maintenance or repairs (or, in the case of the Purchased Assets listed on Schedule 3.11(b), any maintenance or repairs), except in each case for ordinary, routine maintenance and other regularly scheduled repairs. Except as set forth in Schedule 3.11(c), the Purchased Assets, taken as a whole, are sufficient for the continued conduct of the Catawba Mill Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Catawba Mill Business as presently conducted.

3.12 Intellectual Property

3.12.1 Seller is the sole and exclusive legal and beneficial owner of all right, title and interest in and to the Owned Intellectual Property free and clear of Liens other than Permitted Liens. Seller has a valid and enforceable right to use all Licensed Intellectual Property licensed under the Intellectual Property Licenses. Seller has not made any registration, application, or other filing with any Governmental Entity or authorized private registrar in any jurisdiction relating to any of the Owned Intellectual Property. The Owned Intellectual Property, Intellectual Property Licenses and the Licensed Intellectual Property constitutes all of the Intellectual Property used in the conduct of the Catawba Mill Business as presently conducted other than the Excluded Intellectual Property. Seller has no obligation to pay any Person any royalties or other fees for the continued use of the Owned Intellectual Property or the Licensed Intellectual Property and, to the Seller's Knowledge, Purchaser will have no obligation to pay such royalties or other fees as a result of the consummation of the transactions contemplated by this Agreement, in each case, other than as set forth in the Intellectual Property Licenses.

3.12.2 Seller has not licensed its rights or otherwise granted any rights in, to, or under the Owned Intellectual Property, Intellectual Property Licenses or the Licensed Intellectual Property, or the use thereof, to any Person, including any of its Affiliates. To Seller's Knowledge, no Person is misappropriating, infringing, or violating any Owned Intellectual Property, and no Intellectual Property or other proprietary right misappropriation, infringement, or violation Action has been brought against any Person by Seller relating to the Owned Intellectual Property. Seller is not party to or bound to any agreement, open source software license, standards of development effort, specification development effort, settlement, covenant not to sue, consent, decree, stipulation, judgment, or order resulting from any Action which (A) permits third parties to use any of the Owned Intellectual Property, (B) restricts Seller's rights to use any Owned Intellectual Property or Licensed Intellectual Property (other than the Intellectual Property Licenses), or (C) restricts Seller's operation of the Catawba Mill Business in order to accommodate any other Person's Intellectual Property.

3.12.3 Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or require the payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, Purchaser's right to own or use any Owned Intellectual Property or any Licensed Intellectual Property. All Owned Intellectual Property is transferable, alienable and licensable to Purchaser without restriction and without payment of any kind to any third party.

3.12.4 The operation of the Catawba Mill Business as currently conducted by Seller, and as has been conducted since January 1, 2015, and the possession and use of the Owned Intellectual Property and the Licensed Intellectual Property, currently do not infringe upon, misappropriate, violate or otherwise breach, and has not since January 1, 2015 infringed upon, misappropriated, violated, or otherwise breached, any Intellectual Property or other rights of any Person (including any Affiliate of Seller).

3.12.5 Since January 1, 2015, no written claim or demand of any Person has been made or, to Seller's Knowledge, threatened, nor is there any Action that has been settled or otherwise resolved or is pending or, to Seller's Knowledge, threatened, nor is there any investigation that has been settled or otherwise resolved or is pending or, to Seller's Knowledge, threatened, in each case that (a) challenges or challenged the use, ownership, validity, or enforceability of any Owned Intellectual Property or Licensed Intellectual Property or (b) asserts or asserted that the operation or conduct of the Catawba Mill Business as presently conducted by Seller is or was infringing, misappropriating, or otherwise in violation of or constituting the unauthorized use of any Intellectual Property of any Person. To Seller's Knowledge, there are no facts or circumstances that would reasonably be expected to give rise to any such claim, demand, Action, or investigation. None of the Owned Intellectual Property or Licensed Intellectual Property is subject to any outstanding Governmental Order by which Seller is bound, or is the subject of any pending Action against Seller that remains unresolved.

3.12.6 Seller has taken all reasonable and necessary steps to maintain and enforce the Owned Intellectual Property. To Seller's Knowledge, there has been no unauthorized disclosure or use of, or access to, any trade secrets or other confidential information of the Catawba Mill Business.

3.12.7 Seller has not granted nor is it obligated to grant any access or license to any of its source code included in the Owned Intellectual Property (including, in any such case, any conditional right to access or under which Seller has established any escrow arrangement for the storage and conditional release of any of such source code).

3.13 Material Contracts

3.13.1 Schedule 3.13.1 lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected as of the Effective Date or (y) to which Seller is a party or by which it is bound exclusively in connection with the Catawba Mill Business or the Purchased Assets as of the Effective Date, in each case other than Excluded Assets (such Contracts, together with all Contracts concerning any Equipment or Real Property Leases listed or otherwise disclosed in Schedule 3.10 and all Intellectual Property Licenses, being "**Material Contracts**"):

(a) all Contracts involving aggregate consideration in excess of $300,000 and which, in each case, cannot be cancelled without penalty or without more than 30 days' notice;

(b) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Catawba Mill Business or that contain "take or pay" provisions;

(c) all Contracts that provide for the indemnification of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(d) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(e) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(f) all written employment agreements and written Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without at least 30 days' notice;

(g) all Contracts with any Governmental Entity;

(h) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(i) all joint venture, partnership or similar Contracts;

(j) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets, excluding Contracts for the sale of Inventory in the Ordinary Course of Business;

(k) all Material Contracts between Seller and any Affiliate of Seller with respect to the Catawba Mill Business; and

(l) all other Contracts that are material to the Purchased Assets or to the operation of the Catawba Mill Business and not previously disclosed pursuant to this Section 3.13.1.

3.13.2 Each Material Contract that is an Assigned Contract is a legal, valid and binding Contract of Seller and, to Seller's Knowledge, the other parties thereto in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium, or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles. None of Seller or, to Seller's Knowledge, any other party thereto is in breach of or default in any material respect under (or is alleged to be in such breach of or default under), or has provided or received any written notice of any intention to terminate, any Material Contract that is an Assigned Contract. To Seller's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract that is an Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes to any material right or obligation or the loss of any material benefit thereunder. Complete and correct copies of each Material Contract that is an Assigned Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Purchaser. There are no material disputes pending or, to Seller's Knowledge, threatened under any Assigned Contract.

3.14 Employees; Labor Relations

3.14.1 Schedule 3.14.1 contains a true and complete list of (a) the Employees as at the date indicated therein, identified by employee identification number and not by name and (b) all collective bargaining agreements, memoranda of agreement, memoranda of understanding, side letters, and any other written agreements or understandings currently in effect between Seller and the USW or any other labor organization to the extent related to the Catawba Mill Business.

3.14.2 Except as set forth on Schedule 3.14.2, as of the date indicated therein (a) there are no Actions pending or, to Seller's Knowledge, threatened between Seller (to the extent related to the Catawba Mill Business) and any labor organization (to the extent related to the Catawba Mill Business) or any Employee or former employee, and (b) there are no pending or, to Seller's Knowledge, threatened unfair labor practice charges, arbitrations or arbitration awards, grievances, strikes, lockouts, or Actions involving any Employee against or with respect to Seller (to the extent related to the Catawba Mill Business).

3.14.3 The only labor union or other labor organization that represents any Employees is the USW.

3.14.4 During the past five (5) years, with respect to the Catawba Mill Business: (i) Seller has complied, and is now complying, in all material respects with all Laws related to employment, termination of employment, employment practices, employment terms, conditions, and compensation, labor or employment relations, equal employment opportunities, and fair employment practices; (ii) except as set forth on Schedule 3.14.4, there has been no investigation, claim, complaint, charge, action, or litigation before or by any federal, state, or local court, administrative agency, governmental entity, or arbitration tribunal relating to employment, employment practices, terms, conditions, or compensation, employment termination, separation, or layoffs, employment discrimination or equal employment opportunity, employee benefits, fair employment practices, whistleblowing, retaliation, or employee safety or health nor, to Seller's Knowledge, is any threatened; (iii) Seller has been in material compliance with the terms and provisions of the Immigration Reform and Control Act of 1986, as amended, and all related regulations promulgated thereunder ("**Immigration Laws**"); and (iv) Seller has not been warned in writing, fined, or otherwise penalized by reason of its failure to comply with Immigration Laws, nor is any Action pending or, to Seller's Knowledge, threatened with respect to any such noncompliance.

3.14.5 The representations and warranties contained in this Section 3.14 are the only representations and warranties made by Seller with respect to Employees, labor relations, and related matters; except to the extent that such representations and warranties are made by Seller in Section 3.9 in this Agreement.

3.15 Brokers

Other than TM Capital Corp., no agent, broker, finder, investment banker, financial advisor or other Person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement or any of the other Operative Agreements.

3.16 Title

Seller has good and valid title to, or good and valid leasehold interests in, all of the Purchased Assets owned and leased by it, free and clear of all Liens other than (a) the Liens set forth on Schedule 3.16, which will be released immediately prior to the Closing, and (b) Permitted Liens. By virtue of this Agreement and the other Operative Agreements, subject to Section 1.3, Purchaser will obtain at the Closing good and valid title to the Purchased Assets, free and clear of all Liens other than Permitted Liens.

3.17 Permits and Industry Certifications

3.17.1 Except as set forth in Schedule 3.17.1(a), Seller holds all Permits (including Environmental Permits) necessary for the current conduct of the Catawba Mill Business or for the ownership and use of the Purchased Assets, and such Permits are valid and in full force and effect. All fees and charges with respect to such Permits as of the Effective Date have been paid in full. All Permits necessary to conduct the Catawba Mill Business or for the ownership and use of the Purchased Assets (a) are set forth on Schedule 3.17.1, including the names of the Permits and their respective dates of issuance and expiration and (b) if included in the Assigned Permits, subject to Section 1.3 and, in the case of the NRC Permit, the terms of the Control Agreement, shall be transferred to Purchaser on the Closing Date. All necessary filings for the reissuance or renewal of material Permits for the current conduct, ownership or use of the Catawba Mill Business have been timely filed. To Seller's Knowledge, no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, amendment, suspension, lapse or limitation of any Permit set forth on Schedule 3.17.1. Seller is in compliance in all material respects with the Assigned Permits, and there are not any legal, administrative, regulatory, or other Governmental Entity proceedings pending, or, to the Knowledge of the Seller, threatened for violations of any Assigned Permits. The representations and warranties contained in this Section 3.17.1 (and, in the case of Environmental Permits only, Section 3.18.2) are the only representations and warranties made by Seller with respect to Permits.

3.17.2 Except as set forth in Schedule 3.17.2, Seller (a) has complied in all material respects with all certifications, approvals and other authorizations listed on Schedule 3.17.2 (the "**Industry Certifications**"), (b) has not taken or permitted any action that would cause any of the Industry Certifications to be terminated, and (c) has not received any written notice that any Industry Certification will be revoked, suspended, modified or will not be renewed. To Seller's Knowledge, no event or circumstance has occurred that, with notice or lapse of time or both, would result in the revocation or variation in any material respect of any Industry Certification.

3.18 Environmental Matters

3.18.1 The Seller has made available to the Purchaser true, complete and correct copies of all environmental data, reports, studies, and similar information prepared or generated within the past five (5) years that are in the Seller's care, custody and control, relating to (a) the presence, potential presence or Release of Hazardous Substance at, on, under or emanating from the Owned Real Property or Leased Real Property or for which Buyer may be otherwise assuming liability under this Agreement, including under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or state equivalents, including but not limited to any Phase I and Phase II environmental site assessments, (b) the assessment, clean-up, removal, or other remediation of any Release of Hazardous Substance or other waste or materials of any kind in, on, under or emanating from the Owned Real Property or Leased Real Property, (c) compliance of the Catawba Mill Business with Environmental Law including compliance with Environmental Permits issued thereunder, (d) the use of any Hazardous Substance used in the Catawba Mill Business including the manner and location of storage and disposal thereof and (e) all existing or former above and underground ground storage tanks that contain or contained Hazardous Substance and all underground storage tanks, containers, piping, structures or impoundments located at or on real property that is or was owned or leased by or on behalf of the Catawba Mill Business, but excluding routine and non-material data, reports, inspections and other documentation that has not been and is not required to be provided to DHEC or any other Governmental Entity (collectively, the "**Environmental Reports**"). To the Knowledge of the Seller, there are no material environmental reports relating to the presence or Release of Hazardous Substance or compliance with or liability under Environmental Law prepared or generated within the last five (5) years other than the Environmental Reports. To Seller's Knowledge, there is no report relating to a material Liability under Environmental Law which is an Assumed Obligation as of the Closing Date for which the facts giving rise to such Liability are not contained in an Environmental Report.

3.18.2 Except as made available in the Data Room:

(a) Seller is and within the last five (5) years has been in material compliance with all Environmental Laws, including all Environmental Permits issued under Environmental Law, with regard to the Catawba Mill Business;

(b) Seller has not received any written notice from any Governmental Entity or other Person within the last five (5) years with respect to the Catawba Mill Business, Owned Real Property or Leased Real Property alleging that Seller is or may not be in compliance in any respect with any Environmental Law or is or may be liable for the presence, Release, or threatened Release of a Hazardous Substance; except any such notices received after the Effective Date related to any matters discussed by Purchaser or its Affiliates or Representatives with any Governmental Entity;

(c) within the last five (5) years, there has been no Release by Seller of a Hazardous Substance with respect to the Catawba Mill Business, Owned Real Property or Leased Real Property, nor to Seller's Knowledge has any Release of a Hazardous Substance occurred nor is any such Release threatened at, on, under or from any of the Owned Real Property or Leased Real Property or as a result of activities of the Catawba Mill Business, except in each case such Releases as are permitted under Environmental Law;

(d) there are no Actions by any Governmental Entity or other Person pending or, to the Seller's Knowledge, threatened against any of the Purchased Assets, or Seller with respect to the Catawba Mill Business under any Environmental Law or with regard to the presence, exposure to or Release of Hazardous Substances, including but not limited to any obligations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or state equivalents; except any such Actions implemented or threatened after the Effective Date related to any matters discussed by Purchaser or its Affiliates or Representatives with any Governmental Entity;

(e) (i) no real property currently owned, operated or leased by Seller currently relating to the Purchased Assets or the Catawba Mill Business is listed on or has been proposed for listing on the National Priorities List (or CERCLIS) under CERCLA or any equivalent state list, and (ii) to the Seller's Knowledge, no real property formerly owned, operated or leased by Seller relating to the Purchased Assets or the Catawba Mill Business is listed on or has been proposed for listing on the National Priorities List (or CERCLIS) under CERCLA or any equivalent state list;

(f) to the Knowledge of the Seller, there are no conditions, circumstances or other facts that would reasonably be expected to result in unbudgeted control measures or capital expenditures needed for the Catawba Mill Business to maintain compliance with Environmental Laws in the next eighteen (18) months; and

(g) Seller has not retained or assumed, by contract or operation of Law, the liability of any other Person under any Environmental Law or pertaining to the presence, Release or threatened Release of Hazardous Substance arising out of or relating to the Catawba Mill Business or the Purchased Assets.

3.18.3 To Seller's Knowledge, the Data Room contains all material environmental information with respect to the Catawba Mill Business prepared, generated or received within the last five (5) years.

3.18.4 Notwithstanding anything in this Agreement to the contrary, this Section 3.18 (and, in the case of Environmental Permits, Section 3.17.1) contains the sole and exclusive representations and warranties of Seller with respect to, arising out of or relating to environmental matters, including the assessment, clean-up, removal, or other remediation of any Releases of Hazardous Substances from the Purchased Assets or relating to the Catawba Mill Business, the extent to which the Purchased Assets or the Catawba Mill Business are in compliance with any past, present, or future Environmental Laws or Environmental Permits, or any Release or other contamination or pollution of the environment.

3.19 Customers and Suppliers

Schedule 3.19 sets forth a true, complete and correct list of the ten (10) largest customers by revenues (each, a "**Major Customer**") and suppliers by billings to Seller (each, a "**Major Supplier**") of the Catawba Mill Business, in each case, other than Purchaser or any of its Affiliates, and the amount of revenues or billings generated by each during the 2016 and 2017 calendar years and during 2018 for the period beginning January 1, 2018 through August 31, 2018. Except as set forth on Schedule 3.19, as of the Effective Date, Seller has not received any written notice, and has no Knowledge, that any of the Major Customers or Major Suppliers, in each case for the period beginning January 1, 2018 through August 31, 2018, has ceased, or intends to cease, to use or supply the goods or services of the Catawba Mill Business or to otherwise terminate, materially reduce or adversely modify its relationship with the Catawba Mill Business.

3.20 Affiliate Transactions

Except as set forth on Schedule 3.20, no current or, to Seller's Knowledge, former Affiliate of Seller or director or officer of Seller or of any such Affiliate (a) owns any Purchased Assets, (b) owes money to, or is owed money by, the Catawba Mill Business, in each case, to the extent the same constitute Purchased Assets or Assumed Obligations, or (c) is a party to or the beneficiary of any Contract with the Catawba Mill Business which constitutes an Assigned Contract, except in each case for compensation and benefits payable under a Benefit Plan or employment agreement to officers or directors in their capacity as such.

3.21 Accounts Receivable

The Receivables reflected on the Latest Financial Results and the Receivables arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the Ordinary Course of Business; and (b) taking into account the applicable reserve for bad debts, constitute only valid, undisputed claims of Seller not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the Ordinary Course of Business. The reserve for bad debts shown on the Latest Financial Results or, with respect to Receivables arising after the date of the Latest Financial Results, on the accounting records of the Catawba Mill Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

3.22 Inventory

All Inventory of the Catawba Mill Business, whether or not reflected in the Financial Results, (a) consists of a quality and quantity usable and salable in the Ordinary Course of Business, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established (such obsolete, damaged, defective or slow-moving items, the "**Obsolete Inventory**") and (b) complies in all material respects with the Industry Certifications to the extent such Industry Certifications are applicable to such Inventory. All such Inventory is owned by Seller free and clear of all Liens (other than Permitted Liens), and except as set forth on Schedule 3.22 no Inventory of the Catawba Mill Business is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Catawba Mill Business. Any contaminant contained in any Stock, including any pieces of fragments of rubber or metal, is not at a level in excess of industry standards.

3.23 Insurance

Schedule 3.23 sets forth with respect to the Catawba Mill Business a list of all pending claims under the Insurance Policies as of the Effective Date. Neither Seller nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or material alteration of coverage under, any current insurance policies maintained by Seller or its Affiliates relating to the Catawba Mill Business (collectively, the "**Insurance Policies**"). The Insurance Policies are, taken as a whole, of the type and in the amounts customarily carried by Persons conducting a business similar to the Catawba Mill Business and are sufficient for compliance in all material respects with all applicable Laws and Contracts to which Seller is a party or by which it is bound.

3.24 Solvency

3.24.1 Seller is not now Insolvent, nor will it be rendered Insolvent by the transactions contemplated hereby.

3.24.2 As of the Closing and taking into account the transactions contemplated hereby and by the other Operative Documents: (a) Seller will be able to pay its Liabilities as they become due; (b) Seller will not have unreasonably small capital with which to carry on its business; and (c) Seller will have assets (calculated at fair market value) that exceed its known and probable Liabilities.

3.24.3 Seller has not, since January 1, 2014: (a) made a general assignment for the benefit of creditors; (b) filed, or had filed against it, any bankruptcy petition or similar filing; (c) suffered the attachment or other judicial seizure of all or a substantial portion of its assets; (d) admitted in writing its inability to pay its debts as they become due; (e) adopted a plan of liquidation or dissolution; or (f) taken or been the subject of any Action that would reasonably be expected to have an adverse effect on its ability to comply with or perform any of its covenants or obligations under this Agreement.

3.25 Business Activities

Except as set forth on Schedule 3.25, during each of (a) the year ended December 31, 2017 and (b) the eight (8) months from January 1, 2018 until August 31, 2018, none of the Seller, any Seller UPE or any HSR Affiliate of Seller has derived revenues from operations utilizing the Purchased Assets in any industry other than industries within the 2012 North American Industrial Classification System definitions 322110, *Pulp Mills*, 322121, *Paper (except Newsprint) Mills*, 322122, *Newsprint Mills*, 325194, *Cuclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing*, and 321113, *Sawmills*.

3.26 No Other Representation or Warranty

The representations and warranties of Seller contained in this Section 3 are the only representations and warranties made by Seller with respect to the Catawba Mill Business and in connection with the transactions contemplated herein or in any other Operative Agreement and, for greater certainty and without limiting the generality of the foregoing, no other representation, warranty or condition, whether contractual or legal, and whether express or implied by Seller or construed by Purchaser, is made in connection with, arising out of or relating to the Catawba Mill Business and the transactions contemplated by this Agreement or any other Operative Agreement. Purchaser hereby waives and disclaims any such other representation, warranty or condition, express or implied, including without limitation any representation or warranty made or deemed made to any Person pursuant to that certain representation letter, dated as of September 29, 2018, from certain officers of Seller or its Affiliates to Ernst & Young LLP (the "**Management Letter**"). EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 3, THE PURCHASED ASSETS AND THE CATAWBA MILL BUSINESS ARE SOLD ON AN "AS IS WHERE IS" BASIS WITH ALL FAULTS OR DEFECTS, WHETHER PATENT OR LATENT, DISCOVERABLE OR UNDISCOVERABLE, AND WITHOUT ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, WARRANTY AGAINST EVICTION, WARRANTY OF OCCUPANCY, STRICT LIABILITY RIGHTS, OR ANY OTHER WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED. Seller is not making, directly or indirectly, any representations or warranties regarding any pro-forma financial information, financial projections, or other forward-looking statements. Any due diligence materials made available to Purchaser and its representatives do not, and shall not be deemed to, directly or indirectly, contain representations and warranties of Seller, its Affiliates, or representatives.

4. REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER

4.1 Representations and Warranties of Parent. Parent represents and warrants to Seller as follows:

4.1.1 Organization; Capitalization. Parent is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as presently conducted. Parent owns, beneficially and of record, 100% of the membership interests of Purchaser. The authorized equity securities of Purchaser consist solely of membership interests.

4.1.2 Power and Authority. Parent has the necessary limited liability company power and authority to execute and deliver this Agreement and the other Operative Agreements to which it is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Parent of this Agreement and each other Operative Agreement to which it is a party, the performance by it of its obligations hereunder and thereunder and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite limited liability company action on the part of Parent. This Agreement has been duly and validly executed and delivered by Parent and (assuming due authorization, execution and delivery by Seller) constitutes the legal, valid and binding obligations of Parent enforceable against Parent in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles. When each of the other Operative Agreements to which Parent is or will be a party has been duly executed and delivered by Parent (assuming due authorization, execution and delivery by each other party thereto), such Operative Agreement will constitute a legal and binding obligation of Parent enforceable against Parent in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles.

4.1.3 No Conflicts.

(a) The execution and delivery by Parent of this Agreement and the other Operative Agreements to which it is a party, the performance by Parent of its obligations under this Agreement and such other Operative Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) conflict with or result in a violation or breach of, or default under, any of the terms, conditions or provisions of the Organizational Documents of Parent;

(ii) conflict with or result in a violation or breach of any term or provision of any applicable Law in any material respect; or

(iii) (A) in any material respect conflict with, result in a violation or breach of, (B) constitute a material default under or an event that, with or without notice or lapse of time or both, would constitute a material default under, (C) except for requirements under the HSR Act, require Parent to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of or (D) result in or give to any Person any right of termination, cancellation, acceleration, or modification in or with respect to, any material Contract to which Parent is a party.

(b) Except for any filings as may be required under the HSR Act, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Entity is required by or with respect to Parent in connection with the execution and delivery of this Agreement or any of the other Operative Agreements and the consummation of the transactions contemplated hereby and thereby.

4.1.4 Legal Proceedings. There are no Actions pending or, to Parent's Knowledge, threatened against, relating to or affecting Parent or any Affiliate of Parent or any of Parent's assets or properties that would reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the other Operative Agreements.

4.1.5 Brokers. No agent, broker, finder, investment banker, financial advisor or other Person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement or any of the other Operative Agreements on the basis of any arrangements made by Parent or any of its Affiliates.

4.1.6 Business Activities. Except as set forth on Schedule 4.1.6, during each of (a) the year ended December 31, 2017 and (b) the eight (8) months beginning January 1, 2018 and ended August 31, 2018, none of Parent, any Parent UPE, any HSR Affiliate of Parent or any HSR Associate of Parent has derived revenues from operations in an industry within any of the 2012 North American Industrial Classification System definitions 322110, *Pulp Mills*, 322121, *Paper (except Newsprint) Mills*, 322122, *Newsprint Mills*, 325194, *Cuclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing*, and 321113, *Sawmills*.

4.1.7 Exclusivity of Representations. The representations and warranties made by Parent in this Section 4.1 and the Operative Agreements, if applicable, are the exclusive representations and warranties made by Parent. Parent hereby disclaims any other express or implied representations or warranties with respect to itself.

4.2 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller as of the Effective Date and as of the Closing Date as follows:

4.2.1 Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to transact business and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as presently conducted. There are no outstanding rights, subscriptions, warrants, phantom interests, or options to purchase or otherwise acquire any equity securities of Purchaser or securities or obligations of any kind convertible into or exchangeable for any equity securities of Purchaser.

4.2.2 Power and Authority. Purchaser has the necessary limited liability company power and authority to execute and deliver this Agreement and the other Operative Agreements to which it is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Purchaser of this Agreement and each other Operative Agreement to which it is a party, the performance by it of its obligations hereunder and thereunder and the consummation by it of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite limited liability company action on the part of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and (assuming due authorization, execution and delivery by Seller) constitutes the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles. When each of the other Operative Agreements to which Purchaser is or will be a party has been duly executed and delivered by Purchaser (assuming due authorization, execution and delivery by each other party thereto), such Operative Agreement will constitute a legal and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles.

4.2.3 No Conflicts.

(a) The execution and delivery by Purchaser of this Agreement and the other Operative Agreements to which it is a party, the performance by Purchaser of its obligations under this Agreement and such other Operative Agreements and the consummation of the transactions contemplated hereby and thereby do not and will not:

(i) conflict with or result in a violation or breach of, or default under, any of the terms, conditions or provisions of the Organizational Documents of Purchaser;

(ii) conflict with or result in a violation or breach of any term or provision of any applicable Law in any material respect; or

(iii) (A) in any material respect conflict with, result in a violation or breach of, (B) constitute a material default under or an event that, with or without notice or lapse of time or both, would constitute a material default under, (C) except for requirements under the HSR Act, require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of or (D) result in or give to any Person any right of termination, cancellation, acceleration, or modification in or with respect to, any material Contract to which Purchaser is a party.

(b) Except for any filings as may be required under the HSR Act, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Entity is required by or with respect to Purchaser in connection with the execution and delivery of this Agreement or any of the other Operative Agreements and the consummation of the transactions contemplated hereby and thereby.

4.2.4 Legal Proceedings. There are no Actions pending or, to Purchaser's Knowledge, threatened against, relating to or affecting Purchaser or any Affiliate of Purchaser or any of Purchaser's assets or properties that would reasonably be expected to (a) result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the other Operative Agreements or (b) individually or in the aggregate, materially impair or delay the ability of Purchaser to consummate the transactions contemplated by this Agreement and the other Operative Agreements.

4.2.5 Brokers. No agent, broker, finder, investment banker, financial advisor or other Person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement or any of the other Operative Agreements on the basis of any arrangements made by Purchaser or any of its Affiliates.

4.2.6 Financing and Solvency.

(a) At the Closing, Purchaser will (i) have unrestricted cash on hand (without giving effect to any unfunded financing, regardless of whether any such financing is committed) available to pay the Closing Purchase Price and all other amounts to be paid by Purchaser under this Agreement and the other Operative Agreements (whether payable on or after the Closing) and any expenses incurred by Purchaser in connection with the transactions contemplated by this Agreement, (ii) have the resources and capabilities (financial or otherwise) to perform its obligations hereunder, and (iii) not have incurred any obligation, commitment, restriction or liability of any kind, which would impair or adversely affect such resources and capabilities.

(b) Assuming the accuracy in all material respects of the representations and warranties set forth in Section 3, immediately after giving effect to the transactions contemplated by this Agreement, including any Debt Financing, Purchaser will be solvent and shall (i) be able to pay its debts as they become due; (ii) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities); and (iii) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay, or defraud either present or future creditors of Purchaser. In connection with the transactions contemplated hereby, Purchaser has not incurred debts beyond its ability to pay as they become absolute and matured.

4.2.7 Business Activities. Except as set forth on Schedule 4.2.7, during each of (a) the year ended December 31, 2017 and (b) the eight (8) months beginning January 1, 2018 and ended August 31, 2018, none of Purchaser, any Purchaser UPE, any HSR Affiliate of Purchaser or any HSR Associate of Purchaser has derived revenues from operations in an industry within any of the 2012 North American Industrial Classification System definitions 322110, *Pulp Mills*, 322121, *Paper (except Newsprint) Mills*, 322122, *Newsprint Mills*, 325194, *Cuclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing*, and 321113, *Sawmills*.

4.2.8 Exclusivity of Representations. The representations and warranties made by Purchaser in this Section 4.2 and the Operative Agreements, if applicable, are the exclusive representations and warranties made by Purchaser. Purchaser hereby disclaims any other express or implied representations or warranties with respect to itself.

5. **COVENANTS AND AGREEMENTS**

5.1 Conduct During Interim Period

5.1.1 Except (i) as expressly provided in this Agreement, (ii) as set forth in Schedule 5.1, and (iii) as may be consented to in writing by Purchaser (such consent not to be unreasonably withheld, delayed or conditioned), between the Effective Date and the earlier of the Closing Date or the termination of this Agreement (the "**Interim Period**"), Seller shall (x) conduct the Catawba Mill Business in the Ordinary Course of Business and (y) use commercially reasonable efforts to maintain and preserve intact the current Catawba Mill Business in all material respects. Without limiting the foregoing, during the Interim Period, Seller shall not:

(a) make any material change in any method of accounting or accounting practice for the Catawba Mill Business, except as required by GAAP, by applicable Laws or by any Governmental Entity;

(b) transfer, assign, sell or otherwise dispose of any of the Purchased Assets, except for the sale of Inventory or the disposal of damaged or obsolete equipment or materials, in each case, in the Ordinary Course of Business;

(c) cancel any debts or claims, waive any rights constituting Purchased Assets, or accelerate, terminate, or modify any Assigned Contract or Assigned Permit, in each case, outside the Ordinary Course of Business, in a manner that would have a Material Adverse Effect on the Catawba Mill Business;

(d) incur material capital expenditures which would constitute an Assumed Obligation, except as contemplated by the Five Year Capital Expenditure Plan made available in the Data Room or as necessary to make emergency repairs, provided that in the case of emergency repairs that would result in an Assumed Obligation, Seller shall provide advance notice to Purchaser, and Purchaser shall respond to such request within twenty-four (24) hours, and if no response is received from the Purchaser within such twenty-four (24) hour time period, Purchaser shall be deemed to have consented to such repair;

(e) grant any Lien (other than Permitted Liens) upon any of the Purchased Assets;

(f) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any Employees, other than increases in the Ordinary Course of Business or as required by the terms of any written agreements or applicable Law, (ii) make any other material change in the terms of employment for any Employee (other than changes that do not result in any material increased Assumed Obligation with respect thereto), or (iii) take any action to accelerate in any material respect the vesting or payment of any compensation or benefit for any Employee of the Catawba Mill Business that is the general manager or a direct report of the general manager, except, in the case of this clause (iii) in accordance with any Benefit Plan;

(g) hire or promote any person as or to (as the case may be) an Employee that is the general manager or a direct report of the general manager or hire any employee or promote any Employee below an Employee that is the general manager or a direct report of the general manager, in each case, except to fill a vacancy (i) of the mill manager position with the prior written approval of the Purchaser or (ii) of any other position in the Ordinary Course of Business;

(h) adopt, modify or terminate, other than for cause or except as required by applicable Law, any: (i) employment, severance, retention or other agreement with any Employee of the Catawba Mill Business that is the general manager or a direct report of the general manager, or (ii) collective bargaining or other agreement with a union, in each case whether written or oral;

(i) move any tangible personal property from the Owned Real Property into the Service Center that is not (i) as of the Effective Date, exclusively related to the operation of the Service Center or (ii) consists of office or information technology equipment required for use by those employees transferred to the Service Center from the Catawba Mill; or

(j) enter into any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

5.1.2 For greater certainty, all profit and loss of Seller during the Interim Period (including the Closing Date) shall belong to Seller. Nothing herein shall be construed to (a) prohibit Seller from distributing (including via the issuance of dividends) all cash and cash equivalents of the Catawba Mill Business to Seller's direct or indirect shareholders at any time and from time to time prior to Closing or (b) give Purchaser, directly or indirectly, any right to control or direct the Catawba Mill Business prior to Closing.

5.1.3 Upon delivery of written notice to Purchaser during the Interim Period (which notice shall include a copy thereof): (a) each Contract, Permit, license of Intellectual Property, equipment lease, and/or Real Property Lease, or any amendment to any of the foregoing, entered into by Seller during the Interim Period incurred, in each case without violating Section 5.1.1 and that is exclusively related to the Catawba Mill Business shall, without further action on the part of Seller or any Buyer Party, be deemed added to (i) Schedule 1.1.11, 1.1.12, 1.1.8, 1.1.6 or 3.10.3 hereof, as applicable, (ii) Schedule 3.3.1, Schedule 3.3.2 and Schedule 3.4.2 hereof to the extent indicated by Seller in such notice, provided that any required consent shall also be deemed added to Schedule 2.2.4 and shall be deemed a Seller Material Consent and deemed added to Schedule 10.1(e) and shall be deemed an Other Material Consent, in each case, unless Purchaser and Seller consent otherwise, such consent not to be unreasonably withheld, and (iii) each other Schedule relating to representations and warranties set forth in Section 3 of this Agreement that would require such document to be included in a list, as reasonably apparent on the face of such documents or as indicated by Seller in such notice, and (b) each Assumed Obligation entered into during the Interim Period without violating Section 5.1.1 shall, without further action on the part of Seller or any Buyer Party, be deemed added to Schedule 3.5. Furthermore, if Purchaser fails to consent to any request by Seller to take action pursuant to Section 5.1.1(d) hereof where consent is required, Seller shall thereafter have no liability hereunder or otherwise with respect to any Losses resulting from the failure to take such action.

5.2 Notice of Certain Events.

5.2.1 During the Interim Period, each of Purchaser and Parent, on one hand, and Seller on the other hand, shall promptly notify the other Party in writing of:

(a) any fact, circumstance, event or action the existence, occurrence or taking of which, to such Party's Knowledge, (i) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (with respect to Seller) or a material adverse effect (with respect to any Buyer Party), (ii) has resulted in, or is reasonably expected to result in, any representation or warranty made by Seller hereunder not being true and correct in any material respect after giving effect to Section 5.1.3, or (iii) has resulted in, or would reasonably be expected to result in, the failure of any of the conditions to the other Party's obligation to close the transactions contemplated hereby to be satisfied; and

(b) any Actions commenced or, to such Party's Knowledge, threatened in writing that, if pending on the Effective Date, would have been required to have been disclosed pursuant to Section 3.6 or Section 4.1.4 or 4.2.4, as applicable.

5.2.2 During the Interim Period, each of Seller and Purchaser shall notify the other in writing of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or would reasonably be expected to be required in connection with the transactions contemplated by this Agreement;

(b) any notice or other communication from any Governmental Entity in connection with the transactions contemplated by this Agreement; and

(c) any Actions commenced or, to any applicable Party's Knowledge, threatened that relates to or involves or otherwise affects the Purchased Assets or the Assumed Obligations that, if pending on the Effective Date, would have been required to have been disclosed pursuant to Section 3.6 or that relates to the consummation of the transactions contemplated by this Agreement.

5.2.3 A Party's receipt of information pursuant to this Section 5.2 or otherwise shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the other Party(ies) in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules except as provided in Section 5.1.3.

5.3 Efforts and Actions to Cause Closing to Occur

5.3.1 During the Interim Period, upon the terms and subject to the conditions of this Agreement, each Party shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably required to consummate the transactions contemplated herein and in any other Operative Agreement as promptly as practicable, including the preparation and filing of all forms, registrations and notices required to be filed to consummate such transactions. No Party (or any of its Affiliates) shall take any action during the Interim Period with the intention of delaying or preventing the obtaining of any consent or approval from any Person (including any Governmental Entity) required to be obtained hereunder prior to the Closing. For the avoidance of doubt, any failure by Seller to take any of the actions set forth on Exhibit A to Schedule 10.1(e) with respect to seeking to obtain the Other Material Consents shall be deemed a material and willful breach of this Agreement. Purchaser shall provide such assurances as to financial capability, resources and creditworthiness as may be reasonably requested by any Person (including any Governmental Entity, but excluding the provision of any confidential information to any competitor of a Buyer Party, as determined by Purchaser in its reasonable discretion) whose consent or approval is sought hereunder.

5.3.2 During the Interim Period, Seller shall give all notices to, and use commercially reasonable efforts to obtain all consents from, all third parties that are required to be described in Schedule 3.3.2.

5.3.3 During the Interim Period, the Parties shall work jointly and use commercially reasonable efforts to approach any Governmental Entities in order to make, or cause to be made, all filings and submissions required under any Law applicable to such Party or any of its Affiliates and use commercially reasonable efforts to obtain all approvals required to be obtained in connection with the consummation of the transactions contemplated hereby. Any communications with any Person (including any Governmental Entity and any labor union) concerning the transactions contemplated in this Agreement, shall be coordinated by Seller, at its option and discretion, and Purchaser shall not make any such communication without Seller's prior written approval (such approval not to be unreasonably withheld, conditioned or delayed). Each Party undertakes to keep the other Parties informed in a timely manner of any material developments regarding the status of discussions and/or material items in any negotiations with any Governmental Entities or other Persons in connection with the consummation of the transactions contemplated hereby. To the extent permitted by applicable Law, each Party shall promptly inform the other Parties of any material communication made by such Party to, or received by such Party from, any Antitrust Authority or any other Governmental Entity regarding any of the transactions contemplated hereby and, to the extent permitted by applicable Law and subject to redaction of any commercially sensitive information, promptly provide the other Party copies of any such communications.

5.3.4 (a) During the Interim Period, Seller shall reasonably cooperate with Purchaser and shall use commercially reasonable efforts to file or cause the filing of required forms under the HSR Act with the Antitrust Authorities as promptly as practicable following the Effective Date, shall use commercially reasonable efforts to obtain early termination of the waiting period under the Antitrust Laws, and shall respond as promptly as practicable to all requests or inquiries received from the Antitrust Authorities for additional documentation or information. The filing fees under the Antitrust Laws and all other costs for filing and other fees payable to a Governmental Entity as a result of the transactions contemplated by this Agreement shall be borne by Purchaser.

(b) Parent and Purchaser shall not, and shall cause their Affiliates not to, acquire or agree to acquire, by merging with or into or consolidating with, or by purchasing a substantial portion of the assets of or equity in, or by any other manner, any business or any Person or division thereof, or otherwise acquire or agree to acquire any assets, if the entering into of a definitive agreement relating to, or the consummation of such acquisition, merger or consolidation could reasonably be expected to: (i) delay the obtaining of, or increase the risk of not obtaining, any consents of any Governmental Entity necessary to consummate the transactions contemplated hereby or the expiration or termination of any applicable waiting period; (ii) increase the risk of any Governmental Entity entering an order prohibiting the consummation of the transactions contemplated hereby; (iii) increase the risk of not being able to remove any such order on appeal or otherwise; or (iv) delay or prevent the consummation of the transactions contemplated hereby.

(c) During the Interim Period, each Party shall use its commercially reasonable efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated by this Agreement under any Antitrust Law. Without limiting the generality of the foregoing, with respect to this Section 5.3, "commercially reasonable efforts" shall include: (i) in the case of each of Purchaser and Seller, if Purchaser or Seller receives a formal request for additional information or documentary material from an Antitrust Authority, substantially complying with such formal request within thirty (30) days following the date of its receipt thereof; (ii) in the case of Seller only, subject to Purchaser's compliance with Section 5.3.4(d), not frustrating or impeding Purchaser's strategy or negotiating positions with any Antitrust Authority; and (iii) in the case of Purchaser only, at its sole cost, complying with all restrictions and conditions, if any, imposed by any Antitrust Authority with respect to Antitrust Laws as a requirement for granting any necessary clearance or terminating any applicable waiting period. Notwithstanding the foregoing, nothing in this Section 5.3.4 shall require, or be construed to require, any Buyer Party or any of its Affiliates to agree to (x) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of such Buyer Party or any of its Affiliates; (y) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to any Buyer Party of the transactions contemplated by this Agreement and the other Operative Agreements; or (z) any material modification or waiver of the terms and conditions of this Agreement.

(d) To the extent permitted by applicable Law, each party hereto shall promptly inform the other party of any material communication made by such party to, or received by such party from, any Antitrust Authority or any other Governmental Entity regarding any of the transactions contemplated hereby.

5.4 Publicity

During the Interim Period, none of Seller, Parent or Purchaser, or any of their respective Affiliates, shall issue or cause the publication of any press release or other external announcement, including communications with any news media, with respect to this Agreement or the transactions contemplated herein or in any other Operative Agreement without the agreement of the other Party(ies) after review of such press release or announcement, except as may be required by Law or by any listing agreement with a securities exchange or trading market (based upon the advice of counsel) and then only to the extent so required. Notwithstanding the foregoing, Buyer Parties may distribute information about this Agreement and the transactions contemplated herein to the lead arrangers or agents for, and prospective Lenders of, the Debt Financing in connection with the arrangement, marketing, placement and negotiation thereof, subject to the terms of the Confidentiality Agreement.

5.5 Insurance

Effective upon the Closing, Seller shall have the right (but not the obligation) to terminate all insurance coverage provided by Seller to the Catawba Mill Business, the Purchased Assets or the Assumed Obligations for the period beginning immediately following the Closing, provided that the benefit of any pending claim acquired by Purchaser pursuant to Section 1.1.18 shall be transferred to Purchaser and Seller shall not take any action that would impair such claims. Regardless of whether or not any such insurance coverage was terminated pursuant to the preceding sentence, no insurance coverage will be available to Purchaser under any of such policies (including with respect to matters occurring or arising on or prior to the Closing Date). For greater certainty, all pre-paid insurance with respect to the Catawba Mill Business (and the right to make claims with respect to any insurance policy) shall belong to Seller, and Purchaser shall promptly remit to Seller any amount received in connection therewith.

5.6 Investigation by Purchaser

5.6.1 Each Buyer Party acknowledges and agrees that (a) it has conducted its own independent investigation, verification, review and analysis of the business, operations, properties, liabilities, results of operations, financial condition and prospects of the Catawba Mill Business, including the Purchased Assets and Assumed Obligations, (b) it and its representatives have been provided access to the Data Room, and a reasonable amount of time to consider the content of the Data Room, it has participated in presentations by Seller's management and has visited the Owned Real Property, (c) it has been provided with the Data Room Disk, (d) in entering into this Agreement and the other Operative Agreements, it is relying solely upon the aforementioned investigation, review and analysis and is not relying on any representations, warranties, statements or opinions of Seller or its representatives (except the specific representations and warranties of Seller set forth in Section 3).

5.6.2 The Buyer Parties acknowledge that neither Seller nor any of its directors, officers, shareholders, employees, Affiliates, agents, advisors or representatives makes or has made, nor has any Buyer Party relied on, any oral or written representation or warranty, either express or implied, as to the accuracy or completeness of any of the information (including any estimates, projections, forecasts, operating plans or budgets concerning financial or other information relating to the Catawba Mill Business) provided or made available to it or its representatives (including in materials furnished in the Data Room, in presentations by Seller's management, or set forth in the Management Letter), except that the foregoing limitations shall not apply to Seller insofar as it has made the specific representations and warranties set forth in Section 3.

5.6.3 To the fullest extent permitted by Law, none of the Seller nor any of its directors, officers, employees, shareholders, Affiliates, agents, advisors, or representatives, shall have any liability, obligation or responsibility whatsoever to the Buyer Parties (including in contract or tort, as a fiduciary, under any applicable Law or otherwise) based upon any information (including any estimates, projections, forecasts, operating plans or budgets concerning financial or other information relating to the Catawba Mill Business and including for greater certainty the Amec Reports) provided or made available, or statements made (including in materials furnished in the Data Room, in presentations by Seller's management, or set forth in the Management Letter), except that the foregoing limitation shall not apply to Seller insofar as it has made the specific representations and warranties set forth in this Agreement, including Section 3 hereof, or any other Operative Agreement.

5.6.4 As part of Purchaser's agreement to purchase and accept the Purchased Assets, each Buyer Party unconditionally and irrevocably waives any and all actual or potential rights it might have against Seller regarding any form of warranty of any kind or type, other than those expressly set forth in this Agreement, including those set forth in Section 3 hereof and the other Operative Agreements.

5.6.5 Notwithstanding the foregoing, nothing contained herein shall constitute a waiver with respect to any Fraud claim the Buyer Parties may have against the Seller.

5.7 Preservation of Records

5.7.1 Purchaser shall preserve, until at least the eighth (8th) anniversary of the Closing Date, all Acquired Books and Records relating to the period prior to the Closing. After the Closing Date until at least the eighth (8th) anniversary of the Closing Date, upon any Covered Request from Seller or its Affiliates, Purchaser shall (a) provide Seller or its Affiliates or their respective representatives reasonable access to such records during normal business hours and (b) permit Seller or its Affiliates or their respective representatives to make copies of such records, in each case at no cost (other than for reasonable out-of-pocket expenses). A "**Covered Request**" shall mean a written request in connection with an audit, accounting, Tax, litigation, securities disclosure or other similar need or any other reasonable legal or business purpose.

5.7.2 Seller shall preserve, until at least the eighth (8th) anniversary of the Closing Date, all retained books and records of Seller related to the Catawba Mill Business for periods prior to the Closing that are not Acquired Books and Records. After the Closing Date until at least the eighth (8th) anniversary of the Closing Date, upon any Covered Request from Purchaser or its Affiliates, Seller shall (a) provide Purchaser or its Affiliates or their respective representatives reasonable access to such records during normal business hours and (b) permit Purchaser or its Affiliates or their respective representatives to make copies of such records, in each case at no cost (other than for reasonable out-of-pocket expenses).

5.7.3 Neither Purchaser nor Seller shall be obligated to provide the other Party with access to any books or records pursuant to this Section 5.7 where such access would violate any Law.

5.8 Environmental Covenants

5.8.1 During the Interim Period, Seller shall, at its sole cost and expense, use commercially reasonable efforts to (a) repair the equipment or other cause of the High pH Condition, and (b) assess and remediate the High pH Condition to the minimum extent required by the South Carolina Department of Health and Environmental Control ("**DHEC**") and applicable Environmental Laws, consistent with commercially reasonable industry practice (collectively, the "**High pH Condition Work**"); provided, however, that if Seller proposes to remediate such High pH Condition by restricting use of the affected property, Purchaser shall have the right to review and reject such proposal if Purchaser reasonably determines that such proposal may interfere significantly with Purchaser's ability to construct and operate a containerboard mill on the Catawba Mill property at substantially similar costs to construct and operate, and with comparable production capabilities, as those disclosed in writing to Seller by Purchaser.

5.8.2 If the High pH Condition Work is not completed by the Closing, Purchaser shall assume responsibility for and be solely obligated for performing the High pH Condition Work, and the Purchaser's Environmental Reimbursement and the Seller's Environmental Escrow Contribution (each as defined below) will be adjusted as set forth below.

5.8.3 Purchaser, with the commercially reasonable efforts of Seller to cooperate, will further explore a number of options concerning environmental liabilities at the Catawba Mill and Chip Mill, including without limitation: (a) the benefits of Purchaser applying for a non-responsible party VCC; and (b) an environmental insurance policy. If Purchaser chooses to pursue an application for a VCC, and the State of South Carolina or other Governmental Entity requires Purchaser to undertake, clean-up, removal, or other remediation of environmental conditions at the Catawba Mill and/or Chip Mill, Seller will reasonably cooperate with such requests including but not limited to authorizing Purchaser's communications with such Governmental Entity. To the extent that it becomes necessary to expend funds to undertake such clean-up, removal, or remediation under the VCC program, including without limitation, any High pH Condition Work ("**Environmental Work**"), Seller will establish and fund at Closing an environmental escrow account (the "**Environmental Escrow Account**") in an amount that is equal to $5,000,000 (the "**Seller's Environmental Escrow Contribution**"). Purchaser will receive from the Environmental Escrow Account reimbursement of one hundred percent (100%) of its actual out-of-pocket costs to complete the High pH Condition Work and reimbursement of fifty percent (50%) of its actual out-of-pocket costs to complete the Environmental Work unrelated to the High pH condition work to the minimum extent required pursuant to the VCC, consistent with commercially reasonable industry practice (the "**Base Environmental Work**"). The amount that Purchaser is reimbursed from the Environmental Escrow Account shall be referred to as the "**Purchaser's Environmental Reimbursement**." Until the date that is ninety (90) days after the Environmental Escrow Account has been exhausted or all such amounts remaining therein have been released to Seller pursuant to the Escrow Agreement, Seller shall have the right to review the completed Environmental Work, verify the accuracy of any disbursement from the Environmental Escrow Account prior to such disbursement, and verify the Estimated Environmental Costs and Final Environmental Costs. In furtherance of the foregoing, at Seller's request by advance written notice, Purchaser shall provide reasonable access during normal business hours to the personnel, properties, premises, and records of the Catawba Mill Business for purposes of such audit, review and verification. Seller shall bear the cost of such audit, review and verification, provided that if the audit, review, and verification reveals a material discrepancy in any disbursement, then Purchaser shall reimburse Seller's actual costs to conduct such review. Purchaser will keep Seller apprised of all material developments related to the VCC or such environmental insurance policy, including by providing copies of all written communications to and from any Governmental Entity and providing Seller with reasonable notice and opportunity to participate in any planned meetings or telephone calls with any Governmental Entity. The Parties agree and acknowledge that in connection with exploring remediation options of environmental liabilities related to the Catawba Mill Business described in this Section 5.8, Purchaser will be communicating with Governmental Entities, including DHEC, during the Interim Period. Nothing in this Agreement shall prohibit such communications and no such communications shall be considered a breach of this Agreement or the Access Agreement, provided that Purchaser and Parent shall invite Seller to participate in all calls and meetings with such Governmental Entities and shall otherwise keep Seller reasonably informed of all such communications.

5.8.4 Within thirty (30) Business Days after the completion of the first phase of the remedial investigation required under the VCC, Purchaser or Seller may request that the Seller's Environmental Escrow Contribution be adjusted either upwards or downwards by providing the other Party a notice setting out its own revised Estimated Environmental Costs. The term "**Estimated Environmental Costs**" shall mean an amount equal to (w) one-half of the expected cost to complete the Base Environmental Work, plus (x) an allowance for uncertainties and contingencies with respect to the Base Environmental Work equal to ten percent (10%) of such expected costs, plus (y) one hundred percent (100%) of the expected cost to complete the High pH Condition Work and in accordance with this Section 5.8, and (z) an allowance for uncertainties and contingencies with respect to the High pH Condition Work equal to ten percent (10%) of such expected costs. The other Party shall have thirty (30) Business Days to review and respond in writing to such notice, by providing its own revised Estimated Environmental Costs. The Parties shall negotiate in good faith to determine the revised Estimated Environmental Costs and each of Seller, on one hand, and Parent and Purchaser, on the other hand, shall upon reasonable prior notice provide the other Party(ies) with reasonable access to such Party's environmental experts and consultants for purposes of verifying the calculation of the Estimated Environmental Costs. If the Parties are unable to agree on revised Estimated Environmental Costs within fifteen (15) Business Days after such response, the Parties will mandate an agreed-upon engineering firm who shall, acting as an expert and not as an arbitrator, provide its assessment of the revised Estimated Environmental Costs. The "**Final Estimated Environmental Costs**" will be the Estimated Environmental Costs agreed upon by the Parties or, absent such agreement, the Party's estimate (set forth in the adjustment notice or response, as applicable) which is closest to the engineering firm's assessment of the Estimated Environmental Costs. If the Final Estimated Environmental Costs is greater than, or lesser than, the Estimated Environmental Costs, the Seller's Environmental Escrow Contribution shall be adjusted upwards or downwards accordingly and the amounts shall be deposited to or disbursed from the Environmental Escrow Account as required to correspond to the Final Estimated Environmental Costs. If (a) the Final Estimated Environmental Costs are less than the Seller's Environmental Escrow Contribution, Purchaser and Seller shall deliver joint written instructions to the Escrow Agent to release the difference to Seller within two (2) days after such determination and (b) the Final Estimated Environmental Costs are more than the Seller's Escrow Contribution, Seller shall deliver the difference to the Escrow Agent within two (2) Business Days after such determination.

5.8.5 Notwithstanding anything to the contrary, Purchaser's Environmental Reimbursement (including without limitation for High pH Condition Work) shall not exceed the Seller's Environmental Escrow Contribution, as adjusted in accordance with the immediately preceding subsection. Parent shall instruct the Escrow Agent to release any unused funds in the Environmental Escrow Account to Seller no later than two (2) Business Days following (a) Purchaser or Parent receiving a certificate of completion from DHEC under the VCC, with respect to the portion of the Environmental Escrow Account allocable to the Base Environmental Work, plus any accrued interest thereon, and (b) completion of the High pH Condition Work, with respect to the portion of the Environmental Escrow Account applicable to the High pH Condition Work, plus any accrued interest thereon.

5.8.6 Seller shall use commercially reasonable efforts to cooperate with Purchaser's efforts to effect the transfer of all Environmental Permits required for the Catawba Mill Business to Purchaser, as required by Environmental Laws, provided that if such Environmental Permits are not assignable in accordance with applicable Law, then such Environmental Permits shall be deemed Excluded Assets for all purposes hereunder.

5.8.7 This Section 5.8 contains the sole and exclusive covenants of the Parties with respect to matters involving compliance with Environmental Laws, the transfer of Environmental Permits to Purchaser and Releases of Hazardous Substances at or from the Purchased Assets.

5.9 Taxes on Transfer; Withholding.

Any sales Tax, use Tax, real property transfer Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Assets shall be paid fifty percent (50%) by Purchaser and fifty percent (50%) by Seller. Seller shall timely file any Tax Return or other document with respect to such Taxes (and Purchaser shall cooperate with respect thereto as necessary), and each of Purchaser and Seller shall bear fifty percent (50%) of the out-of-pocket expenses in connection with the filing of any such return. Purchaser shall be entitled to deduct and withhold (or cause to be deducted and withheld) from any amounts payable in respect of the Purchased Assets or any other payments contemplated by this Agreement such amount, if any, as Purchaser determines in good faith (with Seller's consent, not to be unreasonably withheld) is required to be deducted and withheld with respect to the making of such payment under applicable Law, and to collect any necessary Tax forms for avoiding such withholding, including IRS Form W-9, or any similar information, from the Seller and any other recipient of any payment hereunder. Any applicable withholding Tax attributable to the sale or transfer of the Purchased Assets (or any other payments contemplated by this Agreement) shall be withheld by Purchaser, timely remitted to the applicable Taxing Authority and shall be treated for all purposes of this Agreement as having been paid to Seller (or such other recipient as applicable in respect of which such withholding was made). Purchaser and Seller each agree to timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns with respect to, such Taxes.

5.10 Real Estate and Personal Property Taxes; Cooperation

5.10.1 To the extent not otherwise covered by the adjustment to the Closing Purchase Price contemplated by Section 1.9, all real estate and personal property Taxes, and similar state and local Taxes (including school taxes) and special assessments with respect to the Purchased Assets shall be allocated to a Straddle Period as follows: the portion of any such Tax that is allocable to the Pre-Closing Period shall be deemed equal to the amount of such Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of calendar days in the entire Straddle Period (any remaining such Taxes for such Straddle Period shall be allocable to the Post-Closing Period). Seller shall be liable for such Taxes for any Pre-Closing Period and Purchaser shall be liable for such Taxes for any Post-Closing Period. Seller shall reimburse Purchaser for any such Straddle Period Taxes for a Pre-Closing Period paid by Purchaser, and Purchaser shall reimburse Seller for any such Straddle Period Taxes for a Post-Closing Period paid by Seller.

5.10.2 The Parties shall reasonably cooperate, and shall cause their respective Affiliates, officers, employees, agents, auditors and other representatives to reasonably cooperate, in preparing and filing all Tax Returns and in resolving all disputes and audits with respect to all taxable periods relating to Taxes, including by retaining, maintaining and making available to each other all records reasonably necessary in connection with Taxes and making employees reasonably available on a mutually convenient basis to provide additional information or explanation or to testify at Actions relating to Taxes.

5.11 Bulk Sales Laws. The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Purchaser, it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Obligations shall be treated as Retained Obligations.

5.12 Payments

5.12.1 Seller shall promptly pay or deliver to Purchaser (or its designated Affiliates) any monies or checks (or any portion thereof) that have been sent to Seller or any of its Affiliates on or after the Closing Date to the extent constituting a Purchased Asset.

5.12.2 Purchaser shall promptly pay or deliver to Seller (or its designated Affiliates) any monies or checks (or any portion thereof) that have been sent to Purchaser or any of its Affiliates on or after the Closing Date to the extent constituting a Excluded Asset.

5.13 Representation and Warranty Policy.

Prior to or upon the Effective Date, Purchaser has obtained the Representation and Warranty Policy. The Representation and Warranty Policy provides that the insurer thereunder may not enforce or seek to or enforce any rights of subrogation, contribution or rights acquired by assignment that it or they might have against any Party arising out of, as a result of, or related to this Agreement, or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby, including any alleged breach of any representation or warranty or the indemnification obligations under Section 9, in all cases, other than as a result of Fraud. During the term of the Representation and Warranty Policy, Purchaser and Parent shall not amend, repeal, or modify any provision of the Representation and Warranty Policy without the Seller's prior express written consent (such consent to any amendment or modification not to be unreasonably withheld or delayed; it being agreed that it would be reasonable for the Seller to withhold its consent if such amendment or modification (a) increased or could potentially increase the Seller's costs, expenses, Liability or obligations in any respect, or (b) would allow the insurer thereunder or any other Person to, except in the case of Fraud, subrogate or otherwise make or bring any Action against Seller or any Affiliate of Seller or any past, present or future director, manager, officer, employee or advisor of any of the foregoing based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement).

5.14 Access to Information.

During the Interim Period, Seller shall (a) afford each Buyer Party and its Representatives reasonable access to and the right to inspect, subject to the terms of the Access Agreement, the Confidentiality Agreement and applicable Law, including Antitrust Laws, all of the Real Property, properties, assets, premises, Acquired Books and Records or any other books or records solely to the extent relating to the Catawba Mill Business, Assigned Contracts and other documents and data related to the Catawba Mill Business; and (b) subject to the terms of the Access Agreement, the Confidentiality Agreement and applicable Law, including Antitrust Laws, instruct the senior management employees of Seller engaged in the Catawba Mill Business and approved in writing by Seller to cooperate with each Buyer Party in its investigation of the Catawba Mill Business. Any investigation pursuant to this Section 5.14 shall be conducted in such manner as not to interfere unreasonably with the conduct of the Catawba Mill Business. No investigation by the Buyer Parties or other information received by the Buyer Parties shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement. Notwithstanding the foregoing, in the event of any conflict between this Agreement and the terms of the Access Agreement, the terms of the Access Agreement shall control.

5.15 No Solicitation of Other Bids.

5.15.1 During the Interim Period, Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than a Buyer Party or any of its Affiliates) relating to the direct disposition, whether by sale, merger or otherwise, of all or any portion of the Catawba Mill Business or the Purchased Assets, other than the sale of Inventory in the Ordinary Course of Business and excluding any sale of all or any part of RFPI, or any of its direct or indirect subsidiaries, whether by asset sale, stock sale, merger or otherwise, provided that such sale transaction would not prevent or materially hinder or delay the Closing hereunder.

5.16 Parent Guarantee.

5.16.1 Parent hereby unconditionally and irrevocably guarantees to Seller the due and punctual payment and performance by Purchaser (and any permitted assignees thereof) of any and all past, present and future Liabilities of Purchaser under this Agreement and the other Operative Agreements (subject to the terms and conditions hereof and thereof), including the due and punctual payment of the Assumed Obligations and all costs of collection and expenses, including reasonable attorneys' fees, incurred by Seller in enforcing the terms thereof and of this Section 5.16 (the "**Purchaser Guaranteed Obligations**"). The foregoing sentence is an absolute, unconditional and continuing guaranty of the full and punctual discharge and performance of the Purchaser Guaranteed Obligations, and is a guaranty of payment, not collection. Should a default occur in the discharge or performance of all or any portion of the Purchaser Guaranteed Obligations when due, the obligations of Parent hereunder shall become immediately due and payable.

5.16.2 Parent represents and warrants to Seller as follows: (i) Parent is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Delaware and has the requisite organizational power and authority to execute and deliver this Agreement and to perform its obligations under this Section 5.16; (ii) the execution, delivery and performance of this Agreement by Parent has been duly authorized by all necessary organizational action, and no other proceedings or actions on the part of Parent is necessary therefor; (iii) this Agreement constitutes the legal, valid and binding obligations of Parent and is enforceable against Parent in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar Laws of general application relating to or affecting creditors' rights and to general equity principles; (iv) the execution, delivery or performance by Parent of this Agreement will not contravene, conflict with or result in a violation of Parent's Organizational Documents or any Laws to which Parent is subject or bound, and there is no Action, suit, claim or legal, administrative or arbitral proceeding pending or, to its knowledge, threatened by or against it with respect to any of the transactions contemplated by this Section 5.16; and (v) at the Closing, Parent will have sufficient funds available to pay and perform all of its obligations under this Section 5.16.

5.16.3 This guarantee shall not be impaired whatsoever by any modification or other alteration of any of the Purchaser Guaranteed Obligations, including the modification or amendment (whether material or otherwise) of any obligation of Parent or Purchaser under this Agreement or any other Operative Agreements. The liability of Parent is direct and unconditional and may be enforced without requiring Seller first to resort to any other right, remedy or security. Parent hereby waives any defense of Purchaser or any other Person of any kind and the right of subrogation, reimbursement or indemnity whatsoever, and any right of recourse to security for the debts and obligations of Purchaser until all of the Purchaser Guaranteed Obligations are paid in full, and waives any notice of acceptance; presentment and protest of any instrument, and notice thereof; notice of default; and all other notices to which each might otherwise be entitled. Nothing shall discharge or satisfy the liability of Parent hereunder except the full payment and performance of all of Purchaser Guaranteed Obligations to Seller. Any and all present and future debts and obligations of Purchaser to Parent are hereby waived and postponed in favor of, and subordinated to, the full payment and performance of the Purchaser Guaranteed Obligations.

5.16.4 Parent further agrees that this guarantee shall continue to be effective or be reinstated, as the case may be, if at any time payment of all or any part of the Purchaser Guaranteed Obligations is rescinded or otherwise must be restored by Seller to Purchaser or to the creditors of Purchaser or any representative of Purchaser or representative of its creditors upon the insolvency, bankruptcy or reorganization of Purchaser, or to Parent or the creditors of Parent or any representative of Parent or representative of the creditors of Parent upon the insolvency, bankruptcy or reorganization of Parent, or otherwise, all as though such payments had not been made. Parent further agrees that in the event that Purchaser, or substantially all of Parent's or Purchaser's assets, are acquired by any third party (by stock sale, asset sale, merger, consolidation or otherwise), then as a condition to such acquisition, Parent shall cause the purchaser thereof to agree to be jointly and severally bound with Parent for its obligations hereunder, *provided*, that this sentence shall not apply to the extent that Seller has (a) coverage from Purchaser's insurance in respect of the environmental Liabilities assumed by Purchaser or a third party under this Agreement and (b) the benefit of any indemnification against or assumption of any such environmental Liability provided by a third party.

6. LABOR AND EMPLOYEE BENEFITS MATTERS

6.1 Collective Bargaining Agreements

6.1.1 Purchaser acknowledges that certain Employees are represented by USW (such Employees, the "**Union Employees**"), and that their respective terms and conditions of employment are set forth in (a) the Memorandum of Agreement, by and between RFPI (f/k/a AbitibiBowater, Inc.), USW, IBEW, IAM, and UAPP, dated April 14, 2010, (b) the Memorandum of Agreement, between RFPI and USW Locals 1924 and 925 dated June 21, 2017, (c) the Memorandum of Agreement, by and between RFPI and USW International Union with its Rock Hill Local 9-1924, dated June 5, 2017, (d) the Labor Agreement, by and between RFPI and USW Local 9-925 and Local 9-1924, for the period April 26, 2014 to April 27, 2019, (e) Memorandum of Agreement, dated February 6, 2014, by and between RFPI and USW, IBEW, and UAAP, and (f) the Side Letters (the agreements referred to in clauses (a) through (g), collectively, the "**Collective Bargaining Agreements**").

6.1.2 At the Closing, Purchaser shall assume all of the obligations of Seller with respect to the Employees under each of the Collective Bargaining Agreements and treat affected Employees of the respective bargaining units in accordance with the terms of the Collective Bargaining Agreements, including as to hiring decisions, staffing levels, benefits programs and other terms permitting changes. Following the Closing, except as otherwise provided herein or in the Collective Bargaining Agreements, Purchaser shall have the right in its exclusive discretion to change employment terms of Union Employees consistent with its obligations under the Collective Bargaining Agreements and applicable law. Purchaser has been given access to all Collective Bargaining Agreements and understands all contractual requirements set forth in the Collective Bargaining Agreements. Purchaser shall execute all documents reasonably necessary to effectuate the assumption of each of the Collective Bargaining Agreements and to obtain a full and unconditional release of Seller under the Collective Bargaining Agreements with respect to the Employees. No party to any Collective Bargaining Agreement shall be a third-party beneficiary of this Agreement. Without limiting the generality of the foregoing, Purchaser affirms it has been informed of, and accepts, the terms related to successorship as set forth in the Collective Bargaining Agreements, including without limitation, Article VI, A of the Memorandum of Agreement, by and between RFPI (f/k/a AbitibiBowater, Inc.), USW, IBEW, IAM, and UAPP, dated August 24, 2010 and Article VII, A of the Memorandum of Agreement, dated February 6, 2014, by and between RFPI and USW, IBEW, and UAAP, and its insertion into applicable location agreements.

6.1.3 Prior to Closing, and with respect to the transactions contemplated by this Agreement, Seller shall timely provide all notices to any labor organization party to a Collective Bargaining Agreement and satisfy its obligations as may be required by any Collective Bargaining Agreement or under applicable law. Seller may engage in bargaining with any labor organization over the effects of the transactions contemplated by this Agreement upon Employees represented by such labor organization; provided, however, that Seller shall be exclusively responsible for satisfying the terms of any such effects bargaining agreement, except as otherwise may be expressly agreed to by Purchaser in its exclusive discretion.

6.2 Employment

6.2.1 Prior to the Closing, Purchaser shall deliver, in writing, an offer of employment to each Employee who is not a Union Employee (a "**Non-Union Employee**") to commence immediately following the Closing. Each offer of employment shall comply and be consistent with the other provisions of this Section 6.2 and the provisions of Sections 6.3 through 6.8. The Non-Union Employees who accept an offer of employment from Purchaser on or prior to the Closing Date are hereinafter referred to as the "**Transferred Non-Union Employees**." Following the Closing Date, Purchaser may, in its discretion and with the consent of any Transferred Non-Union Employee, perform a background check with respect to such Transferred Non-Union Employee, provided that such background check shall be performed in compliance with applicable Law.

6.2.2 Pursuant to the "Standard Procedure" provided in section 4 of Revenue Procedure 2004-53, 2004-2 CB 320, (a) Purchaser and Seller shall report on a predecessor/successor basis as set forth therein, (b) Seller shall not be relieved from filing (or causing to be filed) a Form W-2 with respect to any Transferred Non-Union Employees or any Union Employees, and (c) Purchaser shall undertake to file (or cause to be filed) a Form W-2 for each Transferred Non-Union Employee and Union Employee with respect to any Post-Closing Period.

6.2.3 With respect to each Employee hired after November 6, 1986, at Closing, Seller shall supply to Purchaser U.S. Citizenship and Immigration Services Form I-9 (Employment Eligibility Verification) and all other records, documents, or other papers that are retained with Form I-9 by such Seller pursuant to the Immigration Laws, including any E-Verify reports.

6.3 Employee Benefits

6.3.1 Effective at the Closing, the Transferred Non-Union Employees and the Union Employees shall cease to be covered by the Benefit Plans. Notwithstanding the foregoing, the Transferred Non-Union Employees and Union Employees that are receiving as of the Closing long-term disability payments under a Benefit Plan that provides long-term disability coverage, shall continue to receive such benefits, subject to the terms of such Benefit Plan. From and after the Closing, Purchaser shall provide, or cause to be provided, (a) to each Union Employee, such compensation, employee benefits and other terms and conditions of employment (including OPEB) as are required to be provided to such Union Employee pursuant to the applicable Collective Bargaining Agreement(s), and (b) to each Transferred Non-Union Employee, for a period of twelve (12) months following the Closing Date or such longer period of time required by applicable Law, (i) compensation (including salary, wages and opportunities for commissions, bonuses, incentive pay, overtime and premium pay), location of employment and a position of employment that are, in the aggregate, at least substantially similar to those provided to such Transferred Non-Union Employee by Seller as of immediately prior to the Closing and (ii) employee benefits (including, severance benefits, health and welfare, retirement, deferred compensation (whether qualified or non-qualified), and defined contribution make-up plan benefits) that are either (x) in the aggregate, at least substantially similar to those employee benefits provided to such Transferred Non-Union Employee by Seller as of immediately prior to the Closing or (y) provided by Purchaser (or its Affiliates) to its similarly situated employees.

6.3.2 For purposes of eligibility, vesting and levels of vacation, severance and other benefits under the employee benefit plans of Purchaser providing benefits to Transferred Non-Union Employees and Union Employees (the "**Purchaser Plans**"), Purchaser shall credit each Transferred Non-Union Employee and Union Employee with his or her years of service with Seller and any predecessor entities, to the same extent as such Transferred Non-Union Employee or Union Employee (as applicable) was entitled to credit for such service under any similar Benefit Plan as of immediately prior to the Closing. The Purchaser Plans shall not deny any Transferred Non-Union Employee or any Union Employee coverage on the basis of pre-existing conditions and shall credit such individual for any deductibles and out-of-pocket expenses paid pursuant to the Benefit Plans prior to such Transferred Non-Union Employee or any Union Employee participating in the applicable Purchaser Plans in the year of initial participation with the Purchaser Plans.

6.3.3 Nothing contained in this Agreement shall be construed to prevent the termination of employment of any Transferred Non-Union Employee or Union Employee. The provisions of this Section 6 are solely for the benefit of the Parties, and no current or former employee (including any beneficiary or dependent thereof) or any other Person shall be regarded for any purpose as a third-party beneficiary of this Agreement.

6.4 Retirement Plans

6.4.1 As soon as practicable after the Closing, a defined contribution plan of Purchaser or one of its Affiliates that includes a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code shall accept a rollover by Transferred Non-Union Employees and Union Employees of any "eligible rollover distribution" (within the meaning of Section 402(c)(4) of the Code) including any promissory notes reflecting participant loans from any retirement plan of Seller that is a defined contribution plan containing a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code. Seller shall take such action as is necessary to amend any retirement plan of Seller with a 401(k) feature to prevent any Transferred Non-Union Employees or Union Employees from defaulting on any outstanding loans solely as a result of a termination of employment with Seller and its Affiliates.

6.4.2 Without derogating from the provisions of Sections 6.1 and 6.3, from and after the Closing, Purchaser or one of its Affiliates shall provide all Transferred Non-Union Employees and Union Employees with a tax-qualified defined benefit pension plan (the "**Purchaser DB Pension Plan**") that is substantially similar to the Seller DB Pension Plan (it being understood, for the avoidance of doubt, that nothing herein shall require Purchaser to provide any Transferred Non-Union Employee or Union Employee with any Purchaser DB Pension Plan if such Transferred Non-Union Employee or Union Employee is not provided with any Seller DB Pension Plan as of immediately prior to the Closing, except in the case of Recall Employees). The benefit formula under the Purchaser DB Pension Plan shall provide each Transferred Non-Union Employee and Union Employee, upon such individual's termination or retirement from Purchaser or one of its Affiliates at any time after the Closing, with a minimum benefit equal to the benefit such individual would have received under the Seller DB Pension Plan as if such individual had remained employed by Seller until the date of such termination or retirement from Purchaser (and any ancillary benefit required by applicable Law). The Parties acknowledge that the intent of this Section 6.4.2 is to ensure that the tax-qualified defined benefits provided to the Transferred Non-Union Employees and Union Employees are not adversely affected by the consummation of the transactions contemplated by this Agreement.

6.4.3 As soon as practicable following Closing, Seller shall cause the calculation and transfer to the Purchaser DB Pension Plan assets equal to the accumulated benefit obligation for the Transferred Non-Union Employees and Union Employees (other than Recall Employees) who participate in the Seller's DB Pension Plan as of the Closing, calculated using Seller DB Pension Plan's current assumptions and applicable accounting standards as set forth on Schedule 6.4.3 ("**Pension Plan Transfer Amount**"); provided, however, that the Pension Plan Transfer Amount shall not be more than that allowed by Code Section 414(l) and ERISA Section 4044 with respect to such Transferred Non-Union Employees and Union Employees who participate in the Seller DB Pension Plan as of Closing, recognizing that the Seller DB Pension Plan shall not be fully funded as of the Closing. The Pension Plan Transfer Amount shall be determined as of the Closing Date, and the transfer of the Pension Plan Transfer Amount shall be made in cash with interest at a rate reasonably determined by Seller (net of allocable plan and trust expenses) from the Closing Date to, but excluding, the date of transfer of such assets (the "**Payment Date**"), less the amount of any benefit payments made to or in respect of such Transferred Non-Union Employees and Union Employees during the period from and including the Closing to, but excluding, the Payment Date. Prior to such transfer, each of Seller and Purchaser must approve the calculation of the Pension Plan Transfer Amount; provided, that, if they cannot so agree, such amount shall be solely and finally determined in accordance with the dispute resolution procedures set forth on Schedule 6.4.3 (the "**Pension Dispute Procedures**").

6.4.4 Purchaser's DB Pension Plan shall assume all liabilities and obligations of Seller's DB Pension Plan with respect to the accrued benefits of the Transferred Non-Union Employees and Union Employees (other than Recall Employees) as of the Closing. Upon receipt of the Pension Plan Transfer Amount, Purchaser shall manage the Pension Plan Transfer Amount in its trust in a manner that fully protects each such Transferred Non-Union Employee and Union Employee's accrued benefit in accordance with ERISA and the Code. Thereafter, neither Seller nor Seller's DB Pension Plan shall have any liability or obligation with respect to the pension benefits of any such Transferred Non-Union Employee or Union Employee, and Purchaser shall indemnify and hold harmless Seller and its Affiliates and Seller's DB Pension Plan from all Liabilities, costs and expenses that may result to Seller, its Affiliates, or the Seller DB Pension Plan prior to the Payment Date with respect to any such Transferred Non-Union Employees and Union Employees who participated in the Seller DB Pension Plan.

6.4.5 If for any reason the amount transferred from Seller's DB Pension Plan to Purchaser's DB Pension Plan is less than the Pension Plan Transfer Amount (the amount of the difference being referred to as the "**Shortfall**"), Seller shall forthwith pay or procure to be paid to Purchaser an amount in cash equal to the Shortfall, together with interest thereon at a rate reasonably determined by Seller from and including the Payment Date to, but excluding, the date upon which final payment is made in accordance with this sentence. If for any reason the amount transferred from Seller's DB Pension Plan to Purchaser's DB Pension Plan is greater than the sum of the Pension Plan Transfer Amount (the amount of the difference being referred to as the "**Excess**"), Purchaser shall forthwith pay or procure to be paid to Seller an amount equal to the Excess, together with interest thereon at the rate as reasonably determined by Seller from and including the Payment Date to, but excluding, the date upon which final payment is made in accordance with this sentence. The existence and amount of any Shortfall or Excess shall be solely and finally determined in accordance with the Pension Dispute Procedures.

6.4.6 Purchaser shall execute all documents (including all applicable plan documents and/or amendments and corporate resolutions), and take any other actions necessary to effectuate the assumption by the Purchaser DB Pension Plan of the assets and liabilities of the Seller DB Pension Plan with respect to the Transferred Non-Union Employees and Union Employees (other than the Recall Employees), including the filing of all applicable filings required by the Internal Revenue Service, Pension Benefit Guaranty Corporation or other applicable Governmental Entity, each as set forth in Schedule 6.4.6. Seller shall execute all documents (including all applicable plan documents and/or amendments and corporate resolutions), and at Purchaser's expense, take any other actions reasonably necessary to effectuate the transfer to the Purchaser DB Pension Plan of the assets and liabilities of the Seller DB Pension Plan with respect to the Transferred Non-Union Employees and Union Employees (other than the Recall Employees), including the filing of all applicable filings required by the Internal Revenue Service, Pension Benefit Guaranty Corporation or other applicable Governmental Entity, each as set forth in Schedule 6.4.6. The Parties shall take all steps to ensure that the transactions contemplated in this Section 6.4 meet the requirements of Section 4062(e)(2)(D) of ERISA so that such transactions do not result in a "substantial cessation of operations" under Section 4062(e) of ERISA.

6.4.7 Notwithstanding anything to the contrary set forth herein, if Purchaser or any Affiliate thereof hires any Recall Employee on or before the date such Recall Employee's recall rights under the Collective Bargaining Agreement terminate ("**Rights Termination Date**"), and such Recall Employee participated in the Seller's DB Pension Plan at the time such employee was laid off, then as soon as practicable following December 31, 2019 (in the case of Recall Employees whose Rights Termination Date is July 31, 2019) or the six-month anniversary of the latest Rights Termination Date (in the case of all other Recall Employees), Seller shall cause the calculation and transfer to the Purchaser DB Pension Plan assets equal to the accumulated benefit obligation for such hired Recall Employees as of the applicable Rights Termination Date in accordance with the provisions of this Section 6.4, *mutatis mutandis*, and all Liabilities relating to the Seller DB Pension Plan with respect to such Recall Employees, whenever arising, shall be deemed Assumed Obligations hereunder.

6.5 COBRA

Purchaser shall be responsible for providing, and shall assume all liabilities in respect of, the provision of continued medical coverage pursuant to its group health plans for employees under Part 6, Title I of ERISA and Section 4980B of the Code and similar provisions of state or local Law ("**COBRA Continuation Coverage**"), for all Transferred Non-Union Employees and Union Employees (and their respective covered dependents) who are entitled to benefits with respect to any "qualifying event" (within the meaning of COBRA). Seller shall retain all COBRA responsibilities and obligations imposed on it by applicable Law for those individuals (and covered dependents) who (a) as of the Closing Date are currently receiving COBRA Continuation Coverage, (b) are eligible for COBRA Continuation Coverage as a result of a qualifying event that occurred prior to the Closing Date and (c) are not employed by Purchaser on or after the Closing, provided, that, Purchaser has complied with the terms of this Section 6.5.

6.6 WARN Act

Purchaser represents and warrants that it has no plans for a mass layoff or plant closing (as defined in the WARN Act and the regulations thereunder) with respect to the Transferred Non-Union Employees and Union Employees within, at least, the 90 days following the Closing. In the event of any mass layoff or plant closing in whole or in part after the Closing, as between Purchaser and Seller, Purchaser shall be responsible for providing any required notice and/or making any required payment of severance compensation, including any notice pay and severance pay, to comply with the requirements of and otherwise satisfying any liability to the Employees required under the WARN Act and applicable state Law regarding any mass layoff or plant closing. In the event of any mass layoff or plant closing occurring in whole on or within 90 days prior to the Closing, or the transactions contemplated by this Agreement, as between Purchaser and Seller, Seller shall be responsible for providing any required notice and/or otherwise satisfying any liability to the Employees required under the WARN Act and applicable state Law regarding such mass layoff or plant closing.

6.7 OPEB

As of the Closing, (a) the Transferred Non-Union Employees and the Union Employees shall not be eligible to participate in or receive benefits under any Benefit Plan providing for OPEB and (b) Seller shall have no obligation, liability or responsibility to provide any OPEB to any Transferred Non-Union Employee or any Union Employee.

6.8 Vacation

Purchaser shall be responsible for all liabilities, if any, with respect to Transferred Non-Union Employees and Union Employees attributable to their unused vacation, sick days and personal days through the Closing, whether or not included in determining the Adjusted Net Working Capital.

6.9 Administrative Coordination and Cooperation

From and after the Closing, the Parties shall coordinate their administrative actions and shall cooperate with each other to ensure that the transactions contemplated by this Section 6 are fully consummated.

7. CONDITIONS OF CLOSING

7.1 Conditions to Each Party's Obligation to Effect the Closing

The respective obligation of each Party to effect the Closing shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by mutual agreement of Parent (on behalf of all Buyer Parties) and Seller, in whole or in part, to the extent permitted by applicable Law):

7.1.1 No Law shall have been enacted or promulgated by any Governmental Entity that prohibits the consummation of the transactions contemplated herein or in the other Operative Agreements and there shall be no order or judgment in effect prohibiting consummation of such transactions; provided that the Parties shall use their commercially reasonable efforts to have any such order or judgment vacated or lifted.

7.1.2 All consents, approvals or waivers required from any Governmental Entity shall have been obtained.

7.1.3 The filings pursuant to the Antitrust Laws, if any, shall have been made and the waiting period (and any extension thereof) applicable to the consummation of the transactions contemplated by this Agreement under the Antitrust Laws shall have expired or been terminated.

7.1.4 Seller or any of its Affiliates shall have completed, or caused to be completed, the implementation and setup of the systems required to enable Seller (or its Affiliates) to provide the services under the Seller TSA.

7.2 Conditions to Obligations of Purchaser to Effect the Closing

The obligations of Parent and Purchaser to effect the Closing shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by Parent or Purchaser, in whole or in part, to the extent permitted by applicable Law):

7.2.1 (a) Each of the representations and warranties of Seller set forth in this Agreement (other than the Seller Fundamental Representations) shall be true and correct (without regard to materiality or Material Adverse Effect qualifiers contained therein) on and as of the Closing Date with the same effect as though made at and as of such date (or if made as of a specified date, as of such date) except for such failures to be so true and correct that, individually or in the aggregate, do not have or would not have a Material Adverse Effect and (b) each of the Seller Fundamental Representations (i) that are not qualified by Material Adverse Effect or other materiality qualifications shall be true and correct in all material respects on and as of the Closing Date (or if made as of a specified date, as of such date) and (ii) that are qualified by Material Adverse Effect of other materiality qualifiers will be true and correct in all respects (without disregarding any materiality qualifications) on and as of the Closing Date with the same effect as though made at and as of such date (or if made as of a specified date, as of such date).

7.2.2 Seller shall not have failed to perform or comply with, in any material respect, any covenant or agreement to be performed or complied with by it prior to or on the Closing Date under this Agreement or the Seller TSA.

7.2.3 Seller shall have made all filings that are identified on Schedule 6.4.6 that are required to be filed prior to the Closing.

7.2.4 All Seller Material Consents shall have been obtained.

7.2.5 Seller shall have delivered to Purchaser each of the Assigned Permits, validly transferred to or newly issued in the name of Purchaser, subject to the terms of the Control Agreement in the case of the NRC Permit.

7.2.6 Seller shall have delivered to Purchaser those items required by Section 2.2.

7.2.7 Seller shall have satisfied the condition set forth on Schedule 7.

7.2.8 Subject to Purchaser’s payment of standard premiums, and at no additional cost to Seller, Purchaser shall have received from Chicago Title Insurance Company a pro forma of, and an irrevocable and unconditional commitment to issue an, ALTA 2006 Form extended coverage owner’s policy of title insurance which shall insure Purchaser’s title to the Owned Real Property free and clear of any Liens other than the Permitted Liens.

7.3 Conditions to Obligations of Seller to Effect the Closing

The obligations of Seller to effect the Closing shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by Seller, in whole or in part, to the extent permitted by applicable Law):

7.3.1 (a) Each of the representations and warranties of Purchaser and Parent set forth in this Agreement (other than the Purchaser Fundamental Representations) shall be true and correct (without regard to materiality or Material Adverse Effect qualifiers contained therein) on and as of the Closing Date with the same effect as though made at and as of such date (or if made as of a specified date, as of such date) except for such failures to be so true and correct that, individually or in the aggregate, would not have a material adverse effect on Purchaser or its ability to close the transactions contemplated hereby and (b) each of the Purchaser Fundamental Representations (i) that are not qualified by material adverse effect or other materiality qualifications shall be true and correct in all material respects on and as of the Closing Date (or if made as of a specified date, as of such date) and (ii) that are qualified by material adverse effect of other materiality qualifiers will be true and correct in all respects (without disregarding any materiality qualifications) on and as of the Closing Date with the same effect as though made at and as of such date (or if made as of a specified date, as of such date).

7.3.2 Neither Purchaser nor Parent has failed to perform or comply with, in any material respect, any covenant or agreement to be performed or complied with by it prior to or on the Closing Date under this Agreement, the Access Agreement or the Seller TSA (with it being acknowledged that the failure to timely pay any amounts due thereunder shall constitute a material breach thereunder).

7.3.3 Seller shall have obtained from all applicable third parties unconditional and irrevocable releases releasing Seller and its Affiliates from all the Seller Security Instruments.

7.3.4 All Other Material Consents shall have been obtained.

7.3.5 All Purchaser Plans and the Purchaser DB Pension Plan shall be in full force and effect and Purchaser shall have made all filings that are identified on Schedule 6.4.6 prior to the Closing.

7.3.6 Seller shall have received a full and unconditional release under the Collective Bargaining Agreements with respect to the Employees.

7.3.7 Purchaser shall have funded any amount required to be funded at or prior to Closing under the Seller TSA.

7.3.8 Purchaser shall have delivered to Seller those items required by Section 2.3.

7.4 Frustration of Closing Conditions

No Party may rely on the failure of any condition set forth in Section 7.1, 7.2 or 7.3, as the case may be, if such failure was the direct result of such Party's failure to comply with or breach of any provision of this Agreement. Purchaser and Seller shall not, and shall cause their respective Affiliates not to, willfully take (or omit to take) any action for the purpose of frustrating the satisfaction of any of the conditions set forth in Section 7.1, 7.2 or 7.3 or delaying the Closing Date. If the Closing occurs, each of the conditions set forth in this Section 7 that has not been fully satisfied as of the Closing shall be deemed to have been fully waived by the party that is the beneficiary of such condition.

8. **TERMINATION**

8.1 Termination

This Agreement may be terminated at any time prior to the Closing:

8.1.1 By the mutual written consent of Purchaser and Seller;

8.1.2 By either Purchaser or Seller, if any Governmental Entity issues an order or takes any other action that permanently restrains, enjoins or otherwise prohibits the consummation of the transactions contemplated herein and such order or other action shall have become final and non-appealable;

8.1.3 By either Purchaser or Seller, if the Closing does not occur on or prior to March 31, 2019 (the "**End Date**"); provided, that, no Party may terminate this Agreement pursuant to this Section if any breach by such Party substantially contributed to the failure to close by the End Date or if such Party is in material breach of this Agreement at such time; or

8.1.4 By either Purchaser or Seller, if the other Party (or Parent, in the case of Seller's right to terminate), breaches in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement in a manner that would give rise to the failure of a condition set forth in Section 7, which breach, if curable, has not been cured within thirty (30) days after the receipt by such other Party of written notice from the terminating Party specifying such breach (or by two (2) Business Days prior to the End Date, if earlier), provided, that, the terminating Party is not then in material breach of this Agreement.

8.1.5 By Seller, if the Signing Deposit is not delivered to the Escrow Agent within two (2) Business Days after the Effective Date in accordance with the terms hereof.

8.1.6 By Seller, if (i) the conditions set forth in Section 7.1 and Section 7.2 have been satisfied or are capable of being satisfied on such date (other than those conditions that by their nature are to be satisfied at the Closing that would be satisfied at a Closing as of such date) or have been waived in writing by Purchaser, (ii) Seller has served notice to the Purchaser, which notice shall be served no earlier than three (3) Business Days prior to the End Date, indicating that is ready, willing and able to consummate the transactions contemplated by this Agreement, and (iii) Purchaser fails to complete the Closing within three (3) Business Days following receipt of such notice.

8.2 Effect of Termination

8.2.1 Subject to Section 1.11 and Section 8.2.2, if this Agreement is terminated by any Party pursuant to Section 8.1, this Agreement shall forthwith terminate and have no further force and effect, and no Party shall have any liability hereunder; provided, however, that no such termination shall relieve any Party from any liability for any and all damages suffered by the other Parties as a result of (a) any willful and material breach of this Agreement by that Party or (b) Fraud. Notwithstanding the foregoing, (i) the provisions of Sections 1.11, 5.4, 5.16, this Section 8.2 and Sections 10, 11.1, 11.2, 11.4 through 11.15, 11.17, and 11.18 shall survive such termination indefinitely, and (ii) nothing in this Section 8.2 shall be deemed to release any Party from any liability for any material breach by such Party of the terms of this Agreement prior to termination or thereafter with respect to any Section of this Agreement which survives termination.

8.2.2 If Seller terminates this Agreement (a) pursuant to Section 8.1.6 or (b) following a willful breach by Purchaser of a material term of this Agreement, which breach, if not cured after notice of such breach is provided to Purchaser, would give rise to the failure of a condition set forth in Section 7, then Purchaser shall pay Seller an amount in cash equal to $20,000,000 (the "Reverse Termination Fee") no later than two (2) Business Days after such termination, by (a) instructing the Escrow Agent to release the Initial Deposit Amount and the Signing Deposit Amount to Seller (as partial satisfaction of the Reverse Termination Fee) and (b) wire transfer of the remainder of the Reverse Termination Fee to an account designated by Seller. In the event of a termination of this Agreement where Seller is entitled to receive the Reverse Termination Fee, Seller's receipt of the Reverse Termination Fee pursuant to this Section 8.2.2 shall, except in the event of Fraud by Parent or Purchaser, be the sole and exclusive remedy (whether at Law, in equity, in contract, in tort or otherwise) of Seller and its Affiliates against Purchaser, Parent, their respective Affiliates, for any breach of this Agreement or the failure of the transactions contemplated hereby to be consummated. For the avoidance of doubt, nothing in this Section 8.2 shall preclude the Seller from receipt of the Initial Deposit Amount and/or Signing Deposit Amount in accordance with Section 1.11, except to the extent such amounts are applied against the Reverse Termination Fee in accordance with this Section.

9. INDEMNIFICATION

9.1 Survival

All of the representations and warranties of Parent and Purchaser contained in this Agreement or in any certificate delivered in connection herewith shall survive the Closing for a period of twelve (12) months following the Closing Date, at which time all of such representations and warranties shall expire, except for the Purchaser Fundamental Representations, which shall survive the Closing until such time as a claim in respect of any breach of such representations and warranties is barred from being made under any applicable statute of limitations period and/or statute of repose period imposed by Law. As required solely to support a claim to be made under the Representation and Warranty Policy and not against Seller, all of the representations and warranties of Seller contained in this Agreement or in any certificate delivered in connection herewith shall survive the Closing for a period of twelve (12) months following the Closing Date or such longer time as may be permitted under the Representation and Warranty Policy, at which time all of such representations and warranties shall expire. As among Parent, Purchaser and Seller, all of the representations and warranties of Seller contained in this Agreement or in any certificate delivered in connection herewith shall not survive, and shall terminate upon, the Closing. All covenants and agreements set forth in this Agreement requiring performance from and after the Closing, shall survive the Closing and shall continue in accordance with their terms, and no other covenants or agreements set forth in this Agreement shall survive the Closing. Neither Seller, on the one hand, nor Parent or Purchaser, on the other, will have any liability whatsoever with respect to any covenant or, with respect to Parent or Purchaser, any representation or warranty, unless the Indemnified Party delivers to the Indemnifying Party an Indemnity Notice or Claim Notice, as applicable, pursuant to the terms hereof prior to the expiration date of the applicable survival period for such representation, warranty or covenant. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Indemnified Party to the Indemnifying Party prior to the expiration date of the applicable survival period and in accordance with this Section 9 shall not thereafter be barred by the expiration of the relevant representation, warranty or covenant, and such claims shall survive until finally resolved pursuant to the terms hereof.

9.2 Indemnification by Seller

Subject to the other provisions of this Section 9, from and after the Closing, Seller shall indemnify and defend each Purchaser Group Member against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by or imposed upon such Purchaser Group Member based upon, arising from, with respect to or by reason of:

9.2.1 any breach by Seller of any of its covenants, obligations or agreements in this Agreement or the other Operative Agreements (other than the Seller TSA, the SC Lease and the Sawmill Lease);

9.2.2 any Excluded Asset or Retained Obligation; and

9.2.3 any item listed on Schedule 9.2.3.

9.3 Indemnification by Parent and Purchaser

Subject to the other provisions of this Section 9, from and after the Closing, each of Parent and Purchaser, jointly and severally, shall indemnify and defend each Seller Group Member against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by or imposed upon such Seller Group Member based upon, arising from, with respect to or by reason of:

9.3.1 any breach of the representations or warranties of Parent and/or Purchaser in this Agreement, the other Operative Agreements (other than the Seller TSA, the SC Lease and the Sawmill Lease), or in any certificate or instrument delivered by or on behalf of Parent or Purchaser pursuant to this Agreement;

9.3.2 any breach by Parent or Purchaser of any of its covenants, obligations or agreements in this Agreement, the other Operative Agreements (other than the Seller TSA, the SC Lease and the Sawmill Lease), or any certificate or instrument delivered by or on behalf of Parent or Purchaser pursuant to this Agreement;

9.3.3 any Assumed Obligation;

9.3.4 any Tax Claim with respect to any Post-Closing Period; and

9.3.5 all liabilities related to or in connection with the Purchased Assets or the Catawba Mill Business accruing or incurred on or after the Closing Date.

provided, *however*, that (a) no Seller Group Member shall be entitled to any indemnification and Purchaser shall not be required to indemnify and hold any Seller Group Member harmless with respect to any Losses for claims under Section 9.3.1 (other than in connection with any Purchaser Fundamental Representations) until and unless all Losses for claims under Section 9.3.1 (other than in connection with any Purchaser Fundamental Representations) exceed, in the aggregate, $2,600,000 (the "**Purchaser Deductible Amount**"), in which case Purchaser shall be liable only for the portion of the amount exceeding the Purchaser Deductible Amount (but not the Purchaser Deductible Amount), (b) in determining the amount claimed under Section 9.3.1 (other than in connection with any Purchaser Fundamental Representations), there shall not be included in such claim any Loss that does not exceed $100,000 (the "**Minimum Amount**"), (c) the aggregate amount that the Seller Group Members may claim and that Purchaser may be required to pay pursuant to Section 9.3.1 (other than in connection with any Purchaser Fundamental Representations) shall not exceed an amount equal to $39,000,000.

9.4 Method of Asserting Claims

All claims for indemnification under Section 9, other than any Tax Claim (which shall be asserted and resolved as set forth in Section 9.5) shall be asserted and resolved as follows:

9.4.1 A Party claiming indemnification pursuant to this Section 9 (the "**Indemnified Party**") in respect of, arising out of or involving a claim or demand made by a third party against the Indemnified Party (a "**Third Party Claim**") shall deliver notice (a "**Claim Notice**") to the indemnifying Party (the "**Indemnifying Party**") within fifteen (15) Business Days after receipt by the Indemnified Party of written notice of the Third Party Claim; provided, however, that the failure to timely give such Claim Notice shall not affect the indemnification provided hereunder, except if and to the extent the Indemnifying Party shall have been prejudiced as a result of such failure. The Claim Notice shall (a) identify the applicable third party, if known, (b) state in reasonable detail the circumstances giving rise to the Losses, (c) specify the representation, warranty, covenant or agreement of this Agreement alleged to have been breached or not performed (as applicable), and (d) specify the estimated amount of the Losses, if known.

9.4.2 In the case of a Third Party Claim, the Indemnifying Party shall be entitled, upon written notice to the Indemnified Party, to assume and control the defense (at the Indemnifying Party's expense) thereof, within thirty (30) days of receiving the applicable Claim Notice, with counsel selected by the Indemnifying Party; provided, that, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (w) is asserted directly by or on behalf of a Person that is a Material Supplier or Material Customer of the Catawba Mill Business (if the Indemnifying Party is Seller), (x) seeks an injunction or other equitable relief against the Indemnified Party, (y) the outcome of which could reasonably be expected to have a material impact on the reputation or good will of the Indemnified Party or, in the case of Purchaser, the Catawba Mill Business or (z) relates or otherwise arises in connection with any criminal or regulatory enforcement Action that is commenced, brought, conducted, tried or heard by or before, or otherwise involving any Governmental Entity. If the Indemnifying Party assumes the defense of a Third Party Claim, then (a) the Indemnifying Party shall not be liable to the Indemnified Party for legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof and (b) the Indemnified Party shall have the right to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party; provided, that, the Indemnifying Party shall control such defense; provided, further, that if in the opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of one counsel to the Indemnified Party including fees for consult by such counsel with local counsel in each jurisdiction for which counsel determines in good faith that local counsel is required. If the Indemnifying Party does not assume the defense of a Third Party Claim within thirty (30) days following a Claim Notice or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party, by notice to the Indemnifying Party, may employ its own counsel and control the defense of the Third Party Claim and the Indemnifying Party shall be liable for the reasonable fees and disbursements of counsel employed by the Indemnified Party, provided, that, in any such case the Indemnified Party shall diligently and in good faith contest such Third Party Claim. Whether the Indemnifying Party or the Indemnified Party controls the defense of any Third Party Claim, the Parties shall reasonably cooperate in the defense thereof. Such cooperation shall include the retention and provision to the counsel of the controlling Party of records and information that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

9.4.3 Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 9.4.3. If a firm offer is made to settle a Third Party Claim and if such settlement (i) constitutes a complete and unconditional discharge and release of the Indemnified Party, and (ii) provides for no relief other than the payment of monetary damages by the Indemnifying Party (subject to, if Seller is the Indemnifying Party, the other limitations set forth herein) and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within 15 days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 9.4.2, it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

9.4.4 If an Indemnified Party has a claim against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver notice (an "**Indemnity Notice**") within thirty (30) days after the Indemnified Party has Knowledge of such claim, describing in reasonable detail the facts giving rise to any claim for indemnification and shall include in such Indemnity Notice the estimated amount or the method of computation of the amount of such claim (to the extent practicable), and a reference to the provision of this Agreement upon which such claim is based; provided, however, that failure to timely give such Indemnity Notice shall not affect the indemnification provided hereunder, except if and to the extent the Indemnifying Party shall have been prejudiced as a result of such failure. If the Indemnifying Party disputes its liability with respect to such claim, the Indemnifying Party and the Indemnified Party will proceed in good faith to negotiate a resolution of such dispute, and if not resolved through negotiations within thirty (30) days after receipt of the Indemnity Notice, the Indemnified Party may commence an Action in connection therewith.

9.4.5 Subject to this Section 9, once a Loss is agreed to by the Indemnifying Party or finally determined to be payable in accordance with this Section 9, the Indemnifying Party shall satisfy its obligations within 15 Business Days by wire transfer of immediately available funds to an account designated by the Indemnified Party.

9.5 Tax Contests

9.5.1 If any Taxing Authority asserts any Tax Claim, then the party first receiving notice of such Tax Claim shall, within seven (7) Business Days after receiving such notice, provide written notice thereof to the other party. Such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of any relevant correspondence received from the Taxing Authority.

9.5.2 Seller shall have the sole right to defend or prosecute, at its sole cost, expense and risk, any Tax Claim attributable to a Pre-Closing Period. Purchaser shall take or cause to be taken such actions in connection with contesting any Tax Claim attributable to a Pre-Closing Period as Seller shall reasonably request from time to time, including the retention of counsel and experts as designated by Seller, provided that Seller shall not settle, compromise and/or concede any portion of such Tax Claim that has an adverse effect on Purchaser without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned. So long as Seller is defending or prosecuting a Tax Claim attributable to a Pre-Closing Period, Purchaser shall provide or cause to be provided to Seller any information reasonably requested by Seller relating to such Tax Claim, and Purchaser shall otherwise cooperate with Seller and its representatives in good faith in order to contest effectively such Tax Claim, including executing and delivering any necessary powers of attorney required by Seller to contest such Tax Claim. Purchaser and its authorized representatives shall be entitled, at Purchaser's expense, to attend, but not participate in or control, all conferences, meetings and proceedings relating to any such Tax claim.

9.5.3 Purchaser shall have the sole right to defend or prosecute, at its sole cost, expense and risk, any Tax Claim attributable to a Post-Closing Period. So long as Purchaser is defending or prosecuting a Tax Claim attributable to a Post-Closing Period, Seller shall provide or cause to be provided to Purchaser any information reasonably requested by Purchaser relating to such Tax Claim, Seller and its authorized representatives shall be entitled, at its expense, to attend, but not participate in or control, all conferences, meetings and proceedings relating to any such Tax Claim.

9.5.4 Purchaser shall have the right to defend or prosecute, at its cost, expense and risk, any Tax Claim attributable to a Straddle Period that does not exclusively relate either to a Pre-Closing Period or to a Post-Closing Period (which shall be governed by Sections 9.5.2 and 9.5.3, respectively); *provided, however*, that in the case of any such Tax Claim, (a) Seller shall have the right to participate in such Tax Claim at its own expense and (b) Purchaser shall not settle, compromise and/or concede any portion of such Tax Claim that affects the liability of Seller under this Section 9 without the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned. Any additional Tax resulting from a Tax Claim attributable to a Straddle Period pursuant to this Section 9.5.4 shall be borne (i) by Seller, to the extent such Tax is attributable to a Pre-Closing Period, and (ii) by Purchaser, to the extent such Tax is attributable to a Post-Closing Period.

9.5.5 In the case of any Tax Claim that is defended or prosecuted to a Final Determination pursuant to this Section 9.5, the party responsible for such Tax pursuant to this Section 9.5 shall pay to the applicable Person or Taxing Authority the amount of any Tax arising or resulting from such Tax Claim within seven (7) Business Days after such Final Determination (and if such party pays such amount to the applicable Taxing Authority, such party shall deliver written evidence of such payment to the other party). In the case of any Tax Claim not covered by the preceding sentence, the party responsible for such Tax pursuant to this Section 9.5 shall pay to the applicable Person or Taxing Authority the full amount of any Tax arising or resulting from such Tax Claim, at least seven (7) Business Days before the date payment of such Tax is due (and if such party pays such amount to the applicable Taxing Authority, such party shall deliver written evidence of such payment to the other party). Notwithstanding the foregoing, neither party shall be required to make a payment in the circumstances described by either of the two preceding sentences to the extent such party has been prejudiced by the other party's failure to comply with the provisions of this Section 9.5.

9.6 Representation and Warranty Insurance; Order of Recovery; Exclusive Remedy

9.6.1 Each of Parent and Purchaser agrees that the only source of recovery and recourse for any claims that any Purchaser Group Member may have related to or arising from any representation or warranty made by Seller (or any Affiliate thereof) herein, in the other Operative Documents (other than the Sawmill Lease, SC Lease and the Seller TSA), or in the Management Letter (in this latter case, whether directly or indirectly through any claim against the addressees thereof), shall be (a) from the recovery of amounts under the Representation and Warranty Policy (subject to the terms and limitations of the Representation and Warranty Policy), except with respect to Fraud of the Seller and (b) with respect to Purchaser's Environmental Reimbursement, the balance of the Environmental Escrow Account.

9.6.2 Each of Parent and Purchaser agrees that if it or any other Purchaser Group Member has indemnification claims for Losses under Section 9, then Parent, Purchaser or such other Purchaser Group Member shall seek recovery with respect to such claims by making and reasonably pursuing a claim under the Representation and Warranty Policy to the extent the claim could reasonably be based upon any representation or warranty made by Seller herein or in any certificate delivered in connection herewith (even if such Purchaser Group Member would also have a claim for such item under any other provision of Section 9.2), provided that nothing in this subsection shall limit such Purchaser Group Member's rights hereunder to proceed thereafter against Seller in accordance with and subject to this Section 9.

9.6.3 Except as set forth in Section 1.9 (Post-Closing Adjustment) and Section 11.16 (Specific Performance), no Party shall be liable or responsible in any manner whatsoever to the other Parties (whether in contract, breach of warranty, tort or otherwise), whether for indemnification or otherwise, except for the indemnity obligations expressly provided in this Section 9 and the other indemnity obligations expressly provided for in this Agreement or the other Operative Agreements, which provide the exclusive remedies and causes of action of the Parties with respect to any matter contemplated by this Agreement and the other Operative Agreements, and each party hereby expressly waives and releases any other claim or cause of action arising under Law, including Laws based on negligence or strict liability, or otherwise against the other party with respect to any matter, including environmental matters, contemplated by and /or relating to the subject matter of this Agreement and the other Operative Agreements. Nothing in this Section 9.6 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any Party's Fraud.

9.6.4 Notwithstanding any provision of this Agreement to the contrary, but subject to the lower limits on indemnification set forth in this Section 9, in no event shall Seller's, Parent's, or Purchaser's Liability under this Agreement exceed the Purchase Price.

9.7 Excluded Damages; Materiality Scrape

9.7.1 Except and solely to the extent necessary to make a claim under the Representation and Warranty Policy, the obligations of any Indemnifying Party pursuant to this Agreement shall not include any special, exemplary, indirect, incidental or consequential damages (including loss of profit or revenue or loss of use).

9.7.2 In no event shall Seller have any liability or obligation to a Purchaser Group Member for any Liability to the extent such Liability is taken into account as a Liability or reserve relating to such matter in calculating the amount of the Adjusted Net Working Capital, and no amount shall be due under this Section 9 to the extent that it duplicates another amount already paid under this Agreement or any other Operative Agreement.

9.7.3 For purposes of this Section 9, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty (other than Section 3.4.1 (Financial Results) to the extent such Financial Results have been prepared in accordance with GAAP).

9.7.4 Notwithstanding anything to the contrary set forth herein, (a) no Purchaser Group Member shall be entitled to indemnification from Seller of any Loss hereunder to the extent such Loss constitutes an Assumed Obligation, and (b) Seller's sole and exclusive Liability with respect to the Environmental Work and Purchaser's Environmental Reimbursement shall be limited to Seller's Environmental Escrow Contribution in accordance with the terms hereof.

9.8 Tax Treatment of Indemnification Payments

For purposes of computing the amount of any indemnification hereunder, any such indemnification payment shall be treated as an adjustment to the Purchase Price for all Tax purposes unless otherwise required by Law.

9.9 Mitigation

9.9.1 Each Indemnified Party shall use its commercially reasonable efforts to mitigate any Losses after becoming aware of any event that could reasonably be expected to give rise to any Losses that are indemnifiable hereunder.

9.9.2 If and solely to the extent that an Indemnified Party would receive a double recovery, the amount of any Losses for which indemnification is provided under this Section 9 shall be reduced by any amounts actually recovered by any Indemnified Party under any (a) indemnification or other recovery under any Contract between an Indemnified Party and any Person (other than a Governmental Entity) and (b) insurance policies with respect to such indemnification claim, including, without limitation, the Representation and Warranty Policy (each source named in clauses (a) and (b), a "**Collateral Source**"). An Indemnified Party shall use its commercially reasonable efforts to pursue any claims against all Collateral Sources.

9.9.3 If an Indemnified Party has received the payment required under this Section 9 from the Indemnifying Party in respect of any Losses and later receives proceeds from insurance or payments from a Collateral Source, then such Indemnified Party shall pay to the Indemnifying Party, within thirty (30) days after receipt, an amount equal to the excess of (a) the amount previously received by the Indemnified Party under this Section 9, plus the amount of the insurance payments or other recoveries from such Collateral Source (net of any Taxes or expenses (including increased premiums) incurred in collecting such amount) actually received by such Indemnified Party, over (b) the amount of Losses with respect to such claim which the Indemnified Party was entitled to receive under this Section 9. Notwithstanding any other provisions of this Agreement, it is the intention of the Parties that no Collateral Source shall be (i) entitled to a benefit it would not be entitled to receive in the absence of the foregoing indemnification provisions, or (ii) relieved of the responsibility to pay any claims for which it is obligated.

9.9.4 To the extent Purchaser denies a request by Seller for consent to take any of the actions set forth in Section 5.1.1, and such action would have mitigated any indemnifiable Loss hereunder, then the amount of Losses recoverable pursuant to this Section 9 in respect of such matter, if any, shall be reduced by the amount of Losses that could have reasonably been mitigated by such action.

10. DEFINITIONS

10.1 Definitions

As used in this Agreement, the following defined terms shall have the meanings indicated below:

"**Access Agreement**" means that certain Access Agreement, dated as of June 27, 2018, by and between the Seller and Parent, as may be amended from time to time.

"**Accrued Rebates Calculation**" has the meaning set forth in Section 1.9.1.

"**Accrued Rebates**" means the rebates payable by Seller or its Affiliates to customers of the Catawba Mill Business as of the Closing.

"**Acquired Books and Records**" has the meaning set forth in Section 1.1.13.

"**Acquisition Proposal**" has the meaning set forth in Section 5.15.1.

"**Action**" means any action, suit, litigation or legal proceeding, claim, cause of action, charge, grievance, demand, arbitration, inquiry, audit, notice of violation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative or otherwise, whether at law or in equity.

"**Adjusted Allocation Schedule**" has the meaning set forth in Section 1.10.

"**Adjusted Net Working Capital**" has the meaning set forth in Section 1.9.3.

"**Affiliate**" means, as applied to any Person, any other Person that, directly or indirectly, controls, is controlled by, or under common control with, such Person, provided, however, in the case of Seller, "Affiliate" means RFPI and its controlled Affiliates. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by", and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

"**Affiliated Persons**" has the meaning set forth in Section 11.15.

"**Agreement**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 1.10.

"Amec Reports" means collectively the engineering report revision I prepared by Amec Foster Wheeler E&C Services, Inc. entitled "Confidential Study Catawba Follow-ups" and dated July 18, 2017, together with any amendment or supplement thereto and any revision thereof, as well as any information provided by Amec Foster Wheeler E&C Services, Inc. in connection therewith in whatever form provided.

"**Antitrust Authorities**" means the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, the attorneys general of the several states of the United States and any other Governmental Entity having jurisdiction with respect to the transactions contemplated hereby pursuant to applicable Antitrust Laws.

"**Antitrust Laws**" means the Sherman Act, as amended; the Clayton Act, as amended; the HSR Act, as amended; the Federal Trade Commission Act, as amended; and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade, and the rules and regulations promulgated thereunder.

"**Assigned Contracts**" has the meaning set forth in Section 1.1.11.

"**Assigned Permits**" has the meaning set forth in Section 1.1.12.

"**Assignment and Assumption Agreement**" has the meaning set forth in Section 2.2.6.

"**Assumed Obligations**" has the meaning set forth in Section 1.4.

"**Base Environmental Work**" has the meaning set forth in Section 5.8.3.

"**Benefit Plan**" means any Plan established by Seller or any ERISA Affiliate of Seller with respect to any Employee to which Seller or any ERISA Affiliate of Seller contributes or has contributed on behalf of any Employee, or under which any such Employee or any beneficiary thereof is covered, is eligible for coverage or has benefit rights.

"**Bill of Sale**" has the meaning set forth in Section 2.2.1.

"**Business Day**" means a day other than Saturday, Sunday or any day on which banks located in New York, New York or Montreal, Quebec are authorized or obligated to close.

"**Buyer Parties**" has the meaning set forth in the preamble.

"**Catawba Mill**" means the LWC paper and SBSK pulp mill located in Catawba, South Carolina, as more specifically described in Schedule 1.1.3.

"**Catawba Mill Business**" means, collectively, the conversion of round wood to wood chips by Seller conducted at the Chip Mill, the production of LWC paper and SBSK pulp by Seller conducted at the Catawba Mill, and the production of soaps and turpentine derived from the foregoing, and all activities undertaken in connection therewith or incidental thereto; provided, however, that "Catawba Mill Business" excludes any business activity carried on by Seller at the Service Center.

"**Chip Mill**" means the whole-log chip mill located in Jonesville, South Carolina as more specifically described in Schedule 1.1.3.

"**Claim Notice**" has the meaning set forth in Section 9.4.1.

"**Closing**" has the meaning set forth in Section 2.1.

"**Closing Agent**" has the meaning set forth in Section 2.1.

"**Closing Date**" has the meaning set forth in Section 2.1.

"**Closing Purchase Price**" has the meaning set forth in Section 1.6.

"**COBRA**" means the *Consolidated Omnibus Budget Reconciliation Act of 1985*, as amended, and the rules and regulations promulgated thereunder.

"**COBRA Continuation Coverage**" has the meaning set forth in Section 6.5.

"**Code**" means the *Internal Revenue Code of 1986*, as amended, and the rules and regulations promulgated thereunder, and any successor legislation thereto.

"**Collateral Source**" has the meaning set forth in Section 9.9.2.

"**Collective Bargaining Agreements**" has the meaning set forth in Section 6.1.1.

"**Confidential Information**" means: information concerning the Catawba Mill Business that is not generally known to the public or readily ascertainable through publicly-available information (which includes, but is not limited to, public filings with securities exchanges or trading markets, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, personnel training techniques and materials); provided, however, that Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of disclosure by Seller, in violation of this Agreement, (ii) becomes available to the general public from a Person, other than Seller, its Affiliates or its or their Representatives, who is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, or (iii) is publicly disclosed by Purchaser, its Affiliates, or its or their Representatives.

"**Confidentiality Agreement**" has the meaning set forth in Section 11.5.1.

"**Contested Adjustments**" has the meaning set forth in Section 1.9.2.

"**Contract**" means any contract, lease, deed, mortgage, license, instrument, note, commitment, indenture, joint venture and all other binding agreements, arrangements and undertakings, whether written or oral.

"**Control Agreement**" means a control agreement, substantially in a form required by applicable Law and the NRC, which shall provide that (a) Seller shall maintain oversight and control of the nuclear sources located at the Catawba Mill until the earlier of (i) receipt of the NRC's consent to the transfer of the NRC Permit and (ii) the first anniversary of the Closing, and (b) if such consent is not obtained by the first anniversary of the Closing, Seller shall enter upon the Catawba Mill premises and remove such nuclear sources in accordance with applicable Law.

"**Covered Request**" has the meaning set forth in Section 5.7.1.

"**CPA Firm**" has the meaning set forth in Section 1.9.2.

"**Current Assets**" means the current assets of the Catawba Mill Business included in the line items set forth on Schedule WC to the extent constituting Purchased Assets pursuant to the terms of this Agreement. For the avoidance of doubt, the assets of the Seller DB Pension Plan will not be considered Current Assets.

"**Current Liabilities**" means the current liabilities of the Catawba Mill Business included in the line items set forth on Schedule WC. For the avoidance of doubt, the liabilities of the Seller DB Pension Plan or any Accrued Rebates will not be considered Current Liabilities.

"**Customer Orders**" has the meaning set forth in Section 1.1.9.

"**Data Room**" means the electronic data room established and maintained by Seller's legal counsel containing documents relating to the Catawba Mill Business and Seller and made available to Purchaser.

"**Data Room Disk**" means the DVD-ROM containing the documentation made available to Purchaser in the Data Room.

"**Debt Financing**" means any provision of financing to Purchaser in connection with the transactions contemplated hereby.

"**Deed**" has the meaning set forth in Section 2.2.3.

"**Deposit Escrow Account**" has the meaning set forth in Section 1.11.1.

"**DHEC**" has the meaning set forth in Section 5.8.1.

"**Dollars**" or "**$**" means United States dollars.

"**Effective Date**" has the meaning set forth in the preamble.

"**Employees**" means (a) the individuals who are employed by Seller directly, solely and exclusively in the Catawba Mill Business and whose place of employment is the Catawba Mill or the Chip Mill, but excluding, for greater certainty, all individuals employed by Seller or any Affiliate of Seller whose place of employment is the Service Center, (b) those employees listed on Schedule 10.1(a), and (c) Recall Employees, including, in each case of clause (a), (b), or (c), such individuals who are on military leave, sick leave, Family and Medical Leave Act leave, workers compensation or long-term or short-term disability leave (whether pursuant to a Plan of Seller or required by Law).

"**End Date**" has the meaning set forth in Section 8.1.3.

"**Environmental Escrow Account**" has the meaning set forth in Section 5.8.3.

"**Environmental Laws**" means any and all Laws relating to pollution or protection of the environment or natural resources, human health or safety (as it relates to exposure to Hazardous Substance), including those relating to emissions, discharges or releases of Hazardous Substance into the environment (including ambient air, surface water, groundwater or land) and to the generation, handling, treatment, storage, disposal, recycling or transportation of Hazardous Substance, whenever enacted, and the regulations promulgated pursuant thereto.

"**Environmental Permits**" means any and all Permits required for the ownership and operation of the Purchased Assets under Environmental Laws.

"**Environmental Reports**" has the meaning set forth in Section 3.18.1.

"**Environmental Work**" has the meaning set forth in Section 5.8.3.

"**Equipment**" means, collectively, the Owned Equipment and the Leased Equipment.

"**Equipment Leases**" has the meaning set forth in Section 1.1.6.

"**ERISA**" means the *Employee Retirement Income Security Act of 1974*, as amended, and the rules and regulations promulgated thereunder.

"**ERISA Affiliate**" means any member of (a) a controlled group of corporations (as defined in Section 414(b) of the Code); (b) a group of trades or businesses under common control (as defined in Section 414(c) of the Code); or (c) an affiliated service group (as defined in Section 414(m) of the Code or the regulations under Section 414(o) of the Code).

"**Escrow Agent**" means JPMorgan Chase Bank, N.A., or any replacement escrow agent under the Escrow Agreement.

"**Escrow Agreement**" means that certain Escrow Agreement, dated as of March 16, 2018, by and among Seller, Parent and Escrow Agent, as amended from time to time.

"**Estimated Environmental Costs**" has the meaning set forth in Section 5.8.4.

"**Estimated Net Working Capital**" has the meaning set forth in Section 1.8.

"**Excess**" has the meaning set forth in Section 6.4.5.

"**Excluded Assets**" has the meaning set forth in Section 1.2.

"**Excluded Intellectual Property**" means (i) all Internet domain names and email addresses owned or used by Seller or any of its Affiliates, (ii) all product names and other trade names used by Seller or any of its Affiliates, including ResoluteBrite 76 Gloss, ResoluteBrite 76 Satin, ResoluteGloss and ResoluteBlondGloss, (iii) the present and past corporate names and trade names of Seller, including the names "Resolute", "Resolute FP", "Abitibi-Consolidated", "AbiBow", "Bowater", and related trademarks, logos and designs and (iv) any other Intellectual Property or Intellectual Property Licenses not set forth on Schedule 1.1.7 or Schedule 1.1.8.

"**Final Determination**" means (a) a decision, judgment, decree or other order by any court of competent jurisdiction, which decision, judgment, decree or other order has become final after all allowable appeals by either party to the Action have been exhausted or the time for filing such appeals has expired, (b) a closing agreement entered into under Section 7121 of the Code or any other settlement agreement entered into in connection with an administrative or judicial proceeding, (c) the expiration of the time for instituting suit with respect to a claimed deficiency or (d) the expiration of the time for instituting a claim for refund or if such a claim was filed, the expiration of the time for instituting suit with respect thereto.

"**Final Estimated Environmental Costs**" has the meaning set forth in Section 5.8.4.

"**Final Net Working Capital**" has the meaning set forth in Section 1.9.1.

"**Financial Results**" has the meaning set forth in Section 3.4.1.

"**Fraud**" means, with respect to any Party, an actual and intentional fraud with respect to the making of representations and warranties contained in this Agreement; provided, that such actual and intentional fraud of such Party shall only be deemed to exist if (i) such Party had actual knowledge that the representations and warranties made by such Party were actually breached when made, (ii) that such representations and warranties were made with the express intent to induce another Party to rely thereon and take action or inaction to such other Party's detriment, (iii) such reliance and subsequent action or inaction by such other Party was justifiable and (iv) such action or inaction resulted in Losses to such other Party. For purposes of clause (i) of the immediately preceding sentence, "actual knowledge" with respect to an entity shall mean the actual knowledge, without investigation (without encompassing constructive, imputed or similar concepts of knowledge), of those persons named in the definition of "Knowledge" contained herein.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time, as consistently applied by Seller.

"**Governmental Entity**" means any federal, state, provincial, local, municipal, foreign or other government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority having the force of Law, or any arbitrator, court or tribunal of competent jurisdiction, including all taxing authorities.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Entity.

"**Hazardous Substance**" means any waste or other chemical, material or substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, toxic, or a pollutant or a contaminant, or words of similar import, under or pursuant to any Environmental Law due to its hazardous or deleterious properties or characteristics, including petroleum or petroleum by-products, asbestos or asbestos-containing materials, any radioactive materials, urea formaldehyde foam insulation or polychlorinated biphenyls.

"**High pH Condition**" has the meaning set forth in Schedule 10.1(c).

"**High pH Condition Work**" has the meaning set forth in Section 5.8.1.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**HSR Affiliate of Parent**" means any "affiliate" of Parent, as defined in Rule 801.1(d)(1) promulgated under the HSR Act.

"**HSR Affiliate of Purchaser**" means any "affiliate" of Purchaser, as defined in Rule 801.1(d)(1) promulgated under the HSR Act.

"**HSR Affiliate of Seller**" means any "affiliate" of Seller, as defined in Rule 801.1(d)(1) promulgated under the HSR Act.

"**HSR Associate of Parent**" means any "associate" of any Parent UPE, as defined in Rule 801.1(d)(2) promulgated under the HSR Act.

"**HSR Associate of Purchaser**" means any "associate" of any Purchaser UPE, as defined in Rule 801.1(d)(2) promulgated under the HSR Act.

"**IAM**" means the International Association of Machinists.

"**IBEW**" means the International Brotherhood of Electrical Workers.

"**Indemnified Party**" has the meaning set forth in Section 9.4.1.

"**Indemnifying Party**" has the meaning set forth in Section 9.4.1.

"**Indemnity Notice**" has the meaning set forth in Section 9.4.4.

"**Industry Certifications**" has the meaning set forth in Section 3.17.2.

"**Initial Deposit**" has the meaning set forth in the Confidentiality Agreement.

"**Initial Deposit Amount**" has the meaning set forth in Section 1.11.1.

"**Insolvent**" means the sum of the present fair saleable value of the assets of a Person do not exceed its debts and other probable Liabilities.

"**Intellectual Property**" means all right, title and interest in or relating to intellectual property or proprietary rights of every kind and nature throughout the world, whether registered or unregistered and whether protected, created or arising under the laws of the United States or any other jurisdiction, including: (a) all patents and applications therefor, including all continuations, divisionals, provisionals and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations, substitutions and extensions thereof, and other patent rights and any other Governmental Entity-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (b) all trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, logos and other source or business identifiers, together with the goodwill associated with any of the foregoing, along with all applications, registrations, renewals and extensions thereof; (c) all internet domain names, whether or not trademarks, registered by any authorized private registrar or Governmental Entity, web addresses, web pages, websites and related content; (d) all copyrights, expressions, designs and all mask works, databases and design rights, whether or not copyrightable, registered or published, including author, performer, moral and neighboring rights, and all registrations and recordations thereof and all applications in connection therewith, along with all reversions, extensions and renewals thereof; (e) trade secrets, know-how, discoveries, improvements, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, and other confidential or proprietary information; (f) all intellectual property rights arising from or relating to Technology; (g) all rights of publicity; (h) all moral rights and rights of attribution and integrity; and (i) all Contracts granting any right relating to or under the foregoing.

"**Intellectual Property Licenses**" has the meaning set forth in Section 1.1.8.

"**Interim Period**" has the meaning set forth in Section 5.1.1.

"**Inventory**" has the meaning set forth in Section 1.1.2.

"**Knowledge**" means, (a) with respect to Seller, the actual knowledge of Remi Lalonde, Patrick Corriveau, Francois Lavallee, Pascale Lagace, Martin Savoie and Jo-Ann Longworth, and (b) with respect to Parent and Purchaser, the actual knowledge of Tom Bennett, Mike Quattromani, and Tony Hobson, in each case under clause (a) and (b) of this definition, (x) after making reasonable inquiry of other responsible officers and senior managers of such Person, as reasonably necessary to inform themselves as to the relevant matters, but without any requirement to make any inquiries of other Persons (including any Governmental Entity) or to perform any search of any public registry office or system, and (y) without encompassing constructive, imputed or similar concepts of knowledge; provided, that, with respect to the representations and warranties contained in Section 3.18 hereof, "Knowledge" means the actual knowledge, without investigation (without encompassing constructive, imputed or similar concepts of knowledge), of those persons named above.

"**Latest Financial Results**" has the meaning set forth in Section 3.4.1.

"**Law**" means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, regulation, Governmental Order or other requirement or rule of law of any Governmental Entity.

"**Lease Assignment Agreement**" has the meaning set forth in Section 2.2.7.

"**Leased Equipment**" has the meaning set forth in Section 1.1.6.

"**Leased Real Property**" has the meaning set forth in Section 3.10.3.

"**Lender Related Parties**" means any Lender, its Affiliates and their respective officers, directors, employees and representatives who are involved in the Debt Financing and all of their respective successors and permitted assigns.

"**Lenders**" means any financial institutions providing the Debt Financing.

"**Liability**" with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"**Licensed Intellectual Property**" has the meaning set forth in Section 1.1.8.

"**Liens**" means any lien (statutory or other), security interest, mortgage, pledge, hypothecation, preference, priority, option, condition, statutory or deemed trust, community property interest, equitable interest, encumbrance, easement, encroachment, right of way, right of first refusal, right of first offer, claim, charge, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**Losses**" means losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, fees, costs and expenses of whatever kind, including reasonable attorneys' fees and disbursements and the cost of enforcing any right to indemnification hereunder; provided, however, that "Losses" shall not include punitive damages, except to the extent actually awarded and paid in a Third Party Claim.

"**LWC**" has the meaning set forth in Section 3.11.

"**Material Contracts**" has the meaning set forth in Section 3.13.1.

"**Major Customer**" has the meaning set forth in Section 3.19.

"**Major Supplier**" has the meaning set forth in Section 3.19.

"**Management Letter**" has the meaning set forth in Section 3.26.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or could reasonably be expected to have, individually, or in the aggregate, a material adverse effect on (a) the business, assets, properties, results of operations or condition of the Catawba Mill Business (financial or otherwise), or (b) the value of the Purchased Assets and Assumed Obligations, taken as a whole, other than an effect resulting from any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general; (ii) the effect of any change that generally affects any industry, geography, or market in which the Catawba Mill Business operates; (iii) the effect of any change arising in connection with earthquakes, natural disasters, hostilities, acts of war (whether or not declared), sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions whether existing before or after the Effective Date; (iv) the effect of any action taken by Purchaser or its Affiliates with respect to the transactions contemplated hereby or with respect to Seller; (v) the effect of any changes in applicable Laws or accounting rules or interpretations thereof; or (vi) any effect resulting from the announcement of this Agreement, compliance with terms of this Agreement or the consummation of the transactions contemplated by this Agreement (including any effect related to any actions taken pursuant to Section 5.8 or any requirements or restrictions imposed under the VCC), except, in the case of clauses (i), (ii), (iii) and (v), to the extent the Catawba Mill Business is disproportionately adversely affected thereby as compared to similar businesses. For the avoidance of doubt, "Material Adverse Effect" shall be measured only against past performance of the Catawba Mill Business and not against any forward looking statements, projections, or forecasts of Seller or any other Person.

"**Minimum Amount**" has the meaning set forth in Section 9.3.

"**Negotiation Period**" has the meaning set forth in Section 1.9.2.

"**Net Working Capital**" means the Current Assets as of the Closing *minus* the Current Liabilities as of the Closing, *plus* the absolute value of Accrued Rebates, in each case determined in accordance with the accounting principles, policies, methods and procedures applied in the example set forth on Schedule WC.

"**Non-Parties**" has the meaning set forth in Section 11.15.

"**Non-Union Employee**" has the meaning set forth in Section 6.2.1.

"**NRC**" has the meaning set forth in Section 1.3.3(c).

"**NRC Permit**" means the Permit issued to Seller by the NRC with respect to the nuclear source material located at the Catawba Mill.

"**Objection Notice**" has the meaning set forth in Section 1.9.2.

"**Obsolete Inventory**" has the meaning set forth in Section 3.22.

"**OPEB**" means any welfare benefit (within the meaning of Section 3(1) of ERISA whether or not subject thereto), including death or medical benefits (whether or not insured) provided or to be provided under a Plan to any Employee beyond such Employee's retirement or other termination of service, other than coverage mandated by COBRA or similar state Law.

"**Operative Agreements**" means this Agreement, the Bill of Sale, the Deed, the Assignment and Assumption Agreement, Lease Assignment and Assumption Agreement, the Seller TSA, the SC Lease, the Escrow Agreement, the Sawmill Lease, any certificate delivered hereunder, and any other Contract required to be delivered pursuant to this Agreement. For the avoidance of doubt, the Access Agreement is not an Operative Agreement hereunder.

"**Ordinary Course of Business**" means an action taken by a Person that is taken in the ordinary course of the normal, day-to-day operations of such Person, consistent in all material respects with such Person's past practices.

"**Organizational Documents**" means: (a) the articles or certificate of incorporation or other organizational documents and the bylaws of a corporation; (b) the articles or certificate of formation and the operating agreement or limited liability company agreement of a limited liability company; (c) the partnership agreement and any statement of partnership of a general partnership; (d) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (e) the trust agreement and the certificate of trust of a trust; (f) any charter or agreement or similar document adopted or filed in connection with the creation, formation, or organization of a Person; (g) similar organizational or constituent documents of any entity, and (h) any amendment to or restatement of any of the foregoing.

"**Other Material Consents**" means the consents and amendments set forth on Schedule 10.1(e).

"**Owned Equipment**" has the meaning set forth in Section 1.1.5.

"**Owned Intellectual Property**" has the meaning set forth in Section 1.1.7.

"**Owned Real Property**" has the meaning set forth in Section 1.1.3.

"**Parent**" has the meaning set forth in the preamble.

"**Parent UPE**" means any Person that is an "ultimate parent entity" of Parent, as defined in Rule 801.1(a)(3) promulgated under the HSR Act.

"**Payment Date**" has the meaning set forth in Section 6.4.3.

"**Pension Dispute Procedures**" has the meaning set forth in Section 6.4.3.

"**Pension Plan Transfer Amount**" has the meaning set forth in Section 6.4.3.

"**Permits**" means, collectively, all identification numbers, licenses, permits, variances, certificates, authorizations, approvals, registrations, franchises and similar rights obtained, or required to be obtained, from any Governmental Entity pursuant to applicable Law.

"**Permitted Liens**" means (a) Liens for Taxes and other governmental charges and assessments that are not yet due and payable, (b) Liens of landlords and Liens of carriers, warehousemen, mechanics and materialmen and other like Liens, in each case, for sums not yet due and payable or which are contested in good faith by appropriate proceedings for which reasonable reserves have been established, and which are not, individually or in the aggregate, material to the Catawba Mill Business or the Purchased Assets, (c) Liens for water, sewer and other utility charges that are not yet due and payable, (d) with respect to the Owned Real Property, Liens or imperfections of title, easements, rights of ways, covenants, encumbrances, planning and zoning restrictions or other property rights that have either been disclosed to Purchaser or would be disclosed on inspection of the title and/or survey of such Owned Real Property, if any, including any Liens or imperfections of title, (e) with respect to the Owned Real Property, any applicable building and zoning ordinances, (f) Liens of employees for salaries or wages earned but not yet paid, (g) Liens of unpaid vendors of personal property or other similar Liens arising in the Ordinary Course of Business, (h) obligations pursuant to any lease of personal property (provided, in the case of clauses (b), (c), (f), (g) and (h), such Liens have arisen in the Ordinary Course of Business), (i) all other matters affecting title that have been waived or consented to by Purchaser; and (j) the Liens set forth on Schedule 3.16, which will be released immediately prior to the Closing as well as Liens set forth on Schedule 10.1(d).

"**Person**" means any natural person, corporation, limited liability company, joint venture, general partnership, limited partnership, unincorporated organization, other entity, trust, association or Governmental Entity.

"**Plan**" means any written bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, including any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

"**Post-Closing Period**" means any taxable period or portion thereof beginning on the day after the Closing Date. Except as otherwise provided herein, if a taxable period begins on or before the Closing Date and ends after the Closing Date, then the portion of any Tax that relates to the taxable period that begins after the Closing Date shall be deemed to be equal to the amount of Tax which would be payable if the taxable period began on the day after the Closing Date.

"**Post-Closing Statement**" has the meaning set forth in Section 1.9.1.

"**Pre-Closing Period**" means any taxable period or portion thereof ending before or on (and including) the Closing Date. Except as otherwise provided herein, if a taxable period begins before the Closing Date and ends after the Closing Date, then the portion of any Tax that relates to the taxable period through the Closing Date shall be deemed to equal the amount of Tax which would be payable if the taxable period ended on (and including) the Closing Date.

"**Pre-Closing Statement**" has the meaning set forth in Section 1.8.

"**Purchase Orders**" has the meaning set forth in Section 1.1.10.

"**Purchase Price**" has the meaning set forth in Section 1.6.

"**Purchased Assets**" has the meaning set forth in Section 1.1.

"**Purchased Contracts and Instruments**" means, collectively, the Assigned Contracts, Assigned Permits, Intellectual Property Licenses, Purchase Orders, Customer Orders, Equipment Leases, and Real Property Leases.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Deductible Amount**" has the meaning set forth in Section 9.3.

"**Purchaser UPE**" means any Person that is an "ultimate parent entity" of Purchaser, as defined in Rule 801.1(a)(3) promulgated under the HSR Act.

"**Purchaser's Environmental Reimbursement**" has the meaning set forth in Section 5.8.3.

"**Purchaser DB Pension Plan**" has the meaning set forth in Section 6.4.2.

"**Purchaser Fundamental Representations**" means the representations and warranties made (a) by Parent in Sections 4.1.1 (Organization), 4.1.2 (Power and Authority) and 4.1.5 (Brokers), and (b) by Purchaser in Sections 4.2.1 (Organization), 4.2.2 (Power and Authority) and 4.2.5 (Brokers).

"**Purchaser Group Members**" means, collectively, Purchaser and its Affiliates and their respective Representatives, and "**Purchaser Group Member**" means any of them individually.

"**Purchaser Guaranteed Obligations**" has the meaning set forth in Section 5.16.1.

"**Purchaser Plans**" has the meaning set for in Section 6.3.2.

"**Real Property**" means the Owned Real Property and the Real Property Leases.

"**Real Property Leases**" has the meaning set forth in Section 3.10.3.

"**Recall Employees**" means those Employees who have recall rights pursuant to the Collective Bargaining Agreements, including those listed on Schedule 10.1(f), which reflects all such Employees as of the Effective Date.

"**Receivables**" has the meaning set forth in Section 1.1.1.

"**Recourse Theory**" has the meaning set forth in Section 11.15

"**Release**" means any release, spill, emission, leaking, seepage, pumping, pouring, dumping, emptying, injection, deposit, disposal, or discharge.

"**Representation and Warranty Policy**" means that certain Representation and Warranty Insurance Policy issued by Beazley USA Services, Inc. for the benefit of Purchaser as the named insured.

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants, independent contractors and other agents of such Person.

"**Retained Obligations**" has the meaning set forth in Section 1.5.

"**Reverse Termination Fee**" has the meaning set forth in Section 8.2.2.

"**Review Period**" has the meaning set forth in Section 1.9.2.

"**RFPI**" means Resolute Forest Products, Inc., a Delaware corporation.

"**Rights Termination Date**" has the meaning set forth in Section 6.4.7.

"**Sawmill Lease**" means a lease agreement with respect to the Sawmill Property in substantially the form attached hereto as Exhibit G.

"**Sawmill Property**" means the portion of the Owned Real Property described on Schedule 10.1(g).

"**SBSK**" has the meaning set forth in Section 3.11.

"**SC Lease**" has the meaning set for in Section 2.2.8.

"**Seller**" has the meaning set forth in the preamble.

"**Seller DB Pension Plan**" means the Resolute FP US Pension Plan.

"**Seller Fundamental Representations**" means the representations and warranties made by Seller in Sections 3.1 (Organization), 3.2 (Power and Authority), 3.8 (Tax Matters), 3.15 (Brokers), and 3.16 (Title).

"**Seller Group Members**" means, collectively, Seller and its Affiliates and their respective Representatives (including, for the avoidance of doubt, the Seller DB Pension Plan), and "**Seller Group Member**" means any of them individually.

"**Seller Material Consents**" has the meaning set forth in Section 2.2.4.

"**Seller Parties**" has the meaning set forth in Section 11.15.

"**Seller Security Instruments**" has the meaning set forth in Section 2.3.6.

"**Seller TSA**" means the Seller transition services agreement, dated as of the Effective Date, by and between Seller and Purchaser.

"**Seller UPE**" means any Person that is an "ultimate parent entity" of Seller, as defined in Rule 801.1(a)(3) promulgated under the HSR Act.

"**Seller's Environmental Escrow Contribution**" has the meaning set forth in Section 5.8.3.

"**Service Center**" means the building known as the "service center" located at 5300 Cureton Ferry Road, Catawba, South Carolina 29704, as more specifically described in Exhibit A of the SC Lease;

"**Shortfall**" has the meaning set forth in Section 6.4.5.

"**Side Letters**" means, collectively, those certain letter agreements and memoranda set forth on Schedule 10.1(h).

"**Signing Deposit**" means $7,000,000.

"**Signing Deposit Amount**" has the meaning set forth in Section 1.11.2.

"**Stock**" means all woodchip stock located on the Real Property at Closing.

"**Straddle Period**" means any taxable period that begins before, and ends after the Closing Date.

"**Target Net Working Capital**" means $61,000,000. For the avoidance of doubt, the calculation of the Target Net Working Capital excluded Accrued Rebates.

"**Tax**" or "**Taxes**" means any federal, state, local, foreign and other income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, production, net worth, capital gain, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs duties, capital stock, franchise, profits, payroll, withholding, social security (or similar), unemployment, employment, disability, real property, personal property, sales, use, service, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax, fee, assessment or charge in the nature of taxes, including any interest, penalty, or addition thereto, whether disputed or not.

"**Tax Claim**" means any written claim with respect to Taxes that, if pursued successfully, could serve as the basis for a claim for indemnification under this Agreement.

"**Tax Return**" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Taxing Authority**" means any Governmental Entity of any United States federal, state or local jurisdiction, or any foreign jurisdiction having or purporting to exercise jurisdiction with respect to any Tax.

"**Technology**" means, collectively, all information, designs, formulae, algorithms, procedures, methods, techniques, ideas, know-how, research and development, technical data, databases, software, firmware, source code, object code, programs, subroutines, architecture, tools, semiconductor chips, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form.

"**Third Party Claim**" has the meaning set forth in Section 9.4.1.

"**Transfer**" means, to transfer, convey, sell, alienate, assign, exchange, lease, sublease or otherwise dispose of, such Owned Equipment, whether directly or indirectly, and whether by operation of Law or otherwise.

"**Transferred Non-Union Employees**" has the meaning set forth in Section 6.2.1.

"**UAPP**" means the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.

"**Union Employees**" has the meaning set forth in Section 6.1.1.

"**USW**" means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union.

"**VCC**" means a Voluntary Cleanup Contract, subject to the VCC Act.

"**VCC Act**" means the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §§ 44-56-710 through 760 (as amended).

"**VCC Period**" means the earlier of (i) the publication for public comment of a draft VCC in accordance with the terms and conditions of the VCC Act or (ii) the expiry of a forty-five (45) day period from the Effective Date.

"**WARN Act**" means the Worker *Adjustment and Retraining Act of 1988*, as amended, and the rules and regulations promulgated thereunder.

10.2 Language

Unless the context of this Agreement otherwise requires: (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (d) the term "other party" or "other Party" refers to Seller, on the one hand, and Parent and Purchaser, collectively on the other; (e) the phrases "include" and "including" shall mean "include without limitation", "including without limitation", and "including but not limited to"; (f) the phrases "delivered" or "made available" mean that the information referred to has been physically or electronically delivered to the relevant parties (including, in the case of "made available" to Purchaser, material that has been posted, retained and thereby made available to Purchaser through an on-line Data Room established by or on behalf of Seller); (g) references to "day" or "days" are to calendar days; (h) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (i) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; (j) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and (k) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

11. **MISCELLANEOUS**

11.1 Notices

All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if (a) delivered personally against written receipt, (b) sent by facsimile or email transmission (with confirmation of transmission), (c) mailed by prepaid first class certified mail, return receipt requested or (d) mailed by reputable overnight courier prepaid, to the Parties at the following addresses or facsimile numbers:

If to Seller, to:

Resolute FP US Inc.
c/o Resolute Forest Products, Inc.
111 boul. Robert-Bourassa, bureau 5000
Montréal, QC H3C 2M1
Facsimile No.: (514) 394 3644
Attn: Vice President, Legal Affairs
Email: stephanie.leclaire@resolutefp.com

with a copy, which shall not constitute notice, to:

Akerman LLP
350 East Las Olas Boulevard
Suite 1600
Fort Lauderdale, Florida 33301
Facsimile No.: (954) 463-2224
Attn: Mary V. Carroll
Email: mary.carroll@akerman.com

If to Parent, to:

New-Indy Containerboard, LLC
3500 Porsche Way
Suite 150
Ontario, CA 91764
Facsimile No.: 909-341-5351
Attn: Scott Conant
Email: scott.conant@new-indycb.com

with a copy, which shall not constitute notice, to:

Kraft Group LLC
One Patriot Place
Foxborough, MA 02025
Facsimile: 508-698-1505
Attn: James E. Cobery
E-mail: JimC@TheKraftGroup.com

and
Schwarz Partners
3600 Woodview Trace, Suite 300
Indianapolis, IN 46268
Facsimile: (317) 290-1071
Attn: Stephanie Blackman
E-mail: sblackman@SchwarzPartners.com

If to Purchaser, to:

New-Indy Catawba LLC
c/o New-Indy Containerboard, LLC
3500 Porsche Way
Suite 150
Ontario, CA 91764
Facsimile No.: 909-341-5351
Attn: Scott Conant
Email: scott.conant@new-indycb.com

with a copy, which shall not constitute notice, to:

Kraft Group LLC
One Patriot Place
Foxborough, MA 02025
Facsimile: 508-698-1505
Attn: James E. Cobery
E-mail: JimC@TheKraftGroup.com

and

Schwarz Partners
3600 Woodview Trace, Suite 300
Indianapolis, IN 46268
Facsimile: (317) 290-1071
Attn: Stephanie Blackman
E-mail: sblackman@SchwarzPartners.com

All such notices, requests and other communications will (a) if delivered personally to the address as provided in this Section 11.1, be deemed given upon delivery, (b) if delivered by facsimile or email transmission (with confirmation of transmission) to the facsimile number or email address as provided in this Section 11.1, be deemed given upon receipt (or if such day is not a Business Day, on the next Business Day), (c) if delivered by mail in the manner described above to the address as provided in this Section 11.1, be deemed given upon receipt, provided, that, such notice is sent by certified mail, and (d) if delivered by a reputable overnight courier service to the address as provided in this Section 11.1, be deemed given on the next Business Day after tender to the overnight courier service (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 11.1). Any Party from time to time may change its mailing address, email address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Parties. If any Party refuses to accept delivery of a notice hereunder, such notice shall be deemed to have been received on the day such delivery is refused.

11.2 Entire Agreement

This Agreement, the other Operative Agreements, and the Confidentiality Agreement supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof and contain the sole and entire agreement between the Parties with respect to the subject matter hereof and thereof. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Operative Agreements (other than the Sawmill Lease, Seller TSA and the SC Lease), the Confidentiality Agreement or the exhibits and schedules attached hereto (other than an exception set forth as such in the Schedules) or thereto, the statements in the body of this Agreement will control. Notwithstanding anything to the contrary set forth herein or in the Access Agreement, (a) the following rights and obligations of the Parties pursuant to the Access Agreement shall survive termination of the Access Agreement (which occurred as a result of the execution and delivery of this Agreement) and continue until fully satisfied in accordance with their terms: all obligations of the Parent pursuant to Section 1, including the Repair Obligation, the Report Obligation, and the Disclosure Prohibition (each as defined in the Access Agreement), but excluding the rights of Parent thereunder, including any rights of access; and each of Section 1, Section 5, Section 6, and Section 12 thereof; and (b) the performance or nonperformance of such surviving obligations shall not be subject to any of the limitations on indemnification set forth herein.

11.3 Further Assurance

If at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement or any other Operative Agreement, each Party shall, and shall cause their respective Affiliates to, take such further action (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request for such purpose.

11.4 Expenses

Except as otherwise expressly provided in this Agreement, each Party will pay its own costs and expenses incident to its negotiation and preparation of this Agreement and the other Operative Agreements and the performance of its obligations hereunder and thereunder.

11.5 Confidentiality

11.5.1 The Confidentiality Agreement, dated October 23, 2017, between Seller and Parent, as amended (the "**Confidentiality Agreement**") shall remain in full force and effect in accordance with its terms until the Closing, at which time it shall terminate automatically without further action by Buyer Parties or Seller; provided that Section 24 thereof is terminated as of the Effective Date and is superseded by the terms hereof. If the Closing does not occur, the Confidentiality Agreement shall survive in accordance with its terms (subject to the preceding proviso).

11.5.2 Until the date that is three (3) years after the Closing Date Seller shall, and shall cause its Affiliates to, hold, and shall use its commercially reasonable efforts to cause its or their respective Representatives to hold, in confidence and not disclose to any Person the Confidential Information. If Seller or any of its Affiliates or their respective Representatives are compelled or required to disclose any Confidential Information by Law or judicial or administrative process or by other requirements of Law or any securities exchange or trading market, Seller shall promptly notify Purchaser in advance in writing and shall disclose only that portion of such information which Seller is advised by its counsel (including in-house counsel) in writing is legally required to be disclosed. Seller shall cooperate with Purchaser, at Purchaser's sole expense, to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such Confidential Information. Notwithstanding the foregoing, following the Closing, Seller shall have the right to inform any current customer or supplier of the Catawba Mill Business that Seller is no longer in control of the Catawba Mill Business in response to an inquiry from such customer or supplier regarding the Catawba Mill Business, or otherwise in connection with a situation or circumstance with such customer or supplier that requires clarification regarding the ownership of the Catawba Mill Business.

11.6 Waiver

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

11.7 Amendment

This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party, except that Section 11.7, 11.8, 11.9, 11.13, 11.15 and 11.16 shall not be amended in a manner adverse to the Lender Related Parties without the prior written consent of the Lenders.

11.8 No Third Party Beneficiary

Except as set forth in Section 11.15, the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights, and this Agreement does not confer any such rights, upon any other Person other than any Person entitled to indemnity pursuant to this Agreement; provided, however, that Sections 11.7, 11.8, 11.9, 11.13, 11.15 and 11.16 shall inure to the benefit of the Lender Related Parties, in each case, all of whom are intended to be third-party beneficiaries thereof. Without limiting the foregoing, nothing in this Agreement is intended to or shall confer upon any employee or former employee of Seller any legal or equitable right, benefit or remedy of any nature whatsoever, including any right of employment for any specified period.

11.9 No Assignment; Binding Effect

Neither this Agreement nor any right, interest or obligation hereunder may be assigned or delegated by any Party without the prior written consent of the other Parties and any attempt to do so will be void; provided, however, that a Buyer Party may, without the consent of Seller, (a) assign any of its rights and delegate any of its obligations to any direct or indirect Affiliate of such Buyer Party, provided that such assignment shall not release such Buyer Party from its obligations hereunder, (b) collaterally assign its rights, but not its obligations, under this Agreement to any of its financing sources or to any agent or collateral trustee for such financing sources or (c) assign any of the environmental liabilities or the right to purchase part of the Purchased Assets (other than the Sawmill Property), including those that consist of wastewater treatment assets, to a third party willing to assume such liabilities or assets, provided that such assignment shall not release such Buyer Party from its obligations hereunder. Subject to the first sentence of this Section 11.9, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

11.10 Headings; Schedules

11.10.1 Section titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

11.10.2 The specification of any dollar amount in the representations or warranties contained in this Agreement or the inclusion of any specific item in any Schedules hereto is not intended to imply that such amounts, or higher amounts, or the items so included or other items, are material, and Purchaser shall not use or assert the fact of the setting of such amounts or the inclusion of any such item in any dispute or controversy between or among the Parties as to whether any obligation, item or matter not described herein or included in a Schedule is material for the purposes of this Agreement.

11.10.3 A disclosure in any particular Section of the Schedules or otherwise in this Agreement will be deemed adequate to disclose another exception to a representation or warranty made herein if the disclosure describes the exception so that any exception to any such other representation or warranty is reasonably apparent on its face. No reference in any Schedule shall be construed as an admission or indication by any Party to any third party of any matter whatsoever. No disclosure relating to any possible breach or violation of any agreement, Law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. The sections of the Schedules are qualified in their entirety by reference to the provisions of this Agreement, and are not intended to constitute, and shall not be construed as constituting, representations, warranties, covenants or obligations of the Parties, except as and to the extent provided in this Agreement.

11.11 Invalid Provisions

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Upon a determination that any term or provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

11.12 Governing Law

This Agreement and any related dispute shall be governed by and construed in accordance with the domestic laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

11.13 Submission to Jurisdiction; Consent to Service of Process; WAIVER OF JURY TRIAL

11.13.1 Each of Seller and Purchaser hereby irrevocably and unconditionally (a) consents and submits, for itself and its property, in any Action arising out of or related to this Agreement, the other Operative Agreements (other than the Sawmill Lease, Seller TSA and the SC Lease) or any of the transactions contemplated hereby or thereby, to the exclusive jurisdiction and venue of the United States District Court for the Southern District of New York and the jurisdiction and venue of any court of the State of New York located in the Borough of Manhattan, State of New York and waive any and all objections to jurisdiction and venue that they may have under the laws of the State of New York or the United States.

11.13.2 As a method of service, each Party hereby irrevocably and unconditionally consents to the service of any and all process in any Action brought in any court in or for the State of New York by the deliveries of copies of such process to such Party at its address set forth in Section 11.1 hereof or by certified mail direct to such address.

11.13.3 EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY OTHER OPERATIVE AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.13.3.

11.14 Construction

This Agreement is the product of negotiation between sophisticated parties and individuals, all of whom were represented by counsel, and each of whom had an opportunity to participate in and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly in favor of or against any Party but rather shall be given a fair and reasonable construction without regard to the rule of *contra proferentem*.

11.15 Non-Recourse

This Agreement may only be enforced against, and any Action that may be based upon, in respect of, arise under, out of or by reason of, be connected with, or relate in any manner to this Agreement, or the negotiation, execution, performance or breach (whether willful, intentional, unintentional or otherwise), of this Agreement, including, without limitation, any representation or warranty made in connection with this Agreement or any of the other Operative Agreements (each of such above-described legal, equitable or other theories or sources of liability, a "**Recourse Theory**") may only be made or asserted against (and are expressly limited to) the Persons that are expressly identified as the Parties in the preamble to and signature pages of this Agreement or such Operative Agreements and solely in their capacities as such. No Person who is not a Party, including (i) any past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to (all above-described Persons in this subclause (i), collectively "**Affiliated Persons**") a Party or its Affiliates and (ii) any Affiliated Persons of such Affiliated Persons, and the Parties (the Persons in subclauses (i) and (ii), together with their respective successors, assigns, heirs, executors or administrators, collectively, but specifically excluding the Parties, "**Non-Parties**") shall have any liability whatsoever in respect of, based upon or arising out of any Recourse Theory. Without limiting the rights of any Party against the other Parties as set forth herein, in no event shall any Party, any of its Affiliates or any Person claiming by, through or on behalf of any of them institute any Action under any Recourse Theory against any Non-Party. Notwithstanding anything to the contrary contained herein, Seller agrees, on behalf of itself, its equityholders and Affiliates (the "**Seller Parties**"), that none of the Lender Related Parties shall have any liability or obligation to the Seller Parties relating to this Agreement or any of the transactions contemplated herein (including the Debt Financing). This Section 11.15 is intended to benefit and may be enforced by the Lender Related Parties and shall be binding on all successors and permitted assigns of the Seller Parties.

11.16 Specific Performance

11.16.1 Seller acknowledges that a breach or threatened breach of Sections 5.15 and 11.5 would give rise to irreparable harm to Purchaser, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Seller of any such obligations, Purchaser shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

11.16.2 Purchaser acknowledges that a breach or threatened breach of Section 11.5 would give rise to irreparable harm to Seller, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by Purchaser of any such obligations, Seller shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

11.17 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile, .pdf or other electronic means shall be effective as delivery of a manually executed counterpart to the Agreement.

11.18 Time of Essence

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each party as of the date first above written.

RESOLUTE FP US INC.

by _____
Name:
Title:

NEW-INDY CATAWBA LLC

by _____
Name:
Title:

NEW-INDY CONTAINERBOARD LLC

by _____
Name:
Title:

[Signature Page to Asset Purchase Agreement]

Exhibit D

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2019003143

MORTGAGE
RECORDING FEES $51.00

PRESENTED & RECORDED:
01-25-2019 10:44:50 AM
BK: RB 17377
PG: 336 - 380
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
BY: HEATHER CHAPMAN CLERK

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

From

NEW-INDY CATAWBA LLC

To

JPMORGAN CHASE BANK, N.A.

Dated: January 24, 2019
Premises: 5300 Cureton Ferry Road
Catawba, SC 29704
York County

(This Document Serves as a Fixture Filing under South Carolina Uniform Commercial Cod (S.C. Code § 36-9-502)).

Mortgagor's Organizational Identification Number: N/A

[PREPARED BY:
PARKER POE
200 MEETING STREET, SUITE 301
CHARLESTON, SC 29401]

AFTER RECORDING, RETURN TO:
CRAVATH, SWAINE & MOORE LLP
825 EIGHTH AVENUE
NEW YORK, NY 10019
ATTENTION: JANET L. LEWIS, ESQ.

[[3886523]]

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING dated as of January 24, 2019 (this "Mortgage"), by New-Indy Catawba LLC, a Delaware limited liability company, having an office at One Patriot Place, Foxborough, Massachusetts 02035 (the "Mortgagor"), in favor of JPMORGAN CHASE BANK, N.A., a national banking association, having an office at 383 Madison Avenue, New York, New York 10179 (the "Mortgagee") as Administrative Agent for the Lenders (as such terms are defined below).

WITNESSETH THAT:

Reference is made to the Credit Agreement dated as of December 31, 2018 (as amended, restated, amended and restated, supplemented or modified from time to time), the "Credit Agreement"), among NEW-INDY CONTAINERBOARD HOLD CO LLC, a Delaware limited liability company ("Holdings"), NEW-INDY CONTAINERBOARD LLC, a Delaware limited liability company (the "Holdco Borrower"), NEW-INDY ONTARIO LLC, a Delaware limited liability company (the "Ontario Borrower"), NEW-INDY OXNARD LLC, a Delaware limited liability company (the "Oxnard Borrower"), NEW-INDY HARTFORD CITY LLC, a Delaware limited liability company (the "Hartford City Borrower"), NEW-INDY IVEX LLC, a Delaware limited liability company (the "Ivex Borrower"), CAROLINA CONTAINER LLC, a Delaware limited liability company (the "Carolina Borrower"), NEW-INDY TRIPAQ LLC, a Delaware limited liability company (the "TriPAQ Borrower"), NEW-INDY CATAWBA LLC, a Delaware limited liability company (the "Catawba Borrower", and, together with the Holdco Borrower, the Ontario Borrower, the Oxnard Borrower, the Hartford City Borrower, the Ivex Borrower, the Carolina Borrower and the TriPAQ Borrower, jointly and severally, the "Borrowers"), the Lenders and Issuing Banks from time to time party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent, and (b) the Guarantee and Collateral Agreement dated as of December 31, 2018, (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Guarantee and Collateral Agreement"), among Holdings, the Borrowers, the other Subsidiary Loan Parties party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. Capitalized terms used but not defined herein have the meanings given to them in the Credit Agreement or the Guarantee and Collateral Agreement, as applicable.

Pursuant to the Credit Agreement, (a) the Lenders have agreed to make term loans (the "Term Loans") and revolving loans (the "Revolving Loans") to the Borrowers, (b) the Swingline Lender has agreed to make swingline loans (the "Swingline Loans") to the Borrowers and (c) the Issuing Banks have issued or agreed to issue from time to time Letters of Credit for the account of the Borrowers or any other Subsidiary, in each case, pursuant to, upon the terms of and subject to the conditions specified in the Credit Agreement. Amounts paid in respect of Term Loans may not be reborrowed. Subject to the terms of the Credit Agreement, the Borrowers may borrow, prepay and reborrow Revolving Loans and Swingline Loans.

The Mortgagor is a Borrower and will derive substantial benefit from the making of the Loans by the Lenders and the issuance of the Letters of Credit by the Issuing Banks. In order to induce the Lenders to make Loans and the Issuing Banks to issue Letters of Credit, the Mortgagor has agreed to guarantee, among other things, the due and punctual payment and performance of the Secured Obligations (as hereinafter defined) and the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit are conditioned upon, among other things, the execution and delivery by the Mortgagor of this Mortgage to secure the Secured Obligations.

As used in this Mortgage:

"Cash Management Services" means the treasury management services (including controlled disbursements, zero balance arrangements, cash sweeps, automated clearinghouse transactions, return items, overdrafts, temporary advances, interest and fees and interstate depository network services) provided to Holdings, any Borrower or any Subsidiary.

"Hedging Agreement" means any agreement with respect to any swap, forward, future or derivative transaction, or any option or similar agreement, involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or any similar transaction or combination of the foregoing transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Holdings, any Borrower or any Subsidiary shall be a Hedging Agreement.

"Loan Document Obligations" means (a) the due and punctual payment by the Borrowers of (i) the principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, (ii) each payment required to be made by the Borrowers under the Credit Agreement in respect of any Letter of Credit, when and as due, including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide cash collateral and (iii) all other monetary obligations of the Borrowers under the Credit Agreement and each of the other Loan Documents, including obligations to pay fees, expense reimbursement obligations (including with respect to reasonable attorneys' fees) and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and (b) the due and punctual payment and performance of all other obligations of the Borrowers and each other Loan Party under or pursuant to the Credit Agreement and each of the other Loan Documents (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding).

"Secured Cash Management Obligations" means the due and punctual payment and performance of any and all obligations of Holdings, each Borrower and each other Subsidiary (whether absolute or contingent and however and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor)) arising in respect of Cash Management Services that (a) are owed to the Administrative Agent, an Arranger or an Affiliate of any of the foregoing, or to any Person that, at the time such obligations were incurred or on the Effective Date, was the Administrative Agent, an Arranger or an Affiliate of any of the foregoing, (b) are owed on the Effective Date to a Person that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) are owed to a Person that is a Lender or an Affiliate of a Lender at the time such obligations are incurred.

"Secured Hedging Obligations" means the due and punctual payment and performance of any and all obligations of Holdings, each Borrower and each other Subsidiary arising under each Hedging Agreement that (a) is with a counterparty that is the Administrative Agent, the Arranger or an Affiliate of any of the foregoing, or any Person that, at the time such Hedging Agreement was entered into or on the Effective Date, was the Administrative Agent, the Arranger or an Affiliate of any of the foregoing, (b) is in effect on the Effective Date with a counterparty that is a Lender or an Affiliate of a Lender as of the Effective Date or (c) is entered into after the Effective Date with a counterparty that is a Lender or an Affiliate of a Lender at the time such Hedging Agreement is entered into. Notwithstanding the foregoing, in the case of any Excluded Swap Guarantor, "Secured Hedging Obligations" shall not include Exchanged Swap Obligations of such Excluded Swap Guarantor.

"Secured Obligations" means, collectively, (a) all the Loan Document Obligations, (b) all the Secured Cash Management Obligations and (c) all the Secured Hedging Obligations.

"Secured Parties" means, collectively, (a) the Lenders, (b) the Administrative Agent, (c) each Arranger, (d) each Issuing Bank, (e) each provider of Cash Management Services the obligations under which constitute Secured Cash Management Obligations, (f) each counterparty to any Hedging Agreement the obligations under which constitute Secured Hedging Obligations, (g) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document and (h) the successors and assigns of each of the foregoing.

Pursuant to the requirements of the Credit Agreement, the Mortgagor is granting this Mortgage to create a lien on and a security interest in the Mortgaged Property (as hereinafter defined) to secure the performance and payment in full of the Secured Obligations. The Credit Agreement also requires the granting by other Loan Parties of mortgages, deeds of trust and/or deeds to secure debt (the "Other Mortgages") that create liens on and security interests in certain real and personal property other than the Mortgaged Property to secure the performance and payment of the Secured Obligations.

Granting Clauses

NOW, THEREFORE, IN CONSIDERATION OF the foregoing and in order to secure the payment and performance in full of the Secured Obligations, the Mortgagor hereby grants,

conveys, mortgages, assigns and pledged to the Mortgagee, its successors and assigns, (for the ratable benefit of the Secured Parties), a mortgage lien on and a security interest in all of the Mortgagor's right, title and interest in and to the following described property (the "Mortgaged Property") whether now owned or held or hereafter acquired:

(a) the land more particularly described on Exhibit A hereto (the "Land"), together with all rights appurtenant thereto, including the easements over certain other adjoining land granted by any easement agreements, covenant or restrictive agreements and all air rights, mineral rights, water rights, timber rights, oil and gas rights and development rights, if any, relating thereto, and also together with all of the other easements, rights, privileges, interests, hereditaments and appurtenances thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in the streets and ways adjacent thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired (the "Premises");

(b) all buildings, improvements, structures, paving, parking areas, walkways and landscaping now or hereafter erected or located upon the Land, and all fixtures of every kind and type affixed to the Premises or attached to or forming part of any structures, buildings or improvements and replacements thereof now or hereafter erected or located upon the Land (the "Improvements");

(c) all apparatus, movable appliances, building materials, equipment, fittings, furnishings, furniture, machinery and other articles of tangible personal property of every kind and nature, and replacements thereof, now or at any time hereafter placed upon or used in any way in connection with the use, enjoyment, occupancy or operation of the Improvements or the Premises, including all of the Mortgagor's books and records relating thereto and including all pumps, tanks, goods, machinery, tools, equipment, lifts (including fire sprinklers and alarm systems, fire prevention or control systems, cleaning rigs, air conditioning, heating, boilers, refrigerating, electronic monitoring, water, loading, unloading, lighting, power, sanitation, waste removal, entertainment, communications, computers, recreational, window or structural, maintenance, truck or car repair and all other equipment of every kind), restaurant, bar and all other indoor or outdoor furniture (including tables, chairs, booths, serving stands, planters, desks, sofas, racks, shelves, lockers and cabinets), bar equipment, glasses, cutlery, uniforms, linens, memorabilia and other decorative items, furnishings, appliances, supplies, inventory, rugs, carpets and other floor coverings, draperies, drapery rods and brackets, awnings, venetian blinds, partitions, chandeliers and other lighting fixtures, freezers, refrigerators, walk-in coolers, signs (indoor and outdoor), computer systems, cash registers and inventory control systems, and all other apparatus, equipment, furniture, furnishings, and articles used in connection with the use or operation of the Improvements or the Premises, it being understood that the enumeration of any specific articles of property shall in no way result in or be held to exclude any items of property not specifically mentioned (the property referred to in this clause (c), the "Personal Property");

(d) all general intangibles owned by the Mortgagor and relating to design, development, operation, management and use of the Premises or the Improvements, all certificates of occupancy, zoning variances, building, use or other permits, approvals, authorizations and consents obtained from and all materials prepared for filing or filed with any Governmental Authority in connection with the development, use, operation or management of the Premises and the Improvements, all construction, service, engineering, consulting, leasing, architectural and other similar contracts concerning the design, construction, management, operation, occupancy and/or use of the Premises and the Improvements, all architectural drawings, plans, specifications, soil tests, feasibility studies, appraisals, environmental studies, engineering reports and similar materials relating to any portion of or all of the Premises and the Improvements, and all payment and performance bonds or warranties or guarantees relating to the Premises or the Improvements, to the extent assignable (the "Permits, Plans and Warranties");

(e) all now or hereafter existing leases or licenses (under which the Mortgagor is landlord or licensor) and subleases (under which the Mortgagor is sublandlord), concession, management, mineral or other agreements of a similar kind that permit the use or occupancy of the Premises or the Improvements for any purpose in return for any payment, or the extraction or taking of any gas, oil, water, timber or other minerals from the Premises in return for payment of any fee, rent or royalty (collectively, "Leases"), and all agreements or contracts for the sale or other disposition of all or any part of the Premises or the Improvements, now or hereafter entered into by the Mortgagor, together with all charges, fees, income, issues, profits, receipts, rents, revenues or royalties payable thereunder ("Rents");

(f) all real estate tax refunds and all proceeds of the conversion, voluntary or involuntary, of any of the Mortgaged Property into cash or liquidated claims ("Proceeds"), including Proceeds of insurance maintained by the Mortgagor and condemnation awards, any awards that may become due by reason of the taking by eminent domain or any transfer in lieu thereof of the whole or any part of the Premises or the Improvements or any rights appurtenant thereto, and any awards for change of grade of streets, together with any and all moneys now or hereafter on deposit for the payment of real estate taxes, assessments or common area charges levied against the Mortgaged Property, unearned premiums on policies of fire and other insurance maintained by the Mortgagor covering any interest in the Mortgaged Property or required by the Credit Agreement; and

(g) all extensions, improvements, betterments, renewals, substitutes and replacements of and all additions and appurtenances to, the Land, the Premises, the Improvements, the Personal Property, the Permits, Plans and Warranties and the Leases, hereinafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor on the Land, the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without

any further mortgage, conveyance, assignment or other act by the Mortgagor, all of which shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by the Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns for the ratable benefit of the Secured Parties, forever, subject only to Permitted Encumbrances (as defined in the Credit Agreement), the Liens permitted under Section 6.02 of the Credit Agreement and to satisfaction and release as provided in Section 3.04 and subject to the terms and conditions of this Mortgage.

This Mortgage also secures all present and future disbursements made by Mortgagee under the Credit Agreement, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs and reasonable attorneys' fees, and all other sums from time to time owing to Mortgagee by the Borrowers under the Loan Documents. The amount of the present indebtedness secured hereby is $750,000,000.00 and the maximum principal amount which may be secured hereby at any one time is $1,500,000,000.00. The Secured Obligations hereby secured, if not earlier accelerated, have a maturity date of December 31, 2023.

ARTICLE I

Representations, Warranties and Covenants of the Mortgagor

The Mortgagor agrees, covenants, represents and/or warrants as follows:

SECTION 1.01. *Title, Mortgage Lien.* (a) The Mortgagor has good and marketable fee simple title to the Mortgaged Property, subject only to Permitted Encumbrances.

(b) The execution and delivery of this Mortgage is within the Mortgagor's corporate or other organizational powers and has been duly authorized by all necessary corporate or other organizational action and, if required, action by the holders of the Mortgagor's Equity Interests. This Mortgage has been duly executed and delivered by the Mortgagor and constitutes a legal, valid and binding obligation of the Mortgagor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law and principles of good faith and fair dealing.

(c) The execution, delivery and recordation of this Mortgage (i) do not require any consent or approval of, registration or filing with or any other action by any Governmental Authority, except (A) such as have been obtained or made and are in full force and effect, and (B) filings necessary to perfect or otherwise give constructive notice to third parties of the lien of this Mortgage, (ii) will not violate any Requirement of Law applicable to the Mortgagor, except to the extent any such violations described in clause (b) of the definition of "Requirement of Law", individually or in the aggregate, could not reasonably be expected to result in a Material

Adverse Effect, (iii) will not violate or result (alone or with notice or lapse of time, or both) in a default under any indenture, agreement or other agreement or instrument binding upon and material to the Mortgagor or any of its assets, or give rise to a right thereunder to require any payment, repurchase or redemption to be made by the Mortgagor, or give rise to a right of, or result in, any termination, cancellation, acceleration or right of renegotiation of any obligation thereunder, and (iv) except for the lien of this Mortgage, will not result in the creation or imposition of any Lien on any asset of the Mortgagor.

(d) The Mortgagor will forever warrant and defend its title to the Mortgaged Property, the rights of the Mortgagee therein under this Mortgage and the validity and priority of the lien of this Mortgage thereon against the claims of all Persons, except those having rights under Permitted Encumbrances to the extent of those rights.

SECTION 1.02. *Credit Agreement.* This Mortgage is given pursuant to the Credit Agreement. The Mortgagor expressly covenants and agrees to pay when due, and to timely perform, and to cause the other Loan Parties to pay when due, and to timely perform, the Secured Obligations in accordance with the terms of the Loan Documents. In the event of any conflict between the terms and provisions contained in this Mortgage and the terms and provisions contained in the Credit Agreement, the terms and provisions contained in the Credit Agreement shall govern and control.

SECTION 1.03. *Payment of Taxes, and Other Obligations.* (a) The Mortgagor will pay and discharge from time to time all Taxes and other obligations with respect to the Mortgaged Property or any part thereof or upon the Rents from the Mortgaged Property or arising in respect of the occupancy, use or possession thereof in accordance with, and to the extent required by, Section 5.05 of the Credit Agreement.

(b) In the event of the passage of any state, Federal, municipal or other governmental law, order, rule or regulation subsequent to the date hereof (i) deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or in any manner changing or modifying the laws now in force governing the taxation of this Mortgage or debts secured by mortgages or deeds of trust (other than laws governing income, franchise and similar taxes generally) or the manner of collecting taxes thereon or (ii) imposing a tax to be paid by the Mortgagee, either directly or indirectly, on this Mortgage or any of the Loan Documents, or requiring an amount of taxes to be withheld or deducted therefrom, the Mortgagor will promptly (A) notify the Mortgagee of such event, (b) enter into such further instruments as the Mortgagee may determine are reasonably necessary or desirable to obligate the Mortgagor to make any additional payments necessary to put the Lenders and the other Secured Parties in the same financial position they would have been if such law, order, rule or regulation had not been passed and (C) make such additional payments to the Mortgagee for the benefit of the Lenders and the other Secured Parties to the extent not paid directly by the Mortgagor.

SECTION 1.04. *Maintenance of Mortgaged Property.* The Mortgagor will maintain the Improvements and the Personal Property in the manner required by Section 5.06 of the Credit Agreement.

SECTION 1.05. *Insurance.* The Mortgagor will keep or cause to be kept the Improvements and Personal Property insured against such risks and shall purchase or cause to be purchased such additional insurance as may be required from time to time pursuant to Section 5.07 of the Credit Agreement. Federal Emergency Management Agency Standard Flood Hazard Determination Forms will be purchased by or on behalf of the Mortgagor for each Mortgaged Property on which Improvements are located. If any portion of Improvements constituting part of the Mortgaged Property is located in an area identified as a special flood hazard area by Federal Emergency Management Agency or other applicable agency, the Mortgagor shall purchase or cause to be purchased flood insurance as set forth in the last two sentences of Section 5.07 of the Credit Agreement.

SECTION 1.06. *Casualty Condemnation/Eminent Domain.* The Mortgagor shall give the Mortgagee prompt written notice of any casualty or other damage to the Mortgaged Property or any proceeding for the taking of the Mortgaged Property or any portion thereof or interest therein under power of eminent domain or by condemnation or any similar proceeding in accordance with, and to the extent required by, Section 5.08 of the Credit Agreement. Any Net Proceeds received by or on behalf of the Mortgagor in respect of any such casualty, damage or taking shall be applied in accordance with Section 2.11 of the Credit Agreement.

SECTION 1.07. *Assignment of Leases and Rents.* (a) The Mortgagor hereby irrevocably and absolutely grants, transfers and assigns to the Mortgagee, its successors and assigns, for the benefit of the Secured Parties, all of its right title and interest in all Leases, together with any and all extensions and renewals thereof for purposes of securing and discharging the performance by the Mortgagor of the Secured Obligations. The Mortgagor has not assigned or executed any assignment of, and will not assign or execute any assignment of, any Leases or the Rents payable thereunder to anyone other than the Mortgagee.

(b) Except to the extent permitted by the Credit Agreement, all Leases shall be subordinate to the lien of this Mortgage and the Mortgagor will not enter into, modify or amend any Lease if such Lease, as entered into, modified or amended, will not be subordinate to the lien of this Mortgage.

(c) Subject to Section 1.07(d), the Mortgagor has assigned and transferred to the Mortgagee, its successors and assigns, for the benefit of the Secured Parties, all of the Mortgagor's right, title and interest in, to and under the Rents now or hereafter arising from each Lease heretofore or hereafter made or agreed to by the Mortgagor, it being intended that this assignment and transfer establish, subject to Section 1.07(d), an absolute assignment and transfer of all Rents and all Leases to the Mortgagee and not merely to grant a security interest therein. Subject to Section 1.07(d), the Mortgagee may in the Mortgagor's name and stead (with or without first taking possession of any of the Mortgaged Property personally or by receiver as provided herein) operate the Mortgaged Property and rent, lease or let all or any portion of any of the Mortgaged Property to any party or parties at such rental and upon such terms as the Mortgagee shall, in its sole discretion, determine, and may collect and have the benefit of all of

said Rents arising from or accruing at any time thereafter or that may thereafter become due under any Lease.

(d) So long as an Event of Default shall not have occurred and be continuing, the Mortgagee will not exercise any of its rights under Section 1.07(c), and the Mortgagor shall receive and collect the Rents accruing under any Lease; but after the occurrence and during the continuance of any Event of Default, the Mortgagee may, at its option, receive and collect all Rents and enter upon the Premises and the Improvements through its officers, agents, employees or attorneys for such purpose and for the operation and maintenance thereof. The Mortgagor hereby irrevocably authorizes and directs each tenant, if any, and each successor, if any, to the interest of any tenant under any Lease, respectively, to rely upon any notice of a claimed Event of Default sent by the Mortgagee to any such tenant or any of such tenant's successors in interest, and thereafter to pay Rents to the Mortgagee without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from the Mortgagor, who shall have no right or claim against any such tenant or successor in interest for any such Rents so paid to the Mortgagee. Each tenant or any of such tenant's successors in interest from whom the Mortgagee or any officer, agent, attorney or employee of the Mortgagee shall have collected any Rents, shall be authorized to pay Rents to the Mortgagor only after such tenant or any of their successors in interest shall have received written notice from the Mortgagee that the Event of Default is no longer continuing, unless and until a further notice of an Event of Default is given by the Mortgagee to such tenant or any of its successors in interest.

(e) The Mortgagee will not become a mortgagee in possession so long as it does not enter or take actual possession of the Mortgaged Property. In addition, the Mortgagee shall not be responsible or liable for performing any of the obligations of the landlord under any Lease, for any waste by any tenant or others, for any dangerous or defective conditions of any of the Mortgaged Property, for negligence in the management, upkeep, repair or control of any of the Mortgaged Property or any other act or omission by any other Person.

(f) The Mortgagor shall furnish to the Mortgagee, within 30 days after a written request by the Mortgagee to do so, but in no event more than once per year, a written statement containing the names of all tenants, subtenants and concessionaires of the Premises or the Improvements, the terms of any Lease, the space occupied and the rentals and/or other amounts payable thereunder.

SECTION 1.08. *Restrictions on Transfers and Encumbrances.* The Mortgagor shall not directly or indirectly sell, convey, alienate, assign, lease, sublease, license, mortgage, pledge, encumber or otherwise transfer, create, consent to or suffer the creation of any lien, charge or other form of encumbrance upon any interest in or any part of the Mortgaged Property, or be divested of its title to the Mortgaged Property or any interest therein in any manner or way, whether voluntarily or involuntarily (other than resulting from a condemnation), or engage in any common, cooperative, joint, time-sharing or other congregate ownership of all or part thereof, except in each case in accordance with and to the extent not prohibited by the Credit Agreement;

provided that the Mortgagor may, in the ordinary course of business and in accordance with reasonable commercial standards, enter into easement or covenant agreements that relate to and/or benefit the operation of the Mortgaged Property and that do not materially and adversely affect the value, use or operation of the Mortgaged Property. If any of the foregoing transfers or encumbrances results in a Prepayment Event, any Net Proceeds received by or on behalf of the Mortgagor in respect thereof shall be applied in accordance with, and to the extent required by, Section 2.11 of the Credit Agreement.

SECTION 1.09. *Security Agreement.* This Mortgage is both a mortgage of real property and a grant of a security interest in personal property, and shall constitute and serve as a "Security Agreement" within the meaning of the Uniform Commercial Code as adopted in the state wherein the Premises are located ("UCC"). The Mortgagor has hereby granted unto the Mortgagee, its successors and assigns, a security interest in and to all the Mortgaged Property described in this Mortgage that is not real property and the Mortgagor has filed or will file UCC financing statements, and will file continuation statements prior to the lapse thereof, at the appropriate offices in the jurisdiction of formation of the Mortgagor to perfect the security interest granted by this Mortgage in all the Mortgaged Property that is not real property. The Mortgagor hereby authorizes Mortgagee to execute any document and to file the same in the appropriate offices (to the extent it may lawfully do so), and to perform each and every act and thing reasonably requisite and necessary to be done to perfect the security interest contemplated by the preceding sentence. The Mortgagee shall have all rights with respect to the part of the Mortgaged Property that is the subject of a security interest afforded by the UCC in addition to, but not in limitation of, the other rights afforded the Mortgagee hereunder and under the Guarantee and Collateral Agreement. In the event of any conflict between the terms and provisions of this Section 1.09 and the terms and provisions contained in the Guarantee and Collateral Agreement, the terms and provisions in the Guarantee and Collateral Agreement shall govern and control.

SECTION 1.10. *Filing and Recording.* The Mortgagor will cause this Mortgage, the UCC financing statements referred to in Section 1.09, any other security instrument creating a security interest in or evidencing the lien hereof upon the Mortgaged Property and each UCC continuation statement and instrument of further assurance to be filed, registered or recorded and, if necessary, refiled, rerecorded and reregistered, in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to perfect the lien hereof upon, and the security interest of the Mortgagee in, the Mortgaged Property until this Mortgage is terminated and released in full in accordance with Section 3.04. The Mortgagor will pay all filing, registration and recording fees, all Federal, state, county and municipal recording, documentary or intangible taxes and other taxes, duties, imposts, assessments and charges, and all reasonable expenses incidental to or arising out of or in connection with the execution, delivery and recording of this Mortgage, UCC continuation statements, any mortgage supplemental hereto, any security instrument with respect to the Personal Property, Permits, Plans and Warranties and Proceeds or any instrument of further assurance.

SECTION 1.11. *Further Assurances.* Upon written demand by the Mortgagee, the Mortgagor will, at the cost of the Mortgagor and without expense to the Mortgagee, do, execute, acknowledge and deliver all such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require for the better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage, and on written demand, the Mortgagor will also execute and deliver, and hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to execute and file to the extent it may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments reasonably requested by the Mortgagee to evidence more effectively the lien hereof upon the Personal Property and to perform each and every act and thing requisite and necessary to be done to accomplish the same.

SECTION 1.12. *Additions to the Mortgaged Property.* All right, title and interest of the Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property hereafter acquired by or released to the Mortgagor or constructed, assembled or placed by the Mortgagor upon the Premises or the Improvements, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case without any further grant of a mortgage lien, conveyance, assignment or other act by the Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely and with the same effect as though now owned by the Mortgagor and specifically described in the grant of the Mortgaged Property above, but at any and all times the Mortgagor will execute and deliver to the Mortgagee any and all such further assurances, deeds of trust, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien and security interest of this Mortgage.

SECTION 1.13. *No Claims Against the Mortgagee.* Nothing contained in this Mortgage shall constitute any consent or request by the Mortgagee, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof, nor as giving the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property in such fashion as would permit the making of any claim against the Mortgagee in respect thereof.

SECTION 1.14. *Fixture Filing.* (a) Certain portions of the Mortgaged Property are or will become "fixtures" (as that term is defined in the UCC) on the Land, and this Mortgage, upon being filed for record in the real estate records of the county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the

applicable provisions of said UCC upon such portions of the Mortgaged Property that are or become fixtures.

(b) The real property to which the fixtures relate is described in Exhibit A attached hereto. The record owner of the real property described in Exhibit A attached hereto is the Mortgagor. The name, type of organization and jurisdiction of organization of the debtor for purposes of this financing statement are the name, type of organization and jurisdiction of organization of the Mortgagor set forth in the first paragraph of this Mortgage, and the name of the secured party for purposes of this financing statement is the name of the Mortgagee set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagor/debtor is the address of the Mortgagor set forth in the first paragraph of this Mortgage. The mailing address of the Mortgagee/secured party from which information concerning the security interest hereunder may be obtained is the address of the Mortgagee set forth in the first paragraph of this Mortgage. The Mortgagor shall inform the Mortgagee (and take any steps required by Sections 1.10 and 1.11) if any of the Mortgagor's information set forth in this subparagraph (b) shall change.

ARTICLE II

Defaults and Remedies

SECTION 2.01. *Events of Default.* Any Event of Default under the Credit Agreement (as such term is defined therein) shall constitute an Event of Default under this Mortgage.

SECTION 2.02. *Demand for Payment.* If an Event of Default shall occur and be continuing, then, upon written demand of the Mortgagee, the Mortgagor will pay to the Mortgagee all amounts due hereunder and under the Credit Agreement and the Guarantee and Collateral Agreement and such further amount as shall be sufficient to cover the reasonable costs and expenses of collection, including reasonable attorneys' fees, disbursements and expenses incurred by the Mortgagee, and the Mortgagee shall be entitled and empowered to institute an action or proceedings at law or in equity for the collection of the sums so due and unpaid, to prosecute any such action or proceedings to judgment or final decree, to enforce any such judgment or final decree against the Mortgagor and to collect, in any manner provided by law, all moneys adjudged or decreed to be payable.

SECTION 2.03. *Rights to Take Possession, Operate and Apply Revenues.* (a) If an Event of Default shall occur and be continuing, the Mortgagor shall, upon written demand of the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Mortgaged Property and, if and to the extent not prohibited by applicable law, the Mortgagee itself, or by such officers or agents as it may appoint, may then enter and take possession of all the Mortgaged Property without the appointment of a receiver or an application therefor, exclude the Mortgagor and its agents and employees wholly therefrom, and have access to the books, papers and accounts of the Mortgagor.

(b) If the Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such written demand by the Mortgagee, the Mortgagee may, to the extent not prohibited by applicable law, obtain a judgment or decree conferring upon the Mortgagee the right to immediate possession or requiring the Mortgagor to deliver immediate possession of the Mortgaged Property to the Mortgagee, to the entry of which judgment or decree the Mortgagor hereby specifically consents. The Mortgagor will pay to the Mortgagee, upon written demand, all reasonable expenses of obtaining such judgment or decree, including reasonable compensation to the Mortgagee's attorneys and agents, with interest thereon at the rate per annum applicable to overdue amounts under the Credit Agreement as provided in Section 2.13(c) of the Credit Agreement (the "Interest Rate"); and all such expenses and compensation shall, until paid, be secured by this Mortgage.

(c) Upon every such entry or taking of possession, the Mortgagee may, to the extent not prohibited by applicable law, hold, store, use, operate, manage and control the Mortgaged Property, conduct the business thereof and, from time to time, (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon, (ii) purchase or otherwise acquire additional fixtures, personalty and other property, (iii) insure or keep the Mortgaged Property insured, (iv) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor to the same extent as the Mortgagor could in its own name or otherwise with respect to the same, or (v) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Mortgagee, all as may from time to time be directed or determined by the Mortgagee in its reasonable discretion to be in its best interest, and the Mortgagor hereby appoints the Mortgagee as its true and lawful attorney-in-fact and agent, for the Mortgagor and in its name, place and stead, in any and all capacities, to perform any of the foregoing acts. The Mortgagee may collect and receive all the Rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including reasonable compensation for the services of all persons employed for such purposes), (B) the costs of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, (C) the costs of insurance, (D) such taxes, assessments and other similar charges as the Mortgagee may at its option pay, (E) other proper charges upon the Mortgaged Property or any part thereof and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, the Mortgagee shall apply the remainder of the moneys and proceeds so received in accordance with Section 2.08.

(d) Whenever, before any sale of the Mortgaged Property under Section 2.06, all Secured Obligations that are then due shall have been paid and all Events of Default fully cured, the Mortgagee will surrender possession of the Mortgaged Property back to the Mortgagor, its successors or assigns. The same right of taking possession shall, however, arise again if any subsequent Event of Default shall occur and be continuing.

SECTION 2.04. *Right to Cure the Mortgagor's Failure to Perform.* Should the Mortgagor fail in the payment, performance or observance of any term, covenant or condition

required by this Mortgage or the Credit Agreement (with respect to the Mortgaged Property), the Mortgagee may pay, perform or observe the same, and all payments made or costs or expenses incurred by the Mortgagee in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the Interest Rate. The Mortgagee shall be the judge using reasonable discretion of the necessity for any such actions and of the amounts to be paid. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or the Improvements or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without having any obligation to so perform or observe and without thereby becoming liable to the Mortgagor, to any Person in possession holding under the Mortgagor or to any other Person.

SECTION 2.05. *Right to a Receiver.* If an Event of Default shall occur and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of right to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the Rents. The receiver shall have all of the rights and powers permitted under the laws of the State wherein the Mortgaged Property is located. The Mortgagor shall pay to the Mortgagee upon written demand all reasonable expenses, including receiver's fees, reasonable attorney's fees and disbursements, costs and agent's compensation incurred pursuant to the provisions of this Section 2.05; and all such expenses shall be secured by this Mortgage and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the Interest Rate.

SECTION 2.06. *Foreclosure and Sale.* (a) If an Event of Default shall occur and be continuing, the Mortgagee may elect to sell the Mortgaged Property or any part thereof by exercise of the power of foreclosure or of sale granted to the Mortgagee by applicable law or this Mortgage. In such case, the Mortgagee may commence a civil action to foreclose this Mortgage, or it may proceed to sell the Mortgaged Property or any part thereof to satisfy any Secured Obligation. The Mortgagee, or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property or any part thereof, may sell all or such parts of the Mortgaged Property as may be chosen by the Mortgagee at the time and place of sale fixed by it in a notice of sale, either as a whole or in separate lots, parcels or items as the Mortgagee shall deem expedient, and in such order as it may determine, at public auction to the highest bidder. The Mortgagee or an officer appointed by a judgment of foreclosure to sell the Mortgaged Property may postpone any foreclosure or other sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement or subsequently noticed sale. Without further notice, the Mortgagee or an officer appointed to sell the Mortgaged Property may make such sale at the time fixed by the last postponement, or may, in its discretion, give a new notice of sale. Any person, including the Mortgagor or the Mortgagee or any designee or affiliate thereof, may purchase at such sale.

(b) The Mortgaged Property may be sold subject to unpaid Taxes and Permitted Encumbrances, and, after deducting all costs, fees and expenses of the Mortgagee (including costs of evidence of title in connection with the sale), the Mortgagee or an officer that makes any sale shall apply the proceeds of sale in the manner set forth in Section 2.08.

(c) Any foreclosure or other sale of less than the whole of the Mortgaged Property or any defective or irregular sale made hereunder shall not exhaust the power of foreclosure or of sale provided for herein; and subsequent sales may be made hereunder until the Secured Obligations have been satisfied, or the entirety of the Mortgaged Property has been sold.

(d) If an Event of Default shall occur and be continuing, the Mortgagee may instead of, or in addition to, exercising the rights described in Section 2.06(a) and either with or without entry or taking possession as herein permitted, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to the extent permitted by law, to specifically enforce payment of some or all of the Secured Obligations, or the performance of any term, covenant, condition or agreement of this Mortgage or any other Loan Document or any other right, or (ii) to pursue any other remedy available to the Mortgagee, all as the Mortgagee shall determine most effectual for such purposes.

SECTION 2.07. *Other Remedies.* (a) In case an Event of Default shall occur and be continuing, the Mortgagee may also exercise, to the extent not prohibited by law, any or all of the remedies available to a secured party under the UCC.

(b) In connection with a sale of the Mortgaged Property or any Personal Property and the application of the proceeds of sale as provided in Section 2.08, the Mortgagee shall be entitled to enforce payment of and to receive up to the principal amount of the Secured Obligations, plus all other charges, payments and costs due under this Mortgage, and to recover a deficiency judgment for any portion of the aggregate principal amount of the Secured Obligations remaining unpaid, with interest.

SECTION 2.08. *Application of Sale Proceeds and Rents.* After any foreclosure sale of all or any of the Mortgaged Property, the Mortgagee shall receive and apply the proceeds of the sale together with any Rents that may have been collected and any other sums that then may be held by the Mortgagee under this Mortgage as follows:

FIRST, to the payment of all costs and expenses incurred by the Mortgagee or the Administrative Agent in connection with such collection or sale, foreclosure, or other realization of the Mortgaged Property in connection with this Mortgage, any other Loan Document or any of the Secured Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Mortgagee or the Administrative Agent hereunder or under any other Loan Document on behalf of any of Holdings, any Borrower or any Subsidiary Loan Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Loan Document;

SECOND, to the payment in full of the Secured Obligations (the amounts so applied to be distributed among the Secured Parties pro rata in accordance with the amounts of the Secured Obligations owed to them on the date of any such distribution); and

THIRD, to the Mortgagor, its successors or assigns, or as a court of competent jurisdiction may otherwise direct.

The Mortgagee shall have absolute discretion as to the time of application of any such proceeds, moneys or balances in accordance with this Mortgage. Upon any sale of the Mortgaged Property or any part thereof by the Mortgagee (including pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of the Mortgagee or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Mortgaged Property or such part thereof so sold and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to the Mortgagee or such officer or be answerable in any way for the misapplication thereof.

SECTION 2.09. *The Mortgagor as Tenant Holding Over.* If the Mortgagor remains in possession of any of the Mortgaged Property after any foreclosure sale by the Mortgagee, at the Mortgagee's election the Mortgagor shall be deemed a tenant holding over and shall forthwith surrender possession to the purchaser or purchasers at such sale or be summarily dispossessed or evicted according to provisions of law applicable to tenants holding over.

SECTION 2.10. *Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws.* The Mortgagor waives, to the extent not prohibited by law, (a) the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisement or valuation of any portion of the Mortgaged Property and/or (ii) in any way extending the time for the enforcement or the collection of amounts due under any of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting said debt or any other amounts due the Mortgagee, (b) any right to at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any homestead exemption, stay, statute of limitations, extension or redemption, or sale of the Mortgaged Property as separate tracts, units or estates or as a single parcel in the event of foreclosure or notice of deficiency, and (c) all rights of redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of or each of the Secured Obligations and marshaling in the event of foreclosure of this Mortgage.

SECTION 2.11. *Discontinuance of Proceedings.* In case the Mortgagee shall proceed to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall be discontinued or abandoned for any reason, or shall be determined adversely to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

SECTION 2.12. *Suits To Protect the Mortgaged Property.* The Mortgagee shall have power (a) to institute and maintain suits and proceedings to prevent any impairment of the Mortgaged Property by any acts that may be unlawful or in violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents arising therefrom and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of

or compliance with such enactment, rule or order would impair the security or be prejudicial to the interest of the Mortgagee hereunder.

SECTION 2.13. *Filing Proofs of Claim.* In case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Mortgagor, the Mortgagee shall, to the extent permitted by law, be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such proceedings for the Secured Obligations secured by this Mortgage at the date of the institution of such proceedings and for any interest accrued, late charges and additional interest or other amounts due or that may become due and payable hereunder after such date.

SECTION 2.14. *Possession by the Mortgagee.* Notwithstanding the appointment of any receiver, liquidator or trustee of the Mortgagor, any of its property or the Mortgaged Property, the Mortgagee shall be entitled, to the extent not prohibited by law, to remain in possession and control of all parts of the Mortgaged Property now or hereafter granted under this Mortgage to the Mortgagee in accordance with the terms hereof and applicable law.

SECTION 2.15. *Waiver.* (a) No delay or failure by the Mortgagee to exercise any right, power or remedy accruing upon any breach or Event of Default shall exhaust or impair any such right, power or remedy or be construed to be a waiver of any such breach or Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No consent or waiver by the Mortgagee to or of any breach or Event of Default by the Mortgagor in the performance of the Secured Obligations shall be deemed or construed to be a consent or waiver to or of any other breach or Event of Default in the performance of the same or of any other Secured Obligations by the Mortgagor hereunder. No failure on the part of the Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall constitute a waiver by the Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any future Event of Default by the Mortgagor.

(b) Even if the Mortgagee (i) grants some forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment of any sums secured hereby, (iii) waives or does not exercise some right granted herein or under the Loan Documents, (iv) releases a part of the Mortgaged Property from this Mortgage, (v) agrees to change some of the terms, covenants, conditions or agreements of any of the Loan Documents, (vi) consents to the filing of a map, plat or replat affecting the Premises, (vii) consents to the granting of an easement or other right affecting the Premises or (viii) makes or consents to an agreement subordinating the Mortgagee's lien on the Mortgaged Property hereunder; no such act or omission shall preclude the Mortgagee from exercising any other right, power or privilege herein granted or intended to be granted in the event of any breach or Event of Default then made or of any subsequent default; nor, except as otherwise expressly provided in an instrument executed by the Mortgagee, shall this Mortgage be altered thereby. In the event of the sale or

transfer by operation of law or otherwise of all or part of the Mortgaged Property, the Mortgagee is hereby authorized and empowered to deal with any vendee or transferee with reference to the Mortgaged Property secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

SECTION 2.16. *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS MORTGAGE BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 2.16.

SECTION 2.17. *Remedies Cumulative.* No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, and each and every such right, power and remedy shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

Miscellaneous

SECTION 3.01. *Partial Invalidity.* In the event any one or more of the provisions contained in this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provision of this Mortgage, and this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. *Notices.* All communications and notices hereunder shall be in writing and given in the manner provided in Section 9.01 of the Credit Agreement. All communications and notices hereunder to the Mortgagor shall be given to it in care of the Borrowers in the manner provided in Section 9.01 of the Credit Agreement.

SECTION 3.03. *Successors and Assigns.* All of the grants, covenants, terms, provisions and conditions herein shall run with the Premises and the Improvements and shall apply to, bind

and inure to, the benefit of the permitted successors and assigns of the Mortgagor and the successors and assigns of the Mortgagee.

SECTION 3.04. *Satisfaction and Cancelation.* (a) This Mortgage and the lien created hereby shall (subject to Section 2.04 of the Credit Agreement) terminate when all the Loan Document Obligations (other than contingent amounts not yet due as of the time of payment in full in cash of all other Loan Document Obligations) have been paid in full in cash and the Lenders have no further commitment to lend under the Credit Agreement, the LC Exposure has been reduced to zero (including as a result of obtaining consents of the applicable Issuing Banks as described in Section 9.05 of the Credit Agreement) and the Issuing Banks have no further obligations to issue, amend or extend Letters of Credit under the Credit Agreement.

(b) This Mortgage and the lien created hereby shall also terminate and be released as provided in Section 9.14 of the Credit Agreement.

(c) In connection with any termination or release pursuant to paragraph (a) or (b) of this Section, the Mortgagee shall execute and deliver to the Mortgagor, at the Mortgagor's expense, all documents that the Mortgagor shall reasonably request to evidence such termination or release. Any execution and delivery of documents pursuant to this Section 3.04 shall be without recourse to or warranty by the Mortgagee.

SECTION 3.05. *Definitions.* The rules of construction specified in Section 1.03 of the Credit Agreement also apply to this Mortgage, mutatis mutandis. As used in this Mortgage, the following words and phrases shall have the following meanings: (a) "lien" shall mean "lien, charge, encumbrance, security interest, mortgage or deed of trust"; (b) "obligation" shall mean "obligation, duty, covenant and/or condition"; and (c) "any of the Mortgaged Property" shall mean "the Mortgaged Property or any part thereof or interest therein". Any act that the Mortgagee is permitted to perform hereunder may be performed at any time and from time to time by the Mortgagee or any Person designated by the Mortgagee. Each appointment of the Mortgagee as attorney-in-fact for the Mortgagor under the Mortgage is irrevocable, with power of substitution and coupled with an interest. Subject to the applicable provisions hereof, the Mortgagee has the right to refuse to grant its consent, approval or acceptance or to indicate its satisfaction, in its sole discretion, whenever such consent, approval, acceptance or satisfaction is required hereunder.

SECTION 3.06. *Multisite Real Estate Transaction.* The Mortgagor acknowledges that this Mortgage is one of a number of Other Mortgages and Security Documents that secure the Secured Obligations. The Mortgagor agrees that the lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of the Mortgagee, and without limiting the generality of the foregoing, the lien hereof shall not be impaired by any acceptance by the Mortgagee of any security for or guarantees of any of the Secured Obligations hereby secured, or by any failure, neglect or omission on the part of the Mortgagee to realize upon or protect any Secured Obligation or indebtedness hereby secured or any collateral security therefor including the Other Mortgages and other Security Documents. The lien hereof shall not in any manner be impaired or affected

by any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any of the Secured Obligations secured or of any of the collateral security therefor, including the Other Mortgages and other Security Documents or of any guarantee thereof, and the Mortgagee may at its discretion foreclose, exercise any power of sale, or exercise any other remedy available to it under any or all of the Other Mortgages and other Security Documents without first exercising or enforcing any of its rights and remedies hereunder. Such exercise of the Mortgagee's rights and remedies under any or all of the Other Mortgages and other Security Documents shall not in any manner impair the indebtedness hereby secured or the lien of this Mortgage and any exercise of the rights or remedies of the Mortgagee hereunder shall not impair the lien of any of the Other Mortgages and other Security Documents or any of the Mortgagee's rights and remedies thereunder. The Mortgagor specifically consents and agrees that the Mortgagee may exercise its rights and remedies hereunder and under the Other Mortgages and other Security Documents separately or concurrently and in any order that it may deem appropriate and waives any rights of subrogation.

SECTION 3.07. *No Oral Modification.* Neither this Mortgage nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Mortgagor and the Mortgagee, subject to any consent required in accordance with Section 9.02 of the Credit Agreement; provided that the Mortgagee may without the consent of any Secured Party consent to a departure by the Mortgagee from any covenant of the Mortgagee set forth herein to the extent such departure is consistent with the authority of the Administrative Agent set forth in the definition of the term "Collateral and Guarantee Requirement" in the Credit Agreement.

ARTICLE IV

Particular Provisions

This Mortgage is subject to the following provisions relating to the particular laws of the state wherein the Premises are located:

SECTION 4.01. *Applicable Law; Certain Particular Provisions.* This Mortgage shall be governed by and construed in accordance with the internal law of the state where the Mortgaged Property is located, except that the Mortgagor expressly acknowledges that by their terms, the Credit Agreement and other Loan Documents (aside from those Other Mortgages to be recorded outside New York) shall be governed by the internal law of the State of New York, without regard to principles of conflict of law. The Mortgagor and the Mortgagee agree to submit to jurisdiction and the laying of venue for any suit on this Mortgage in the state where the Mortgaged Property is located.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – EXECUTION PAGE FOLLOWS]

Notice-Waiver of Right of Appraisal. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. (S.C. Code Ann. §29-3-680 through 760).

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered to the Mortgagee by the Mortgagor on the date of the acknowledgment attached hereto.

Signed, sealed and delivered in the presence of:

Witness

Print Name: Karen A. O'Brien

Witness:

Print Name: Dimitry Marcelin

NEW-INDY CATAWBA LLC, a Delaware limited liability company

By:

Name: Michael A. Quattromani
Title: Authorized Signatory

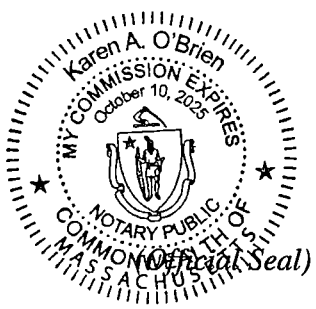
[Signature Page to Catawba, York County, South Carolina Mortgage]

[[3886523]]

STATE OF MA

COUNTY OF Norfolk

The foregoing instrument was personally acknowledged before me this 22 day of January, 2019 by Michael A Dattmore, Authorized Signatory of New-Indy Catawba LLC, a Delaware limited liability company, on behalf of the limited liability company.



(Official Seal)

K. OB
Official Signature of Notary

Karen A. O'Brien
Notary's printed or typed name, Notary Public

My commission expires: 10-10-2025

[Acknowledgement Page to Catawba, York County, South Carolina Mortgage]

[[3886523]]

Exhibit A
to Mortgage

LEGAL DESCRIPTION

Parcel 1 (Tax Map Number and Acreages for Reference Only: 764-00-00-033 (136.82 acres, more or less))

All that certain lot or parcel of land situated, lying and being in York County, South Carolina, containing 136.82 acres, more or less, and being more fully shown and described as "B" tract CDW-418, Parcel 1" on a plat of survey for Bowater Incorporated made by Michael R. Mills, S.C. Reg. No. 11606, dated October 16, 1992, revised May 24, 1993, and recorded in the Offices of the Clerk of Court for York County, South Carolina in Plat Book A-282 at Page 3, which plat is incorporated into this description by reference thereto and to which plat reference is made for a metes and bounds description of said land.

LESS AND EXCEPTING a portion of the property described in that Condemnation Notice and Tender of Payment by and between South Carolina Department of Transportation vs. Bowater Incorporated, a Delaware corporation filed on February 9, 2011 and being Common Please Case Number 2011-CP-46-00581. Also being shown on that Plat recorded in Book E244, at Page 6.

Derivation: This being a portion of the property conveyed to Bowater Incorporated by deed of Calhoun Newsprint Company, dated August 5, 1996, effective as of September 22, 1995, recorded October 17, 1997, in Deed Book 2011 at page 331, aforesaid records.

Parcels 2 and 3 (Tax Map Number and Acreages for Reference Only: Map #756-00-00-148 and Map # 759-00-00-002 (46.46 Acres))

All that tract or parcel of land situated, lying and being in York County, South Carolina, containing 46.46 acres, more or less, and being more fully shown and described on a plat of survey for Bowater Incorporated, Carolina Division Woodlands, Auten & Crosby Tract CDW-1501, made by Glenn Associates Land Surveying Company, Michael R. Mills, Registered Land Surveyor No. 11606, dated November 15, 1990, and recorded in the office of the Clerk of Court for York County, South Carolina in Plat Book 107, Page 41, which plat is incorporated into this description by reference thereto and to which plat reference is made for a metes and bounds description of said land.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed from Thomas M. Auten dated January 21. 1991, recorded in Book 187, Page 88 in the Office of the Clerk of Court for York County, South Carolina.

Parcels 4, 5, 6 and 7 (Tax Map Number and Acreages for Reference Only: 758-00-00-048, 758-00-00-049, 758-00-00-050 and 758-00-00-051))

[[3886523]]

All those certain pieces, parcels or lots of land lying, being and situate in York County, South Carolina, and being shown and designated as Section 1, Lot 9 consisting of 1.00 acres, more or less, Section 2, Lot 6, consisting of 2.08 acres, more or less, Section 2, Lot 7, consisting of 3.26 acres, more or less, and Section 2, Lot 2, consisting of 0.81 acres, more or less, all as shown on Plat of Wildwood Green Subdivision by Bradford M. Hucks, R.L.S., dated May 8, 1974 and recorded in Plat Book 44 at Page 30; reference to which said plat is hereby made for a more complete description of the premises.

TOGETHER WITH that certain easement and agreement conveyed to Bowater Carolina Corporation by Annie McKinney Stevens and Olin Eugene Crosby, recorded in Book 400 at Page 580.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed of William A. Rogers and Stanley J. Rogers, dated August 28, 1986, recorded September 4, 1986, in Book 904 at Page 111, aforesaid records.

Parcel 8 (Tax Map Number and Acreages for Reference Only: 757-00-00-002 (67.14 acres, more or less))

All those certain pieces, parcels or tracts of land lying, being and situate on the northern side of CSX Transportation, Inc. 150' R/W in Catawba Township, York County, South Carolina and being more particularly shown and described as Tract "A" 25.15 Acres and Tract "B" 41.99 Acres on Boundary Survey for Bowater, Inc. & Dorothy B. Faris Whiteside, prepared by Michael R. Mills, dated March 28, 2006, and recorded in Plat Cabinet D, Slide 122, page 6, as follows: BEGINNING at an iron post found at Grid Point 707, SC Grid Coordinates North = 1,100,307.98 and East = 2,029,527.53 and running thence with line of property now or formerly of Neil Lineberger Ferguson, Life Estate S. 57°14'21" E. 960.18 feet to an iron axel found; thence turning and running N. 49°49'35" E. 398.01 feet to a 1" rebar set; thence running N. 49°49'35" E. 20.75 feet to point in the center of branch; thence turning and running with the center of branch the following fourteen (14) courses and distances: (1) S. 85°07'05" E. 47.06 feet; (2) S. 49°12'42" E. 31.93 feet; (3) N. 82°23'18" E. 47.97 feet; (4) N. 79°34'27" E. 65.61 feet; (5) N. 30°34'53" E. 36.64 feet; (6) N. 77°51'32" E. 34.40 feet; (7) 21°27'56" W. 40.66 feet; (8) N. 88°46'08" E. 32.35 feet; (9) S. 48°44'16" E. 79.57 feet; (10) S. 70°24'25" E. 50.66 feet; (11) N. 65°28'14" E. 47.81 feet; (12) S. 60°41'48" E. 101.09 feet; (13) S. 46°41'07" E. 49.32 feet; and (14) S. 03°26'11" E. 10.12 feet; thence turning and running S. 50°40'31" W. 5.55 feet to an iron pipe found; thence running S. 50°40'31" W. 2094.53 feet to a 1" rebar set; thence running S. 50°40'31" W. 1.45 feet to an iron post found; then running S. 50°40'31" W. 74.40 feet to a point in the centerline of railroad right of way thence turning and running with the centerline of said railroad right of way N. 88°05'03" W. 948.35 feet to Grid Tie Point at Coordinates North = 1,098,639.00 East = 2,028,552.45; thence continuing with the centerline of railroad right of way N. 88°05'03" W. 1060.73 feet to a point; thence turning and running N. 51°14'54" E. 76.73 feet to a 1" rebar set; thence running N. 51°18'12" E. 5.94 feet to an iron post found; thence running N. 51°14'54" E. 2,527.05 feet to the point of beginning.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed of Dorothy B. Faris Whiteside, dated July 13, 2006, recorded July 19, 2006, in Deed Book 8220 at page 5, aforesaid records.

Parcel 9, (Tax Map Number and Acreages for Reference Only: 759-00-00-003 (32.6 acres, more or less)

All that certain piece, parcel or tract of land lying, and being situate near Catawba Junction in York County, South Carolina, having the following courses and distances to wit: Beginning at an old iron western side of old road east of Southern Railway and running thence with adjoining Jean Crosby property S. 48-15 W. 3,180 feet to an old iron; thence S. 37-45 E. 200 feet to a stake; thence N. 57-25 E. 3,218 feet to a stake at Southern Railway; running thence with center line of Southern N. 35 W. 413 feet to a point; thence N. 50-30 W. 271 feet to the beginning point, containing 32.6 acres, more or less, and being shown as Tract #1 on map of property of J.M. Auten, et al, dated November 10, 1960, prepared by R.H. Marett, Reg. Surveyor.

Derivation: These being the identical properties conveyed to Bowater Incorporated by deed of Thomas M. Auten and Elsie I. Auten, recorded August 11, 1986, in Deed Book 899 at Page 296, aforesaid records.

Parcel 10 (Tax Map Number and Acreages for Reference Only: 759-00-00-004 (32.4 acres, more or less))

All that certain piece, parcel or tract of land lying and being situate near Catawba Junction in York County, South Carolina, having the following courses and distances to wit: Beginning at a stake on Southern Railway running thence S. 66 15 W. 3,272 feet to a stake; thence N. 37 45 W. 186.5 feet to a stake; thence with adjoining line of Tract #1 N. 57 25 E. 3,218 feet to a stake on said Railroad; thence with center line of Southern, 685 feet to the beginning point, containing 32.4 acres, more or less, and being designated as Tract #2 on map of property of J.M. Auten, et al, dated November 10, 1960, prepared by R.H. Marett, Reg. Surveyor.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed of Janelle Baker Auten and Verjean Auten Timmons, dated July 31, 1986, recorded August 1, 1986, in Deed Book 898 at Page 7, aforesaid records.

Parcel 11 Tax Map Number and Acreages for Reference Only: 759-00-00-005 (33.4 acres, more or less))

All that certain piece, parcel or tract of land lying and being situate near Catawba Junction in York County, South Carolina, having the following courses and distances to wit: Beginning at a stake on Railroad running thence with adjoining line of tract #2 S. 66-15 W. 3,272 feet to a stake; thence S. 37-45 E. 242.5 feet to a stake; thence N. 72-30 E. 1,500 feet to an iron; thence N. 73 E. 1,894.2 feet to an iron E. side of Railroad; thence with center line of Southern N. 35 W. 685 feet the beginning point, containing 33.4 acres and designated as Tract #3 on map of

property of J.M. Auten, et al. dated November 10, 1960, prepared by R.H. Marett, Reg. Surveyor.

Derivation: These being the identical properties conveyed to Bowater Incorporated by deed of Thomas M. Auten and Elsie I. Auten, recorded August 11, 1986, in Deed Book 899 at Page 296, aforesaid records.

Parcel 12 (Tax Map Number and Acreages for Reference Only: 759-00-00-006 (68 acres, more or less))

All that certain tract or parcel of land containing 68 acres, more or less, situated, lying, and being in York County, South Carolina, being part of the property conveyed to The Travelers Insurance Company from East Highlands Company by deed dated October 26, 1966, recorded in Deed Book 356, page 512, in the records of York County, South Carolina.

Derivation: This being a portion of the property conveyed to Bowater Incorporated by deed of The Travelers Insurance Company, dated December 1, 1991, recorded January 23, 1992, in Book 377 at page 59, aforesaid records.

Parcels 13 and 14 (Tax Map Number and Acreages for Reference Only: 762-00-00-002 and 762-00-00-003 (.258 and .766 acres, more or less), York County):

All those tracts or parcels of land situated near Catawba in York County, South Carolina, and designated as Parcels 3 and 4 on a plat entitled "Bowaters Carolina Corporation, Catawba, S.C., Property Transferred to Catawba Newsprint" prepared by R.H. Marett, Registered Land Surveyor, dated September 28, 1967, Drawing No.; D-10-80 and recorded in Plat Book 33, Pages 24-25, in the Office of the Clerk of Court for York County, South Carolina, and being more fully described according to said plat and Bowaters' plant coordinate system as follows:

Parcel 3:

Beginning at a point (Plant coordinates 7+57.0 South and 17+02.0 East) situated South 58 degrees 27 minutes East 721.12 feet from the corner of Parcel 2 as shown on the above-referenced plat, designated by plant coordinates 1+20.00 South and 13+64.00 East; thence North 59 degrees 30 minutes East 75 feet to a point (plant coordinates 7+57.0 South and 17+77 East); thence South 30 degrees 30 minutes East 150 feet to a point; thence South 59 degrees 30 minutes West 75 feet to a point; thence North 30 degrees 30 minutes West 150 feet to the point of beginning, containing 0.258 acre, more or less.

Parcel 4:

Beginning at a point (plant coordinates 8+86.87 South and 21+77.08 East) situated North 77 degrees 29 minutes East 420.63 feet from the corner of Parcel 3 as shown on the above-referenced plat, designated by plant coordinates 7+57.0 South and 17+77 East; thence South 30

degrees 30 minutes East 162.26 feet to a point; thence North 59 degrees 30 minutes East 14.48 feet to a point; thence South 30 degrees 30 minutes East 101.62 feet to a point; thence South 59 degrees 30 minutes West 61.0 feet to a point; thence North 30 degrees 30 minutes West 101.62 feet to a point; thence South 59 degrees 30 minutes West 144.80 feet to a point; thence North 30 degrees 30 minutes West 122.26 feet to a point; thence North 59 degrees 30 minutes East 95.42 feet to a point; thence North 30 degrees 30 minutes West 40 feet to a point; thence North 59 degrees 30 minutes East 95.46 feet to the point of beginning, containing 0.766 acre, more or less.

Parcels 3 and 4 hereinabove described are part of the property conveyed to Catawba Newsprint Company by deed from Bowaters Carolina Corporation dated November 10, 1967, and recorded in Book 370, Page 367, in the Office of the Clerk of Court for York County, South Carolina.

Derivation: Deed from Catawba Newsprint Company to Bowater Incorporated (successor by mergers and name changes to Bowaters Carolina Corporation) dated June 12, 1987 and recorded September 22, 1987 in Record Book 979, Page 207, Office of the Clerk of Court for York County, South Carolina.

Parcels 15 and 16 (Tax Map Number and Acreages for Reference Only: 759-00-00-009 (3.206 acres, more or less) and 759-00-00-010 (.313 acres, more or less), York County:

All those tracts or parcels of land situated near Catawba in York County, South Carolina, and designated as Parcels 1 and 2 on a plat entitled "Bowaters Carolina Corporation, Catawba, S.C., Property Transferred to Catawba Newsprint" prepared by R.H. Marett, Registered Land Surveyor, dated September 28, 1967, Drawing No. D-10-80 and recorded in Plat Book 33, Pages 24-25, in the Office of the Clerk of Court for York County, South Carolina, and being more fully described according to said plat (which plat is incorporated into this instrument by reference thereto and to which plat reference is hereby made for a full and complete description of said Parcels 1 and 2) and Bowaters' plant coordinate system as follows:

Parcel 1:

Beginning at a point (plat coordinates 1+50.58 North and 1+64.67 East) on Bowaters' plant site near Catawba, South Carolina, said point being North 35 degrees 56 minutes East 1,183.54 feet from a point in the center line of the Southern Railway System's main track, which point is 6,068 feet (measured along the center line of said track) southeast of the point of intersection of the center line of said track with the center line of the Seaboard Coast Line Railroad main line track; running thence North 59 degrees 30 minutes East 1,088.91 feet to a point (plat coordinates 1+50.58 North and 12+53.58 East); thence South 30 degrees 30 minutes East 128.9 feet to a point; thence South 59 degrees 30 minutes West 1,088.91 feet to a point; thence North 30 degrees 30 minutes West 128.29 feet to the point of beginning, containing 3.206 acres, more or less.

Parcel 2:

Beginning at a point (plat coordinates 1+08 North and 13+64 East) situate North 80 degrees 35 minutes East 118.34 feet from the corner of Parcel 1 hereinabove described, designated by plant coordinates 1+50.58 North and 12+53.58 East; thence South 30 degrees 30 minutes East 116 feet to a point; thence North 59 degrees 30 minutes East 31.0 feet to a point; thence South 30 degrees 30 minutes East 64 feet to a point; thence South 59 degrees 30 minutes West 31.0 feet to a point; thence South 30 degrees 30 minutes East 48 feet to a point (plant coordinates 1+20.00 South and 13+64.00 East); thence South 59 degrees 30 minutes West 50.0 feet to a point; thence North 30 degrees 30 minutes West 203.0 feet to a point; thence South 59 degrees 30 minutes West 10 feet to a point; thence North 30 degrees 30 minutes West 25 feet to a point; thence North 59 degrees 30 minutes East 60 feet to the point of beginning containing 0.313 acre, more or less.

Derivation: This being a portion of the property from Catawba Newsprint Company to Bowater Incorporated (successor by mergers and name changes to Bowaters Carolina Corporation) dated December 21, 1990 and recorded January 21, 1991 in Record Book 184, Page 198, Office of the Clerk of Court for York County, South Carolina.

Parcel 17 (Tax Map Number and Acreages for 759-00-00-007, York County)

BEGINNING at an iron pin on the western edge of right of way of Southern Railroad, said iron pin being located by commencing at U.S.G.S. Marker V5, 1933, Catawba, S.C. and going South 44°55' West 12.7 feet to the centerline of Seaboard and Southern Railroads; thence with centerline of Southern Railroad South 62°38' East 1,707.0 feet; thence with curve of 2°40' for 1,000.0 feet; thence South 35°30' East 3,361.0 feet to point in the center of Southern Railroad right of way; thence South 59°30'32" West 50 feet to the point of beginning; running thence with western edge of right of way of Southern Railroad South 35°30'55" East 1,237.44 feet to an iron; thence running South 59°27'50" West 1,187.80 feet to an iron; thence running North 35°30'32" East 1,238.01 feet to an iron; thence running North 59°29'31" East 1,187.71 feet to the point of beginning; containing 33.62 acres, more or less.

Derivation: This being a portion of the property conveyed to Catawba Property Holdings, LLC by deed of Georgia-Pacific Wood Products, LLC, dated December 3, 2007, recorded December 11, 2007, in Book 9661 at Page 68; thereafter a Quit-Claim Deed was prepared from Georgia-Pacific Wood Products, LLC to Catawba Property Holdings, LLC and also recorded on December 11, 2007, in Book 9661 at Page 78, aforesaid records.

Parcel 18 (Tax Map Number and Acreages for Reference Only #759-00-00-008

BEGINNING at an iron pin located North 59°30' East 50 feet from a point in the centerline of the Southern Railway's System's main track, which point is 6,068 feet (measured along the centerline of said tract) Southeast of the point of intersection of the centerline of said tract with the centerline of the Seaboard Airline Railroad's main track, which point of intersection is South 44°55' West 12.7 feet from U.S.G.S. Marker No. V5 dated 1933, at Catawba, South Carolina; running thence from said iron pin North 59°30' East 1,184.05 feet to a #6 inch pipe; thence North 66°39'10" East 202.26 feet to an iron pin, the northeastern corner of the tract; thence

South 30°30' East 208.64 feet to a spike found; thence North 59°30' East 22 feet to a spike found; thence South 30°30' East 82 feet to a #4 rebar set; thence South 59°30' West 39 feet to a conc. nail set; thence South 30°30' East 53 feet to a #4 rebar set on the North side of a railroad spur tract, the southeastern corner of the tract; thence South 59°30' West along the northside said spur tract 242.0 feet to a spike found; thence South 30°30' East 324.40 feet to a point; thence South 59°30' West 1,064.9 feet to a #8 rebar found in the northeast right of way line of the Southern Railway Systems main line track; thence North 35°30'55" West with said right of way line 695.89 feet to the beginning.

Derivation: This being a portion of the property conveyed to Catawba Property Holdings, LLC by deed of Georgia-Pacific Wood Products, LLC, dated December 3, 2007, recorded December 11, 2007, in Book 9661 at Page 68; thereafter a Quit-Claim Deed was prepared from Georgia-Pacific Wood Products, LLC to Catawba Property Holdings, LLC and also recorded on December 11, 2007, in Book 9661 at Page 78, aforesaid records.

Parcel 19 (Tax Map Number and Acreages for Reference Only: #759-00-00-018

A .543 acre parcel known as the Duke Power Company's Substation and being more fully described as follows:

BEGINNING at a fence corner located North 3°58'10" West 222.09 feet from the southwest corner of the above-described property; then running thence with the fence North 30°30' West 204 feet North 59°30' East 116 feet, South 30°30' East 204 feet and South 59°30' West 116 feet to the Beginning.

Derivation: This being a portion of the property by deeds dated August 31, 1956 and recorded in Book 231 at Page 120 and Book 231 at Page 108, Miles H. Lineburger, Jr. and Jesse Faye Jones Lineburger conveyed certain property to Bowaters Carolina Corporation.

Parcels 20, 21, 22 and 23 (Tax Map Number and Acreages for Reference Only: 759-00-00-015, 759-00-00-016, 759-00-00-017, 757-00-00-018 and No. 3 TMP Tract, York County

All that certain piece, parcel or lot of land lying, being and situate south of Cureton Ferry Road and west of the Catawba River in Catawba Township, York County, South Carolina, and being more particularly described as parcel A on Plat of Survey for BOWATER INCORPORATED prepared by Edward F. Woodward dated June 25, 2001, revised January 24, 2002 and revised July 18, 2002, recorded in Plat Cabinet C, Slide 129, Page 2, in the Office of the Clerk of Court for York County, South Carolina, as follows: BEGINNING at a new iron pin located N. 88°59'08" W. 24.75 feet from an existing iron pin at South Carolina Grid Coordinates: N = 1,096,236.73 E = 2033314.9040 and running thence N. 88°59'08" W. 130.25 feet to a point on line of property of Bowater, Inc.; running thence with the line of said property N. 16°30'52" E. 255.20 feet to a point and turning and continuing with the line of said property N. 71°35'52" E. 152.08 feet to a new iron pin; thence turning and running with new boundary lines the following five (5) courses and distances: (1) S. 59°32'25" W. 81.17 feet to a new iron pin; (2) S. 51°12'21"

W. 115.93 feet to a new iron pin; (3) S. 20°23'24" W. 43.53 feet to a new iron pin; (4) S. 27°28'28" E. 52.59 feet to a new iron pin; and (5) S. 34°34'18" E. 113.85 feet to the point of beginning; containing 0.29 acres, according to said plat.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed of General Chemical Corporation, dated November 20, 2002, recorded December 18, 2002, in Book 4870 at Page 276, aforesaid records.

AND

All that certain tract or parcel of land situated in Catawba Township, York County, South Carolina, consisting of 1.88 acres, more or less, and being more fully described according to a plat of a survey made by R.H. Marett, Registered Surveyor, on December 19, 1967, recorded in Plat Book 33, at page 174, in the office of the Clerk of Court for York County, South Carolina, as follows:

To find the point of Beginning of the property hereby conveyed, begin at the intersection of the centerline of Seaboard Airline Railroad with the centerline of South Carolina Highway 697, run thence in a southwesterly direction with the centerline of said highway 1,561.5 feet to the intersection of said centerline with the property line between the property of the Grantor and the property of the Grantee; thence South 25 degrees 3 minutes East with said property line 64.9 feet to a point in said line, the true beginning point of the property hereby conveyed; thence South 25 degrees 3 minutes East with said property line 396.4 feet to a corner; thence South 64 degrees 57 minutes West 413.4 feet; thence North 21 degrees 16 minutes East 572.2 feet to the point of Beginning.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of Burris Chemical, Inc. dated _____, 1968, recorded March 18, 1968 in Book 374 at Page 343, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, recorded on July 1, 2009 in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York and State of South Carolina, being more particularly described as follows, to wit: Beginning at a concrete monument 82 feet southwest of the Cureton Ferry Road on the west bank of the Catawba River, corner of property of Miles H. Lineberger, Sr., et al; running thence with the course of said river in a generally northeasterly direction approximately 8,781 feet to a concrete monument and sycamore pointers on the west bank of the Catawba River, corner of property of James M. Moore and Elizabeth Ashe Moore; running thence with line of Moore property, S. 73-09 W. 4132.1 feet to a concrete monument; thence N. 58-50 W. 567 feet to a concrete monument; thence S. 71-25 W. 260 feet to a concrete monument; thence S. 63-23 W.

180 feet to a concrete monument; thence S. 42-56 W. 943 feet to a concrete monument, dogwood and oak pointers; thence S. 75-25 W. 935 feet to a concrete monument; thence S. 68-25 W. 1,682 feet to a concrete monument; thence with line of property of Miles H. Lineberger, Jr., et al, S. 17-30 E. 480 feet to a concrete monument; thence along county road, S. 77-30 W. 219 feet to a concrete monument; thence S. 50 E. 200 feet to a point on Cureton Ferry Road; thence along said road and with line of property of Miles H. Lineberger, Jr., et al, S. 46 E. 1343.2 feet to a concrete monument on east side of said road; thence with line of property of Miles H. Lineberger, Sr., et al, N. 61-30 E. 424.5 feet to an iron stake; S. 37-16 E. 1,011.2 feet to an iron pipe and old pointer; S. 28-43 E. 993 feet to an iron pipe beside the Cureton Ferry Road; thence along said road S. 40-39 E. 600 feet; thence S. 44-30 E. 791.3 feet to the concrete monument at the beginning corner, containing 700 acres, more or less.

Derivation: This being a portion of the property conveyed to Bowaters Carolina Corporation by deed of Anne Wright, individually and as executrix of the estate of Alex S. Hanes, Jr., dated August 30, 1956, recorded August 30, 1956 in Book 231 at page 63, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records

LESS AND EXCEPT:

No. 3 TMP Tract:

Located near Catawba in York County, South Carolina, and being more particularly described as Tract No. 1 containing 0.84 acres, Tract No. 2 containing 0.07 acre, Tract No. 3 containing 0.0225 acre, and Tract No. 4 containing 0.049 acre for a total combined acreage of 0.9815 acre, all more clearly shown and described as Tracts 1, 2, 3, and 4 on a drawing titled Catawba Newsprint Company York County, Property Plat (3 Tracts) No. 3 TMP Plant CRSS Drawing Number P-2025-10-10-M-1 prepared by James Thomas Wigington, R.L.S. S.C. 5774, dated 9-30-85, revised 2/19/87 and recorded in Plat Book 89, Page 116, in the Office of the Clerk of Court of York County, South Carolina, which drawing is incorporated into this instrument by reference thereto and to which drawing reference is hereby made for a full and complete description of said Tracts 1, 2, 3, and 4. On said drawing Tract No. 1 is designated "NO. 3 TMP PLANT;" Tract No. 2 is designated "NO. 3 MILL, LOW DENSITY BLENDCHEST;" Tract No. 3 is designated "NO. 3 MILL, HYDRO TOWER;" and Tract No. 4 is designated "NO. 3 MILL HYDRO BLEACHING TANK AREA.

AND

All those certain pieces, parcels or tracts of land situate, lying and being in Catawba Township, County of York, State of South Carolina and being more particularly described upon plat prepared by R.H. Marett, Registered Surveyor, dated March, 1956 and being more particularly described as follows, to wit:

Tract No. 1: Beginning at a point in S.C. Highway and running with said highway S. 57-30 E. 711.7 feet to a stake; thence S. 52-55 W. 710 feet to point in center of Southern Railroad track; thence with said railroad N. 36-30 W. 820 feet to point in center of said railroad; thence N. 71-30 E. 478 feet to the point of beginning, containing nine and 5/10 (9.5) acres, more or less.

Tract No. 2: Adjoining Tract No. 1 above. Beginning at a point in center of Southern Railroad and running with center of said railroad S. 36-30 E. 5645 feet to point on line of water edge of Catawba River; thence with said water edge offset line being S. 69-10 W. 835 feet, more or less, to mouth of branch; thence N. 47-45 W. 2497 feet along old wire and hedge row to stake; thence S. 36-37 W. 920 feet along abandoned road bed to stake; thence S. 75-45 W. 3161 feet along old abandoned road, wire fence and hedge row, to stake; thence S. 3 W. 1734 feet to old corner; thence N. 67-48 W. 692 feet to old corner; thence N. 17-54 W. 2333 feet along old fence and hedge row to stake; thence N. 56-16 E. 3425 feet along old wire and hedge row to stake; thence N. 11-30 W. 1349.7 feet to stake; thence N. 71-30 E. 1894.2 feet to point of beginning; containing 407.5 acres, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of A. Frank Epting and Faye B. Epting, dated August 29, 1956, recorded August 30, 1956, in Book 231 at page 57, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York, State of South Carolina, being more particularly described as follows, to wit: Beginning at a point in center of S.C. Highway No. 504 at its intersection with the Catawba River; running thence with the line of said Catawba River in a southeasterly direction and southerly direction for a distance of approximately 1,450 feet to a monument which is 86 feet south of the center of trestle or bridge of Seaboard Air Line Railway Company, corner of property of Anne Wright Hanes; running thence with the line of property of Anne Wright Hanes, S. 72-45 W. 4183 feet to an iron; thence N. 56-45 W. 630 feet to a stake; thence S. 73-30 W. 260 feet to a stake; thence S. 64-30 W. 180 feet to a stake; thence S. 44 W. 943 feet to a stake; thence S. 72-45 W. (crossing S.C. Highway No. 697) 935 feet to a stake, corner of Hanes property and Rawlins property; thence with line of property; thence with line of property of Rawlins, N. 22 W. 1110 feet to point in fork of branch; thence with northern and northeastern boundary lines of property of Wardell Rawlins, W.B. Simpson and Estate of W.S. Faris, with and up the center of a branch to a point where the center of said branch crosses the center of track of Seaboard Air Line Railway Company; thence with the center line of said railroad track, S. 89-11 E. 2674.5 feet to a point where center of S.C. Highway No. 697 intersects with center of said railroad track; thence with the center line of S.C. Highway No. 697, N. 6-46 W. 993.9 feet to a point where center line of S.C. Highway No. 697 intersects with center line of S.C. Highway No. 504; thence with the center line of S.C. Highway No. 504 in an approximate four (4) degree curve, chord S. 59-46 E.

450 feet, chord S. 78-12 E. 450 feet, chord N. 85-12 E. 415.8 feet, N. 78-46 E. 3400 feet and continuing with said center line of said highway with curve of road for a distance of 227.8 feet to the beginning point in the edge of the Catawba River; containing two hundred sixty three (263) acres, more or less.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of James M. Moore and Elizabeth Ashe Moore, dated October 17, 1956, recorded October 17, 1956 in Book 232 at Page 443, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York and State of South Carolina, being more particularly described as follows, to wit: Beginning at a stake by post oak and wild cherry fifty (50) feet east from center of Southern Railroad track; running thence with line of property of Miles H. Lineberger, Jr. and Jesse Faye Jones Lineberger, North 68 East 205 feet and North 66-30 East 1277.1 feet to a stake; thence with line of property of Anne Wright Hanes, North 61-30 East 424.5 feet to a stake; thence continuing with line of property of Anne Wright Hanes, South 37-16 East 1011.2 feet to a stake; thence South 28-43 East 993 feet to a stake, South 40-39 East 600 feet to a stake, South 44-30 East 791.3 feet to a stake by white maple and willow on the north bank of the Catawba River; thence down and with said river as follows: South 51 West 330 feet, South 64 West 742.5 feet, South 73 West 976 feet to a stake 50 feet east from center of track of the Southern Railroad; thence with right of way of said Southern Railroad and 50 feet east therefrom; North 36-30 West approximately 3,248 feet to the point of beginning; containing one hundred forty eight (148) acres, more or less.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of Miles H. Lineberger, Sr. and Nell Harrill Lineberger, dated August 31, 1956, recorded September 4, 1956, in Book 231 at Page 108, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

Tract No. 1:
All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York, State of South Carolina and being more particularly described as follows, to wit: Beginning at a point in the center of the Cureton Ferry Road near a concrete marker, corner of property of Anne Wright Hanes (Formerly L.S. Lindler); running thence with Hanes Line along the center of Cureton Ferry Road N. 46 W. 1343.2 feet to a stake; thence continuing with

said road, N. 50 W. 200 feet to a stake; thence continuing with said road, S. 75-30 W. 422 feet to a stake; thence continuing with said road, N. 53 W. 125 feet to a stake; thence with line of Epting property, S. 52-45 W. 720 feet to a point in center of Southern Railroad track; thence with center of said track, S. 36-30 E. 1607 feet to a stake; corner of property of Miles H. Lineberger, Sr. and Nellie H. Lineberger; thence with line of said property, N. 68 E. 205 feet and N. 66-30 E. 1277.1 feet to the point of beginning; containing fifty and eight tenths (50.8) acres, more or less.

Tract No. 2:
All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York, State of South Carolina and being more particularly described as follows, to wit: Beginning at a stake in the edge of Cureton Ferry Road, Anne Wright Hanes corner; thence with line of property of Anne Wright Hanes in center of said road, N.75-30 E. 219 feet to a stake; thence with another line of property of Anne Wright Hanes N. 17-30 W. 480 feet to a stake; thence with line of property of L.J. Massey, S. 67-30 W. 243 feet to a stake; thence with another line of property of L.J. Massey, S. 18 E. 440 feet to the point of beginning; containing two and four tenths (2.4) acres, more or less.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of Miles H. Lineberger, Sr. and Jesse Faye Jones Lineberger, dated August 31, 1956, recorded September 4, 1956, in Book 231 at Page 120, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1 2009, in Book 10877 at Page 38, aforesaid records.

AND

A certain piece or parcel of land containing 150 acres situate in the State and County above mentioned on branches of Catawba River, bounded by lands of J.M. Ivey, on the south or west by lands which I have laid off to John Faris, on the north by W.L. Roddey and east by Charlie Dunlap, the form of which is the following: Beginning at a rock on North 49 East 55.00 to black oak on branch; thence down branch to sweetgum; thence S. 49 W. 45.00 to rock on road; thence up road to beginning.

Derivation: This being the identical property conveyed to Bowaters Carolina Corp. by deed of James Lyle Pope, dated August 18, 1956, recorded November 2, 1956, in Book 233 at Page 114, aforesaid records; and by deed of Hugh Simpson Patton, dated August 31, 1956, recorded November 2, 1956, in Book 233 at page 120; and by deed of Frank Faris Patton, dated September 7, 1956, recorded November 2, 1956, in Book 233 at Page 117, aforesaid records; and by Title Under Order of the Court of Billy D. Hayes, as Special Referee, dated November 2, 1956, and recorded in Book 233 at Page 124, aforesaid records; and by deed of Sara Patton Barett, dated August 23, 1956, recorded November 2, 1956, in Book 233 at Page 122; and by deed of Janie Patton Killian, William Simpson Faris Kimball, Annell Patton Barrett, James Lyle Patton and Eva Patton McCullough, Edward L. Faris and Mary Faris, dated June 29, 1956, recorded November 2, 1956, in Book 233 at Page 102; and by deed of J. Boyce Pope, dated

August 9, 1956, recorded November 2, 1956, in Book 233 at Page 112. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or track of land situate, lying and being near the Town of Catawba, County of York and State of South Carolina, containing 8.8 acres, more or less, and being more particularly described as follows, to wit: Beginning at a point on edge of right of way of Southern Railway Company, corner of property of R.T. McClanahan; running thence with line of property of McClanahan, N. 51 E. 432 feet to a point in center of Seaboard Air Line Railway Company track; thence with the center line of said track S. 89-06 E. approximately 1020 feet to a point in center line of said track where property of W.W. Faris, S. 57 W. approximately 840 feet to a point across old road, line of property of Reo A. Walker; thence with the line of property of Reo A. Walker; N. 75 W. approximately 350 feet to a point and continuing N. 70-15 W. 266 feet to a point; thence S. 65 E. 100 feet to the point of beginning.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of James C. Faris, Martha F. Crosby, Oliver Faris and Joe Simpson Faris, dated August 29, 1956, recorded October 13, 1956, in Book 232 at page 293, aforesaid records; and by Title Under Order of the Court by W. Clarkson McDow, as Special Referee, dated October 13, 1956, recorded in Book 232 at Page 296. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel, or tract of land situate, lying and being in Catawba Township, County of York, State of South Carolina, near the Town of Catawba and being more particularly described as follows, to wit: Beginning at a point on the northeastern edge of right of way of Southern Railway Company, corner of property of Estate of J.C. Faris; running thence with the line of said railroad right of way, N. 50 W. 283.8 feet, more or less; thence with line of property of Lula Mackey and property now or formerly of Nancy Craig, N. 35 E. 2937 feet, more or less; thence with property of James M. Moore and Elizabeth Ashe Moore, formerly J.T. Ferguson, S. 57 E. 1082.4 feet, more or less, thence with line of property of Estate of J.C. Faris, S. 49 W. 3062.4 feet, more or less, to the point of beginning; containing forty six (46) acres, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Ray T. McClanahan, dated August 29, 1956, recorded August 30, 1956, recorded in Book 231 at Page 66, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior

Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in York County, State of South Carolina, in Catawba Township, on the Cureton's Ferry Road, containing nine (9) acres, more or less, and being shown and designated on plat of property of L.J. Massey prepared by White and Marett, Engineers and Surveyors, November 9, 1950 and being more particularly described as follows: Beginning at a point in the center of Cureton's Ferry Road leading to Catawba Junction and running thence with the center of said road N. 72 E. 157 feet; thence N. 18 W. 440 feet to a stake; thence N. 67-30 E. 751 feet to a stake; thence N. 6-30 W. 275 feet to stake; thence S. 84-45 W. 157.6 feet to gum tree; thence S. 72 W. 806.3 feet to stake; thence S. 18 E. 797.5 feet to the point of beginning on Cureton's Ferry Road.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of L.J. Massey and Drucilla Massey, dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page 73, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, York County, South Carolina, about one (1) mile south of the Town of Catawba, containing fifty four (54) acres, more or less, and being more particularly described as follows, to wit: Beginning at a point in the center of Cureton's Ferry Road, corner of property of Catawba Chapel, A.M.E. Zion Church and W. B. Simpson; running thence with Church and Simpson line, N. 44 E. 2630 feet to a corner in center of branch; thence in a eastern direction down said branch to a corner; thence S. 22 E. 1110 feet to a corner; thence with line of property of Anne Wright Hanes, S. 68-30 W, approximately 1175 feet to a point, corner of property of L.J. and Drucilla Massey; thence with the line of said Massey property, N. 6-30 W. 275 feet to a stake; S. 84-45 W. 157.6 feet to a stake; S. 72 W. 806.3 feet to a stake and S. 18 E. 797.5 feet to a stake on edge of Cureton's Ferry Road; thence in said road, S. 73 W. approximately 260 feet to a stake on southern edge of said road; thence with said road N. 58 W. approximately 110 feet to a point, corner of property of Charles and Louise Rollins; thence with line of Rollins property, N. 30-30 E. 210 feet to a stake; N. 59-30 W. 210 feet to a stake and S. 30-30 W. 210 feet to a stake in said road; thence with center of said road, N. 56 W. approximately 565 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM a certain one (1) acre tract of land sold to Charles and Louise Rollins by deed recorded in Book 134 at Page 253 and a certain nine (9) acre tract of land sold to L.J. and Drucilla Massey by deed recorded in Book 165 at page 76; said tract now containing approximately fifty-four (54) acres, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Wardell Rawlins and Maggie Rawlins, dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page 76, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or lot of land lying on the northeast side of the Cureton's Ferry Road near Catawba Junction in Catawba Township, York County, South Carolina and being more particularly described as follows, to wit: Beginning at a stake on the northeast side of the Cureton's Ferry Road, about one mile east of Catawba Junction, and running thence N. 30 ½ E. 210 feet to a stake; thence S. 59 ½ E. 210 feet to a stake; thence S. 30 ½ W. 210 feet to a stake on the above mentioned road; thence with the edge or the road N. 59 ½ W. 210 feet to the beginning, containing one (1) acre, more or less, bounded by the Cureton's Ferry Road and property of Wardell and Maggie Rawlins.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Charles Rollins and Louise Rollins, dated August 29, 1956, recorded August 30, 1956, in Book 231, at page 79, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, near the Town of Catawba, and being more particularly described as follows, to wit: Beginning at a point in center of Cureton's Ferry Road, corner of property owned by Wardell and Maggie Rawlins; running thence with the line of Rawlins property, N. 44 E. 2,630 feet to a point in center of branch; running thence with the meanderings of said branch in a northerly direction to a point, rear corner of property of Estate of William S. Faris; thence with line of Faris property, S. 49 W. 2970 feet to a point in center of Cureton's Ferry Road; thence approximately S. 47 E. 720 feet to point of beginning; SAVING AND EXCEPTING THEREFROM a tract of one (1) acre conveyed by Charles Dunlap to the Trustees of M.E. Zion Church by deed dated December 28, 1898 and recorded in the office of the Clerk of Court for York County, South Carolina on April 21, 1902 in Deed Book 22 at Page 42 and being the same property conveyed to the grantor herein by deed from J.H. Caldwell dated December _____, 1918 and recorded in the office of the Clerk of Court for York County, South Carolina on December 20, 1918 in Deed Book 47 at Page 302; containing forty nine (49) acres, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of W.B. Simpson, dated August 29, 1956, recorded August 30, 1956 in Book 231 at Page 82, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in York County, South Carolina, near the Town of Catawba, being more particularly described as follows, to wit: Beginning at a stake at old culvert or pipe in center of an old road, corner of property conveyed to Reo A. Walker; running thence with the line of said old road S. 44-30 E. 532 feet to a stake on edge of right of way of Southern Railway track;

thence with the edge of said right of way in a northwesterly direction to a stake, corner of property conveyed to Reo A. Walker; thence with the line of property of Reo A. Walker N. 28 E. 92 feet to the point of beginning; containing approximately one-half (1/2) acre, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Fannie Belk Walker, dated August 29, 1956, recorded August 30, 1956, in Book 231 at page 85, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate and being in York County, near Catawba, South Carolina designated on plat of property of Reo A. Walker, prepared by R. H. Marett, Registered Surveyor, dated October 16, 1952 and more particularly described as follows: Beginning at a point 75 feet southeast of the intersection of the center line of a road with a county road, said county road being approximately one half mile east of Catawba, S.C., and where the northern edge of the Southern Railroad right of way intersects said county road; running thence with the right of way of said Southern Railroad S. 63-30 E. 734 feet to a point, corner of property of Fannie Walker; running thence N. 28 E. 92 feet to a stake at old culvert or pipe in center of an old road; running thence with the center line of said old road N. 39 W. 117 feet to a plum tree, said plum tree being situate at a point where said old road intersects with the southern edge of a county road; running thence with the southern edge of said county road N. 75 W. 357.5 feet to a point; thence continuing with said edge of said county road N. 70-15 W. 266 feet to the point of beginning; containing 92/100 (0.92) of an acre, more or less.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of Reo A. Walker, dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page

87, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York and State of South Carolina, and being about one (1) mile southeast of the Town of Catawba, being more particularly described as follows, to wit: Beginning at a point in center of Cureton's Ferry Road, joint front corner of the subject tract and tract owned by Quay Dunlap; running thence with the center of said road N. 45-30 W. 110 feet to a stake; thence with line of property of Auten, S. 76 W. 418 feet to a stake near Southern Railway track; thence with line of Southern Railway track and parallel thereto, S. 35-30 E. 110 feet to a stake; thence with line of property of Dunlap N. 76 E. 430 feet to the point of beginning; containing one (1) acre, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Ervin Cureton, dated September 1, 1956, recorded September 4, 1956, in Book 231 at Page 111, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in the County of York, State of South Carolina, near the Town of Catawba and being more particularly described as follows, to wit: Beginning at a point on the northern side of Cureton's Ferry Road, corner of property owned by Wardell and Maggie Rawlins; running thence with line of Rawlins property, N. 45-30 E. 290 feet to a stake; thence with line of property of W. B. Simpson, N. 44-30 W. 150 feet to a stake; thence with line of property of W. B. Simpson, S. 45-30 W. 290 feet to a stake in Cureton's Ferry Road; thence with the line of said road, approximately S. 47 E. 150 feet to the point of beginning; containing one (1) acre, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Wardell Rawlins, Ervin Cureton, L. J. Massey, John Moffett, McCoy Dunlap, Jr., John Sanders, Charles Rollins (Rawlins), Hazel Mackey and Rev. George Buie, Pastor, as and constituting the Board of Trustees of Catawba Chapel, A.M.E. Zion Church, dated August 23, 1956, recorded September 29, 1956, in Book 232 at Page 129, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at Page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land being and situate near the Town of Catawba, Catawba Township, County of York and State of South Carolina, lying on the South side of the Seaboard Air Line Railway and East side of the Southern Railway Company right of way and Cureton's Ferry Road and West side of the lands of R. T. McClanahan (formerly J. D. Davis), containing one-fourth (1/4) acre, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Lula Mackey, dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page 68, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York and State of South Carolina, and being about one (1) mile southeast of the Town of Catawba, being more particularly described as follows, to wit: Beginning at a point in center of Cureton's Ferry Road, corner of property belonging to Epting; running thence with center of said road N. 51 W. 110 feet to a point; thence with line of property of Ervin Cureton, S. 76 W. 430 feet to a stake near Southern Railway track; thence with line of said tract and parallel thereto, S. 35-30 E. 110 feet to a stake; thence with line of Epting property, N. 73 E. 460 feet to the point of beginning; containing one (1) acre, more or less.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of Quay Dunlap, dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page 54, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being in Catawba Township, County of York and State of South Carolina, near the Town of Catawba, being more particularly described as follows, to wit: Beginning at a point in center of Cureton's Ferry Road, corner of property of Ervin Cureton; running thence with the center of said road as follows: N. 44 W. 720 feet, N. 47-45 W. 440 feet, N. 55-30 W. 450 feet and N. 50-30 W. 450 feet and N. 50-30 W. 202.4 feet to a point in center of Southern Railway track; thence with the center line of said tract, S. 36-30 E. approximately 1750 feet to a point, rear corner of property of Ervin Cureton; thence with the line of property of Ervin Cureton N. 76 E. 418 feet to the point of beginning; containing eight and six tenths (8.6) acres, more or less, exclusive of right of way of Southern Railway.

Derivation: This being the property conveyed to Bowaters Carolina Corporation by deed of J. M. Auten, J. W. Auten and T. M. Auten dated August 29, 1956, recorded August 30, 1956, in Book 231 at Page 51, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at page 38, aforesaid records.

AND

All that certain piece, parcel or tract of land situate, lying and being near the Town of Catawba, County of York and State of South Carolina, containing 16.2 acres, more or less, and being more particularly described as follows, to wit: Beginning at a point on western edge of old road in line of property of Reo A. Walker, corner of property of Estate of J. C. Faris; running thence with line of property of estate of J. C. Faris, N. 57 E. approximately 840 feet to point in center of Seaboard Air Line Railway Company tract; thence with the center line of said tract S. 89-06 E. approximately 948 feet to a point where line of property of Estate of W. S. Faris intersects same; thence with line of property of Estate of W. S. Faris, S. 49 W. approximately 1370 feet to a point on Southern side of old road in line of property of Fannie Belk Walker; thence with the line of property of Fannie Belk Walker, N. 44-30 W. approximately 532 feet and continuing with line of property of Reo A. Walker N. 59 W. 117 feet and N. 75 W. approximately 50 feet to the point of beginning; SAVING AND EXCEPTING existing rights of way of the Seaboard Air Line Railway Company and South Carolina Highway leading to the Town of Catawba.

Derivation: This being the identical property conveyed to Bowaters Carolina Corporation by deed of W. W. Faris, dated August 27, 1956, recorded August 30, 1956, in Book 231 at Page 60, aforesaid records. Bowater Incorporated is the successor in interest to Bowaters Carolina Corporation as set forth in that Affidavit of Fact made by William G. Harvey, as Senior Vice President and Treasurer of Bowater Incorporated, and recorded July 1, 2009, in Book 10877 at page 38, aforesaid records.

AND

A portion of the property described in that Order for Abandonment and Closure of a Segment of Crosby Lane (York County Road J7-005) and Vesting Title in Abutting Property Owners by and between York County and Bowater, Inc., recorded in 16341, at Page 28.

AND

No. 3 TMP Tract:

Located near Catawba in York County, South Carolina, and being more particularly described as Tract No. 1 containing 0.84 acres, Tract No. 2 containing 0.07 acre, Tract No. 3 containing 0.0225 acre, and Tract No. 4 containing 0.049 acre for a total combined acreage of 0.9815 acre,

all more clearly shown and described as Tracts 1, 2, 3, and 4 on a drawing titled Catawba Newsprint Company York County, Property Plat (3 Tracts) No. 3 TMP Plant CRSS Drawing Number P-2025-10-10-M-1 prepared by James Thomas Wigington, R.L.S. S.C. 5774, dated 9-30-85, revised 2/19/87 and recorded in Plat Book 89, Page 116, in the Office of the Clerk of Court of York County, South Carolina, which drawing is incorporated into this instrument by reference thereto and to which drawing reference is hereby made for a full and complete description of said Tracts 1, 2, 3, and 4. On said drawing Tract No. 1 is designated "NO. 3 TMP PLANT;" Tract No. 2 is designated "NO. 3 MILL, LOW DENSITY BLENDCHEST;" Tract No. 3 is designated "NO. 3 MILL, HYDRO TOWER;" and Tract No. 4 is designated "NO. 3 MILL HYDRO BLEACHING TANK AREA.

Derivation: This being a portion of the property from Catawba Newsprint Company to Bowater Incorporated (successor by mergers and name changes to Bowaters Carolina Corporation) dated December 21, 1990 and recorded January 21, 1991 in Record Book 184, Page 198, Office of the Clerk of Court for York County, South Carolina.

AND

LESS AND EXCEPTING a portion of the property described in that Condemnation Notice and Tender of Payment by and between South Carolina Department of Transportation vs. Bowater Incorporated, a Delaware corporation filed on February 9, 2011 and being Common Please Case Number 2011-CP-46-00581.Also being shown on that Plat recorded in Book E244, at Page 6.

DERIVATION: BEING THOSE PORTIONS OF PROPERTY LYING WITHIN THE FOLLOWING TAX MAP NUMBERS: 759-00-00-015, 759-00-00-016, 759-00-00-017 and 757-00-00-018, less any deeds out.

TOGETHER WITH, right of way and roadway easement agreement recorded in Book 4284 at Page 148.

Property described in that Order for Abandonment and Closing of Road described as York County Road Y-J60-012 and recorded on January 28, 2002 in Book 4140 at Page 236, aforesaid records.

Parcel 24 (Tax Map Number and Acreages for Reference Only: 761-00-00-002 (262 acres, more or less), York County:

Being all that certain piece, parcel, or tract of land situated, lying and being in York County, South Carolina, containing 262 acres, as shown on print dated March 9, 1977, marked Landsford Dwg. No. 18, copy of which is attached hereto and made a part hereof, which is based on a plat of survey made by R. H. Marett, Registered Surveyor, on February 2, 1977, recorded in Book 54 at Page 168, and also made a part hereof by reference thereto.

Derivation: This being the identical property conveyed to Catawba Timber Company by deed of Crescent Land & Timber Corp., dated June 20, 1977, recorded February 28, 1978, in Book 566 at Page 366, in the Office of the Clerk of Court for York County, South Carolina. Bowater Incorporated is the successor in interest to Catawba Timber Company as set forth in that Affidavit and Notice of Merger and Ownership made by Harvey M. Templeton, III, as Assistant Secretary of Bowater Incorporated, and recorded in Book 342 at Page 69, in the Office of the Clerk of Court for York County, South Carolina.

Parcel 25 (Tax Map Number and Acreages for Reference Only: 764-00-00-032 (213.66 Acres)):

All that tract or parcel of land situated, lying and being in York County, South Carolina, containing 100.00 acres, more or less, and being more fully shown and described as "E" Tract CDW-1503 on a plat of survey for Bowater Incorporated made by Michael R. Mills, S.C. Reg. No. 11606, dated October 16, 1992, revised November 24, 1992 and recorded in the Office of the Clerk of Court for York County, South Carolina, in Plat Book 116, Page 199, which plat is incorporated into this description by reference thereto and to which plat reference is made for a metes and bounds description of said land.

Derivation: This being the identical property conveyed to Bowater Incorporated by deed of Ashe Farms, Inc., dated January 12, 1993, recorded May 28, 1993, in Book 720 at Page 36, aforesaid records.

AND

All those tracts or parcels of land situated in York County, South Carolina containing a total of 138.66 acres, more or less, and being more fully shown and described as "Tract CDW – 1508 A (6.91 acres), C (47.14 acres), D (48.21 acres) and F (36.40 acres)" on a plat of survey for Bowater Incorporated made by Michael R. Mills, S.C. Reg. No. 11606, dated October 16, 1992, revised November 24, 1992, further revised March 3, 1993, and recorded in the Office of the Clerk of Court for York County, South Carolina, in Plat Book 116, Page 199, which plat is incorporated into this description by reference thereto and to which plat reference is made for a metes and bounds description of said land.

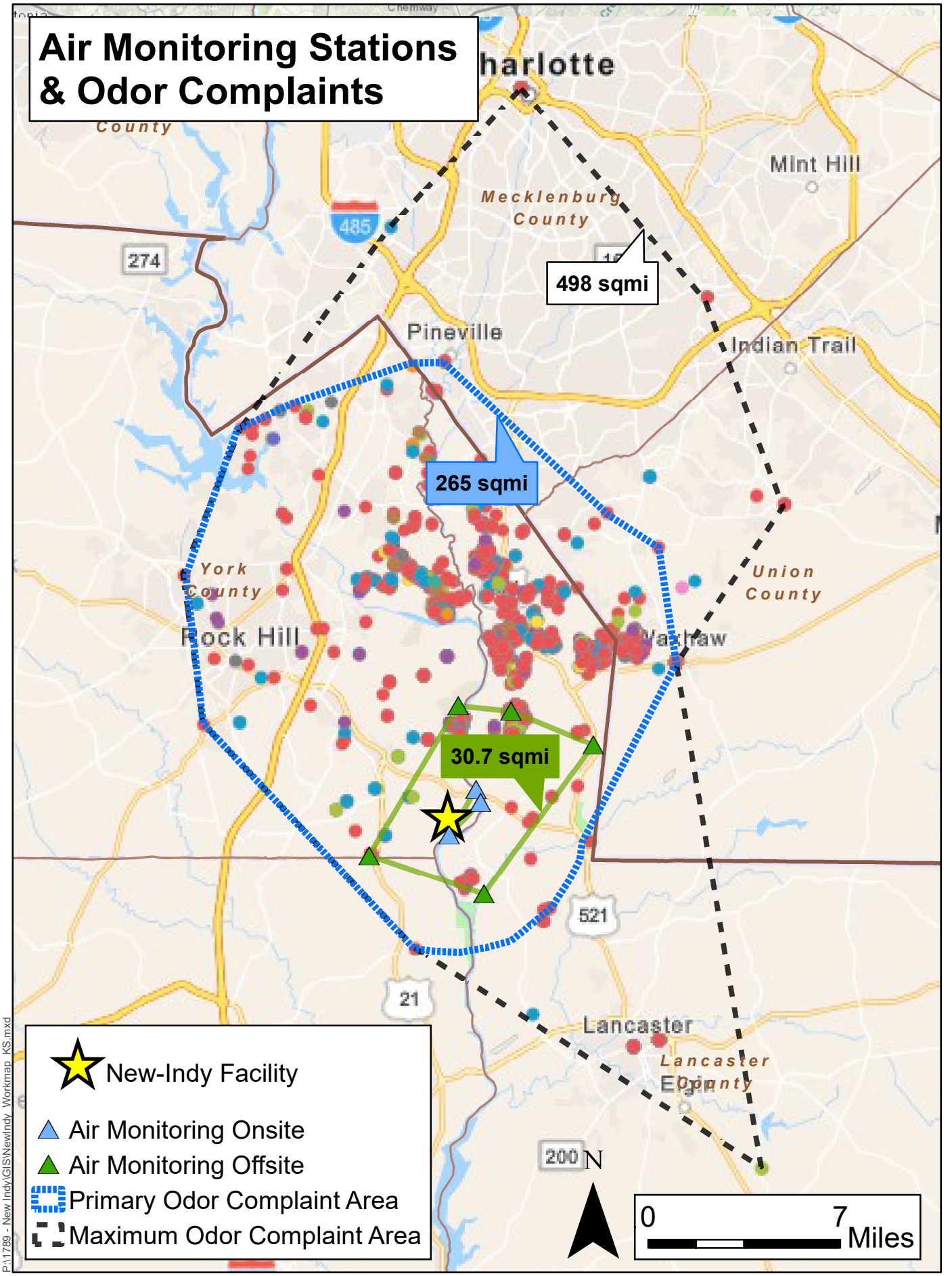
Derivation: This being the identical property conveyed to Bowater Incorporated by deed of Ashe Farms, Inc., dated April 30, 1993, recorded May 28, 1993, in Book 720 at Page 200, aforesaid records.

LESS AND EXCEPTING: All that certain piece, parcel or tract of land lying, being and situate on the southern side of S.C. Highway 5 (66' Right of way) in Catawba Township, York County, South Carolina and being more particularly shown and described as Tract "C" 25.00 Acres on Boundary Survey for Bowater, Inc. & Dorothy B. Faris Whiteside, prepared by Michael R. Mills, dated March 28, 2006, and recorded in Plat Cabinet D, Slide 122, Page 6, as follows: BEGINNING at a point in the centerline of S.C. Highway 5 at Grid Point 602, SC Grid

Coordinates North = 1,102,468.45 and East = 2,029,471.45 and running thence with the centerline of S.C. Highway 5, the following five (5) courses and distances: (1) S. 69°43'02" E. 656.88 feet; (2) S. 69°07'06" E. 99.87 feet; (3) S. 69°02'07" E. 99.86 feet; (4) S. 68°41'56" E. 99.90 feet; and (5) S. 68°17'03" E. 199.92 feet to a point; thence running S. 57°47'01" E. 177.71 feet to a steel post found; thence turning and running S. 30°47'37" W. 1,252.03 feet to a 1" rebar set; thence turning and running N. 32°52'34" W. 1,336.76 feet to a 1" rebar found; thence turning and running N. 16°25'59" E. 441.84 feet to a 1" rebar found; thence running N. 16°24'59" E. 34.50 feet to the point of beginning.

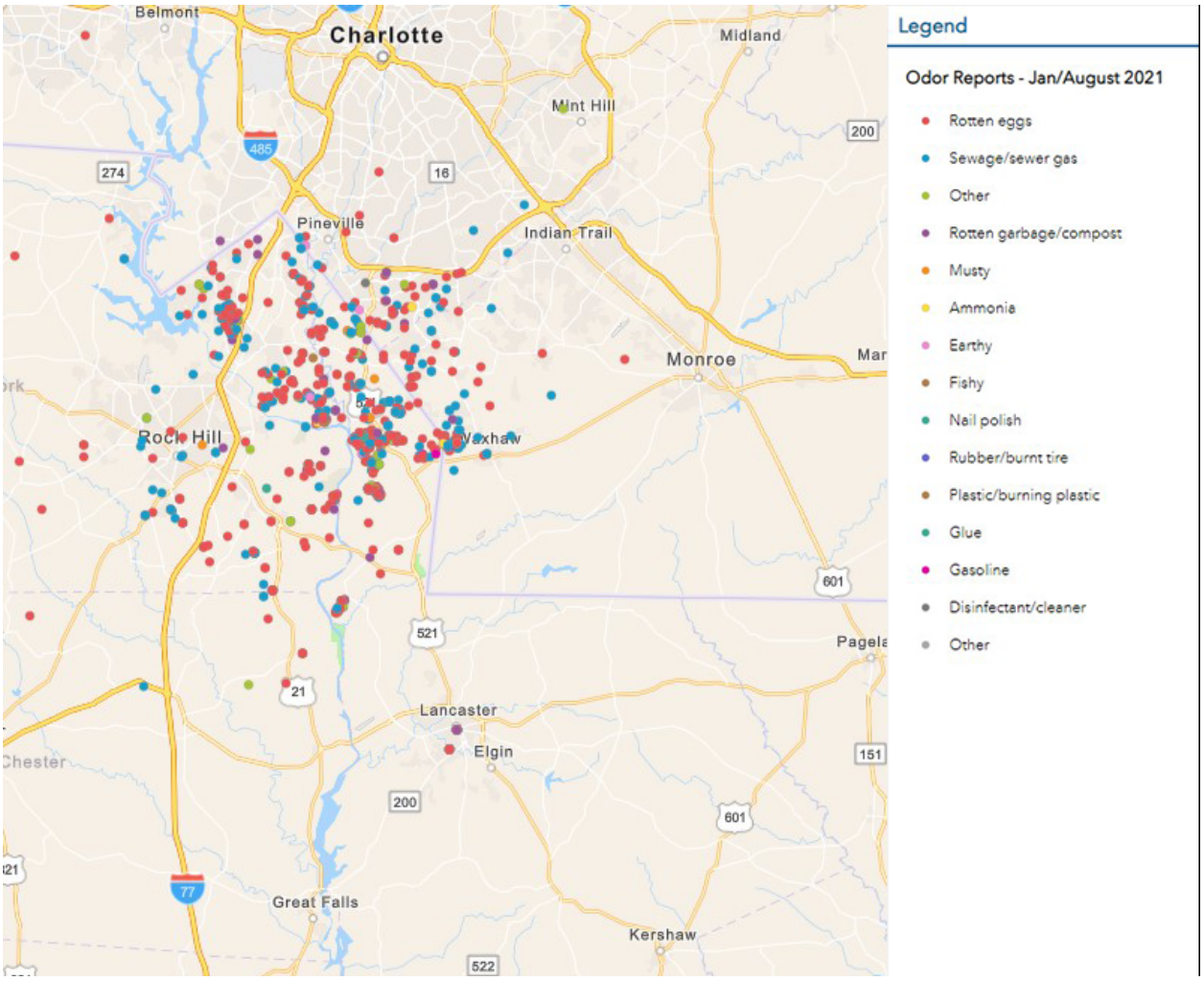
MOST RECENT DERIVATION: BEING the same property conveyed unto New-Indy Catawba, LLC by deed of Resolute FP US Inc. dated December 31, 2018 and recorded in the York County ROD Office on December 31, 2018 in Book 17347 at Page 139.

Exhibit E



Data Sources: South Carolina DHEC. New Indy Odor Investigation, Odor Complaints Map for June, 2021.
https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation
Accessed August 10, 2021
https://newindycatawba.com/wp-content/uploads/2021/08/NI-Air-Monitoring-Summary-Results-08-07-21.pdf

March 2021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Midland
Mint Hill
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274
16
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Pineville
Indian Trail
Monroe
Rock Hill
Waxhaw
601
521
Pagela
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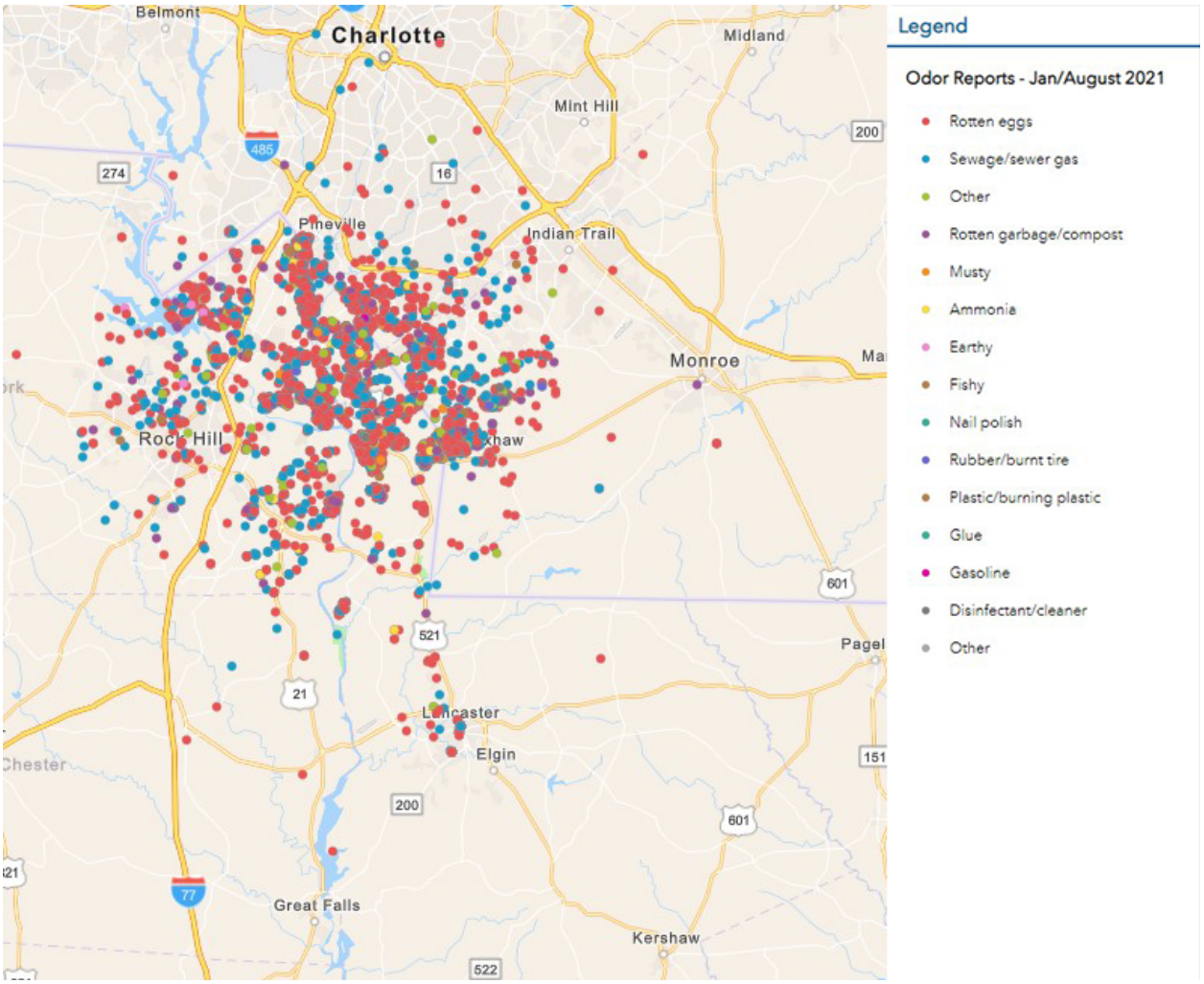
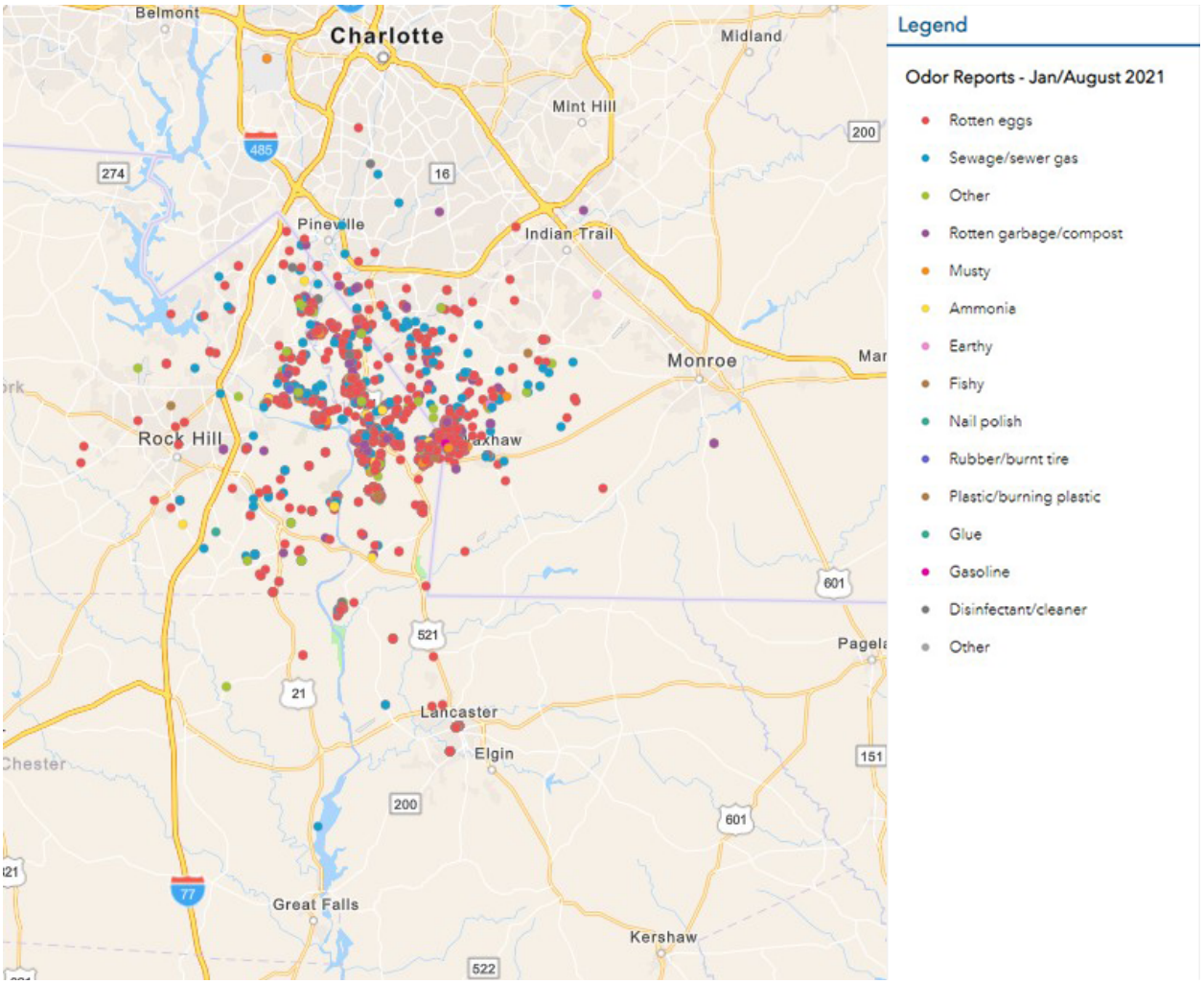
Lancaster
Chester
Elgin
151
200
601
77
Great Falls
Kershaw
522
Legend
Odor Reports - Jan/August 2021
Rotten eggs
Sewage/sewer gas
Other
Rotten garbage/compost
Musty
Ammonia
Earthy
Fishy
Nail polish
Rubber/burnt tire
Plastic/burning plastic
Glue
Gasoline
Disinfectant/cleaner
Other

April 2021


Belmont
Charlotte
Midland
Mint Hill
485
274
16
200
Pineville
Indian Trail
Monroe
Rock Hill
601
521
Pagel
21
Lancaster
Chester
Elgin
151
200
601
77
Great Falls
Kershaw
522
Legend
Odor Reports - Jan/August 2021
Rotten eggs
Sewage/sewer gas
Other
Rotten garbage/compost
Musty
Ammonia
Earthy
Fishy
Nail polish
Rubber/burnt tire
Plastic/burning plastic
Glue
Gasoline
Disinfectant/cleaner
Other

May 2021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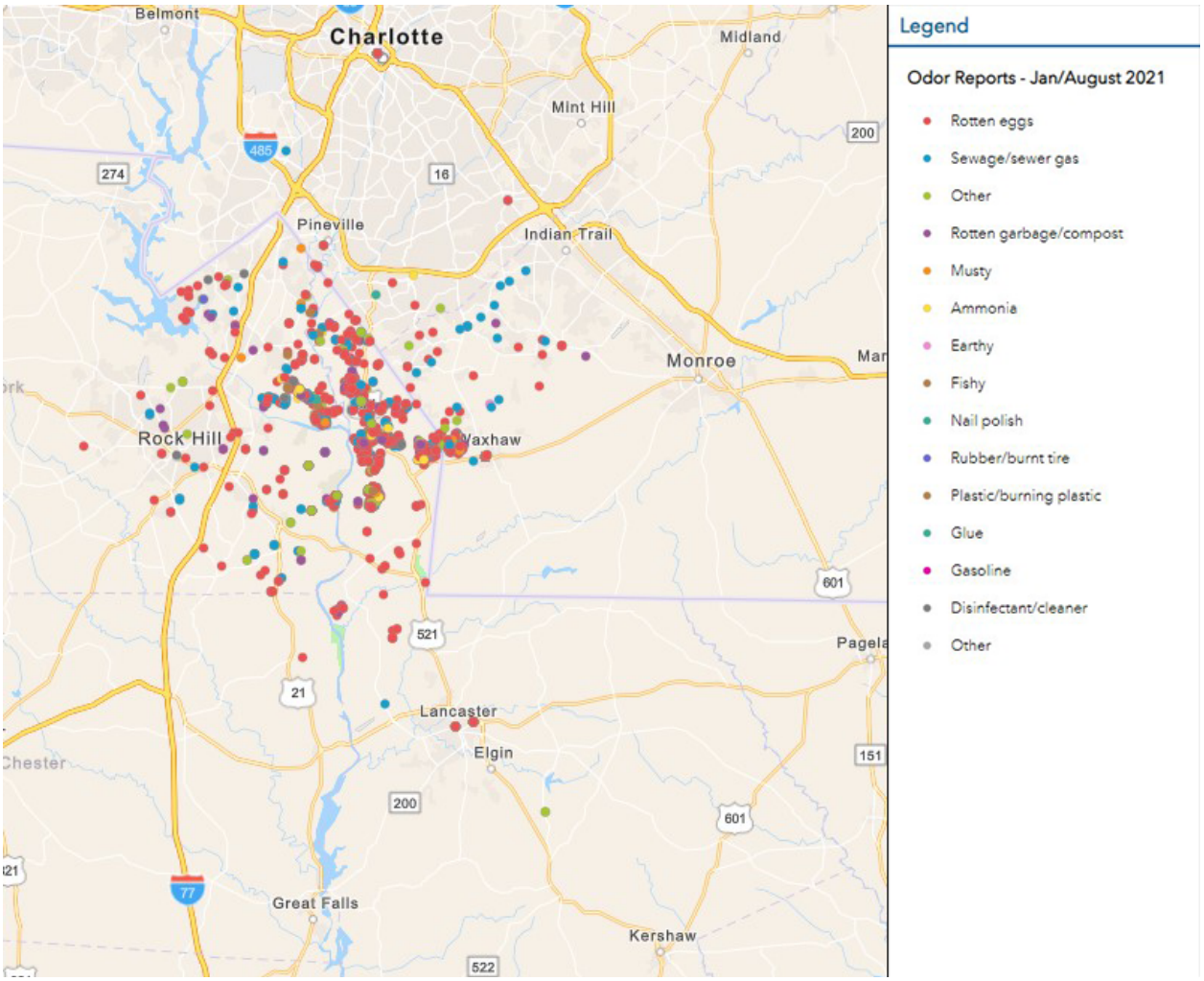
Charlotte
Midland
Mint Hill
485
274
16
200
Pineville
Indian Trail
Monroe
Rock Hill
601
521
Pagela
21
Lancaster
Elgin
151
Chester
200
601
77
Great Falls
Kershaw
522
Legend
Odor Reports - Jan/August 2021
Rotten eggs
Sewage/sewer gas
Other
Rotten garbage/compost
Musty
Ammonia
Earthy
Fishy
Nail polish
Rubber/burnt tire
Plastic/burning plastic
Glue
Gasoline
Disinfectant/cleaner
Other

June 2021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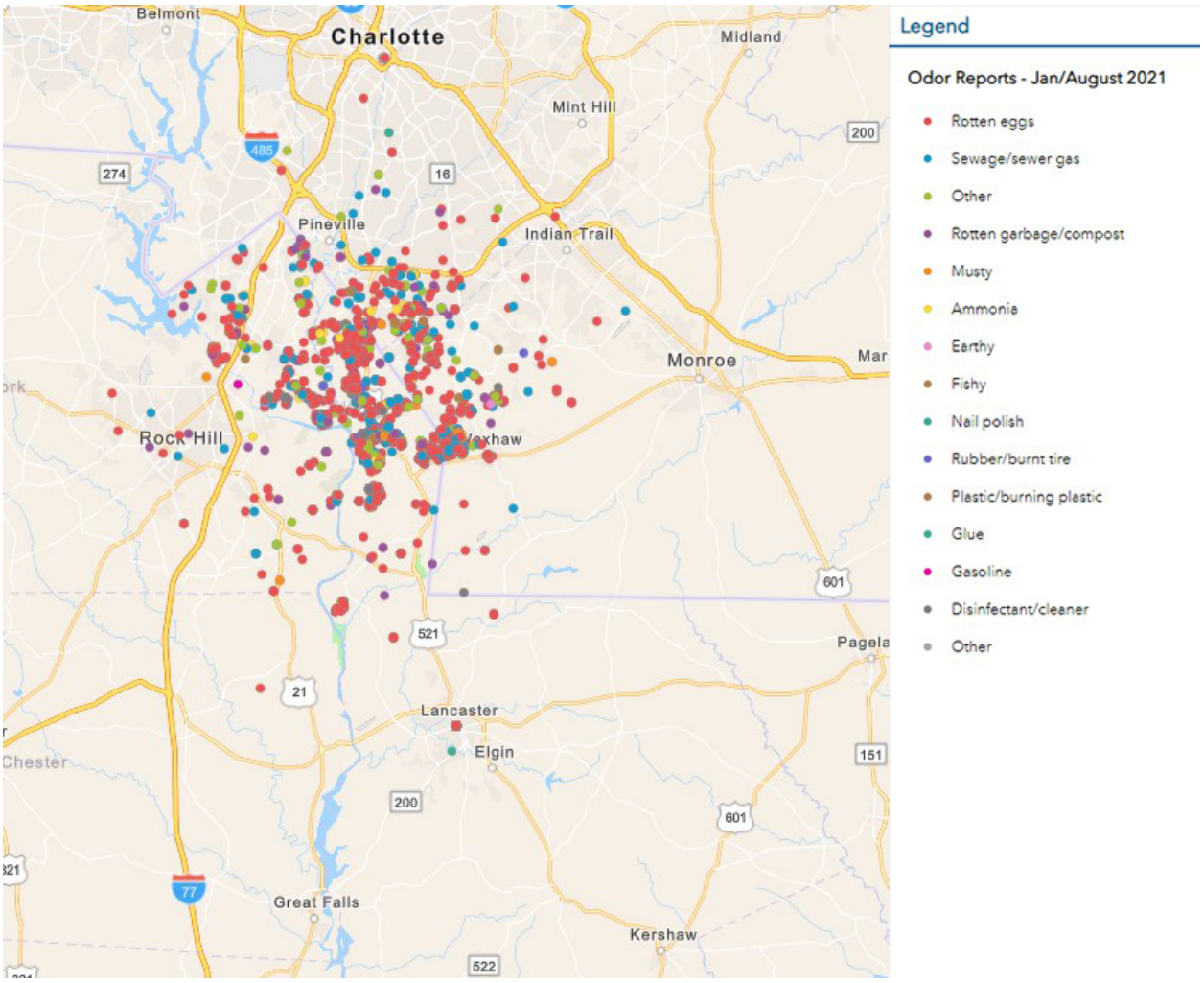
Fishy
Nail polish
Rubber/burnt tire
Plastic/burning plastic
Glue
Gasoline
Disinfectant/cleaner
Other

July 2021


Belmont
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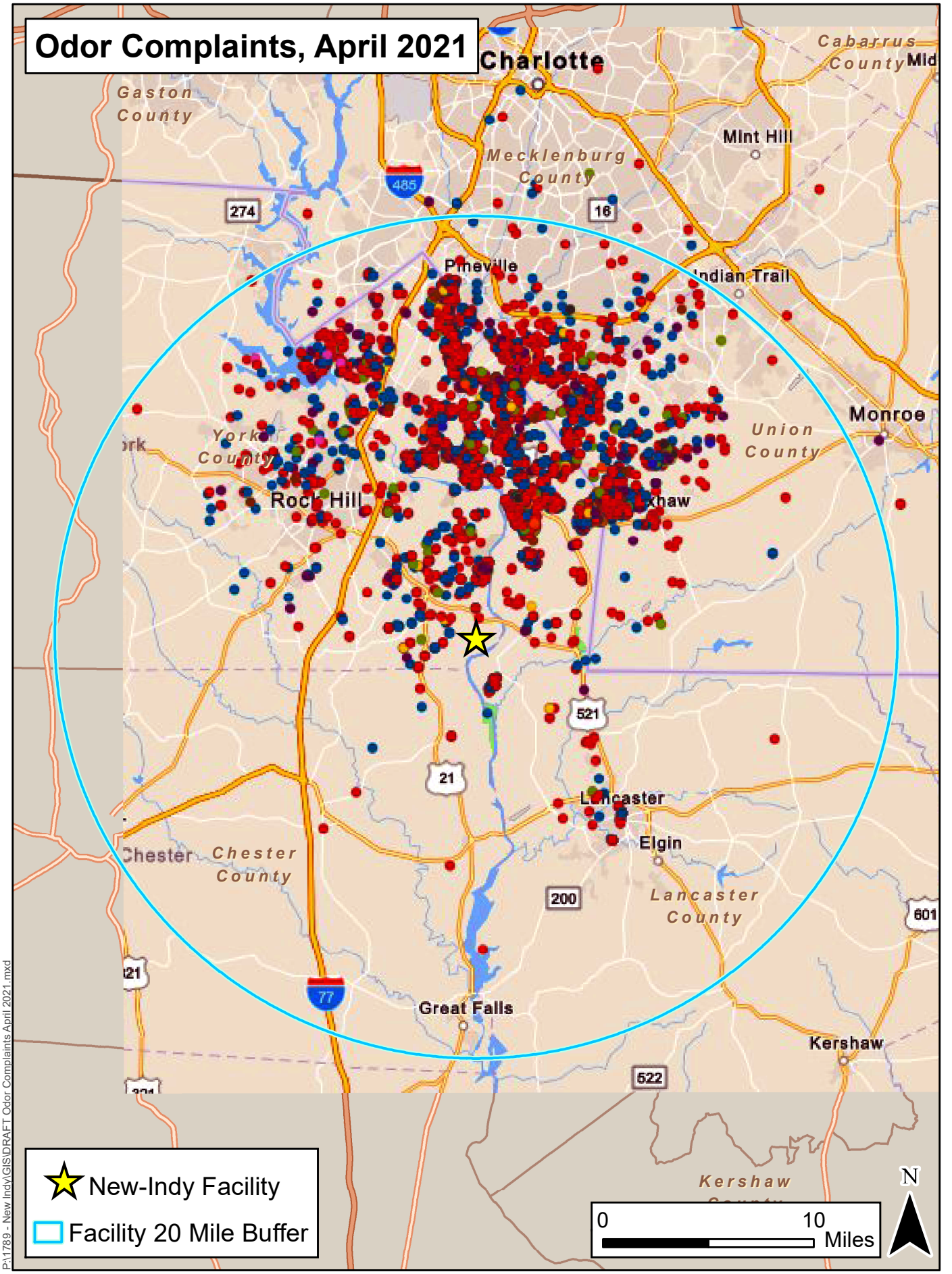
Other



Data Sources: South Carolina DHEC. New Indy Odor Investigation, Odor Complaints Map for April, 2021.
https://scdhec.gov/environment/environmental-sites-projects-permits-interest/new-indy-odor-investigation