

WHEREAS, Defendants deny and continue to deny any wrongdoing by them in connection with the historical operation of the USMR Smelter and the testing and remediation of Smelter Contaminants in Carteret, New Jersey;

WHEREAS, Defendants, the Settlement Class Representatives, and the Settlement Class desire to settle their claims on the terms and conditions stated herein without further litigation;

WHEREAS, in consideration of the promises and the mutual covenants hereinafter set forth, the Settlement Class Representatives, the Settlement Class, acting by and through Settlement Class Counsel, and Defendants have agreed to this class settlement agreement (“Agreement” as defined below).

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party hereto, IT IS HEREBY AGREED by the Parties, subject to Court approval, as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “**Agreement**” means this class settlement agreement including all exhibits.
- 1.2 “**Class Area**” means the geographical area defined by the Plaintiff class defined in the proposed Preliminary Approval Order, attached as Exhibit A, to this Agreement, and as illustrated by the map, attached as Exhibit B.
- 1.3 “**Class Period**” means January 30, 2017 through the Execution Date.
- 1.4 “**Class Settlement Benefits**” means the combination of the Settlement Fund and the Settlement Class Counsel’s contribution to the NJDEP Program.
- 1.5 “**Complaint**” means the Fifth Amended Complaint filed in the Litigation.
- 1.6 “**Court**” means the United States District Court for the District of New Jersey.

1.7 “**Effective Date**” means the first date by which all of the events and conditions specified in paragraphs 13.1.1 through 13.1.4 of this Agreement have been satisfied and have occurred.

1.8 “**Eligible Property**” means (i) all Residential Property (as that term is defined by N.J. Admin. Code § 18:12-2.2(b) and includes “dwelling house[s] and the lot or parcel of land on which the dwelling house is situated [where the] dwelling is functionally designed for use and enjoyment by not more than four families and includes residential condominiums”) and (ii) vacant lots zoned for residential use in each case located within the geographical boundary defined by the Class Area (where such land use applies at any time during the Class Period), but excluding (i) properties owned by the Defendants or employees of Defendants, and (ii) properties owned by any federal, state, or local government or any subdivision of such government entities. A preliminary list of Eligible Properties is attached as Exhibit C, subject to the review of the Settlement Administrator pursuant to Section 9.3 of this Agreement.

1.9 “**Eligible Property Payment Amount**” means the fixed per-property payment amount for each Eligible Property calculated by the Settlement Administrator based upon the available monies in the Class Settlement Fund after deduction of Class Counsel’s attorney’s fees, costs, expenses, and class representative incentive awards pursuant to Section 10 of this Agreement divided by the total number of all Eligible Properties within the Class Area.

1.10 “**Execution Date**” means the date that this Agreement is fully executed by all Parties.

1.11 “**Fairness Hearing**” means the hearing at which the Court will consider whether to give final approval to this Agreement, approve, modify or deny an award of attorneys’ fees,

incentive awards, costs and expenses, enter the Final Approval Order, and make such other final rulings as are contemplated by this Agreement.

1.12 “**Final Approval Order**” means the Court’s entry of the Final Judgment approving this Agreement.

1.13 “**Litigation**” means the class action lawsuit captioned *Juan Duarte. et al. v. United States Metals Refining, Co., et al.*, C.A. No. 2:17-cv-01624, in the United States District Court for the District of New Jersey that is now pending and any and all actions arising out of the underlying facts that are filed on behalf of the Settlement Class Members who do not exercise their right to opt out.

1.14 “**NJDEP**” means the New Jersey Department of Environmental Protection.

1.15 “**NJDEP Program**” means the community outreach, sampling and analysis, environmental remediation, restoration, and reporting associated with the residential soil cleanup program conducted by USMR in Carteret, New Jersey under the oversight of the NJDEP.

1.16 “**Notice Date**” means the date upon which the mailing of the “Individual Notice” to Settlement Class Members whose addresses can be determined through reasonable effort is complete pursuant to the requirements set out in Paragraph 16 of the proposed Preliminary Approval Order, the exact calendar date to be determined by the Settlement Administrator.

1.17 “**Opt-Out Request**” means the request for exclusion as provided for in Section 5.

1.18 “**Party**” or “**Parties**” mean the persons who have entered into this Agreement being the Settlement Class Representatives, the Settlement Class (acting by and through Settlement Class Counsel), and Defendants.

1.19 “**Person**” means a natural person, individual, corporation, association, limited liability company, partnership, limited partnership, joint venture, affiliate, and any other type of legal entity and their respective predecessors, successors, executors, administrators, representatives or assigns, including without limitation spouses, heirs, tenants, licensees, invitees, and occupants to the extent they assert claims or other interests associated with real property located in the Class Area by, through or under the Person who owns the real property.

1.20 “**Preliminary Approval**” means the Court’s order certifying the Settlement Class, directing notice to the Settlement Class, and preliminarily approving this Agreement under Federal Rule of Civil Procedure 23(e), where such approval is in substantially the same form as the Preliminary Approval Order attached as Exhibit A to this Agreement.

1.21 “**Released Claims**” means without limitation, any and all state and federal claims, actions, demands, rights, liabilities, suits, complaints, petitions, causes of action, whether known or unknown, past, present or future, suspected or unsuspected, contingent or non-contingent that arise from facts occurring from the beginning of time through execution of this Settlement Agreement, including all claims for property damages, inconvenience, annoyance, economic loss, and punitive or exemplary damages in connection with such claims arising from or related to the historical operation of the USMR Smelter that is the subject matter of this litigation, the environmental investigations and cleanup conducted by Defendants, and any other property conditions allegedly associated with either historical operation of the USMR Smelter or the Defendants’ environmental investigation and cleanup, and specifically include without limitation any claims and causes of action asserted in Plaintiffs’ Fifth Amended Complaint (including without limitation private nuisance, trespass, strict liability, and negligence). The “Released Claims” do not include claims for personal

injuries or medical monitoring or punitive or exemplary damages in connection with such claims.

1.22 “**Released Persons**” means all named Defendants in this litigation as well as their parents, subsidiaries, affiliated or related entities, and all directors, officers, employees, agents, joint ventures, legal representatives, attorneys, shareholders, insurers, predecessors, successors, assigns, and all other persons, natural or corporate, in privity with them.

1.23 “**Settlement Administrator**” means the individual or entity appointed by the Court to perform the settlement administration duties described in Section 9 of this Agreement, who shall serve as “administrator” of the Settlement Fund within the meaning of Treasury Regulation section 1.468B-2(k)(3). The Parties will recommend to the Court that JND Legal Administration serve as Settlement Administrator.

1.24 “**Settlement Class**” means the Settlement Class Members in the aggregate for the class to be certified by the Court pursuant to this Agreement solely for the purpose of effectuating this Agreement, as provided for in Section 3.

1.25 “**Settlement Class Counsel**” means the following lawyers: Steven J. German and Joel M. Rubenstein of German Rubenstein, LLP; Christopher T. Nidel and Jonathan Nace of Nidel & Nace PLLC; W. Mark Lanier, Richard D. Meadow, Alex Brown, and Christopher L. Gadoury of The Lanier Law Firm, P.C.; and John M. Vlasac, Jr. and Boris Shmaruk of Vlasac & Shmaruk LLC.

1.26 “**Settlement Class Member**” means any Person who owns or owned all or part of an Eligible Property at any time during the Class Period, who falls within the definition of the Settlement Class, and who does not opt out pursuant to Section 5 of this Agreement.

1.27 “**Settlement Class Representatives**” means Juan Duarte and Betsy Duarte.

1.28 “**Settlement Fund**” means USMR’s payment(s) described in Sections 9.2.1 and 9.2.2 of this Agreement that will be used to pay the monetary benefits to the Settlement Class Members, Settlement Class Counsel’s attorneys’ fees and expenses, the Settlement Class Representative incentive awards, and any settlement administration costs in excess of \$250,000 (if any), as described in this Agreement. The Settlement Fund shall be structured and operated by the Settlement Administrator in a manner so that it qualifies as a “qualified settlement fund” under section 468B(d)(2) of the Internal Revenue Code and Treasury Regulation §1.468B-1.

1.29 “**Settlement Fund Escrow Account**” means the escrow account established and managed by the Settlement Administrator to hold and distribute the Settlement Fund.

1.30 “**USMR Smelter**” means the industrial facility that is the subject matter of Plaintiffs’ Fifth Amended Complaint, which was located on Middlesex Avenue in the Borough of Carteret, Middlesex County, New Jersey, and which includes without limitation all of USMR’s former copper smelting, copper refining and other industrial and commercial operations conducted in and around that location.

2.NO ADMISSION OF WRONGDOING OR LIABILITY

2.1 Nothing in this Agreement or in any final judgment, or order of dismissal entered in the Litigation, constitutes an admission or concession of any liability or wrongdoing by Defendants or that there is any validity to any allegation in the Complaint. Settlement Class Counsel and Settlement Class Representatives shall not state or imply that Defendants have admitted or conceded any liability or wrongdoing. Nor shall they state or imply to anyone that, by this Agreement, or by USMR’s payment to the Settlement Fund or performance of the NJDEP Program, any of the Parties have acknowledged any validity to or weakness in the claims or the defenses asserted in the Litigation. Neither this Agreement, the Final Approval Order, the fact of settlement, the settlement negotiations, nor any related documents or facts

related to the settlement or settlement negotiations, shall be offered or received in evidence against any Released Person(s) for purposes of establishing liability or in an effort to certify a class action against any Released Person(s) for claims related in any way to the factual circumstances giving rise to this Litigation or in an effort to certify any claim against any Released Party. This Agreement and the Final Approval Order are specifically allowed to be utilized in any proceeding: (i) as may be necessary to consummate or enforce this Agreement, or (ii) against Settlement Class Representatives or Settlement Class Members or by any of the Released Person(s) to support a defense of *res judicata*, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense. A breach of the provisions of this paragraph 2.1 shall entitle the aggrieved person(s) to an injunction from any such future conduct and an award of attorneys' fees and costs associated in obtaining the injunction, but only against the Party, Settlement Class Member, or person responsible for such breach subject to this paragraph.

3.SETTLEMENT CLASS CERTIFICATION

3.1 Plaintiffs, on consent, will amend the operative Complaint to modify the current class definition so that it is consistent with the proposed class defined in the proposed Preliminary Approval Order attached as Exhibit A and the Class Area map as defined by Exhibit B.

3.2 Defendants agree that, solely for the purposes of the class settlement embodied in this Agreement and its implementation, they will not oppose the certification of a Settlement Class, as more particularly described in this Agreement. The Settlement Class Members and Settlement Class Counsel agree that they will not use, suggest or offer the fact that Defendants did not oppose the certification of the Settlement Class as grounds to certify or affirm on appeal a litigation class, including in the event the proposed class settlement described by this

Agreement is not finally approved and Defendants resume their opposition to Plaintiffs' motion for certification of a litigation class.

3.3 Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost-effective, and assured method of resolving claims of the Settlement Class Members, Settlement Class Counsel has concluded that this Agreement provides Class Settlement Benefits to the Settlement Class Members that are fair, adequate, reasonable, and in the best interest of Settlement Class Members. The Parties and Settlement Class Counsel agree to recommend approval of this Agreement to the Court, and to support approval of this proposed class settlement as fair, adequate and reasonable. Settlement Class Counsel further agrees to undertake their best efforts, including all reasonable and proper steps and efforts that may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to secure the Court's approval, and to oppose any appeals from or challenges to the Final Approval Order.

4. NOTICE OF PROPOSED CLASS SETTLEMENT

4.1 Provided no appeal is taken of the Preliminary Approval of this Agreement and certification of the Settlement Class, the Parties agree to work with the Settlement Administrator to provide notice of the proposed class settlement to the Settlement Class as required by Federal Rule of Civil Procedure 23 and all applicable due process requirements. Subject to Court approval, notice shall be provided in a manner substantially similar to that outlined in the notice plan included as part of the proposed Preliminary Approval Order attached as Exhibit A.

4.2 The cost of the notice described in Paragraph 4.1 and other settlement administration costs up to an aggregate total of \$250,000 will be paid by USMR. Any

settlement administration costs in excess of \$250,000 shall be paid from the Class Settlement Fund subject to the approval by the Parties and the Court.

4.3 The text of the notices to the Settlement Class as described by Paragraph 4.1, shall be substantially equivalent to the notices included with the proposed Preliminary Approval Order that is attached as Exhibit A. A preliminary list of Settlement Class Members and mailing addresses for individual notice is attached as Exhibit C. The Settlement Administrator shall have the discretion to add to or subtract from this list consistent with the definition of the Settlement Class and the notice requirements of Federal Rule of Civil Procedure 23.

4.4 Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Motion for Preliminary Approval attaching this Settlement Agreement is filed with the Court, the Settlement Administrator shall serve upon the Attorney General of New Jersey, the Attorneys General of any other state where the listed address for an owner of an Eligible Property is a state other than New Jersey (based on the most recent Borough of Carteret tax records), the Attorney General of the United States, and other required government officials, notice of the proposed settlement as required by law. Expense of such CAFA Notice shall be treated as a cost of claims administration under Section 11 of this Settlement Agreement.

5.OPT-OUT PROCEDURE

5.1 Settlement Class Members who want to be excluded from the Settlement Class must send a written request for exclusion clearly evidencing their desire to opt out of the proposed class settlement (“Opt-Out Request”) and signed by them or their duly authorized representative with documentation of such representative authorization to:

Duarte v. U.S. Metals Refining Company
c/o JND Legal Administration
PO Box 91420
Seattle, WA 98111

postmarked no more than forty five (45) days after the Notice Date.

5.2 A Settlement Class Member that owns multiple Eligible Properties within the class must opt-out all Eligible Properties or alternatively have all Eligible Properties stay within the class. In other words, a single Settlement Class Member cannot have some Eligible Properties within the class and others excluded from the class. In the event a Settlement Class member seeks to opt-out some Eligible Properties and not others, the Parties will request that the Court deem all Eligible Properties owned by the Settlement Class Member in question to have not properly opted out of the Class Settlement Benefits and that such Settlement Class Member be deemed to have fully participated in the Class Settlement Benefits. Any exception to this procedure must be made in writing by the Settlement Administrator and approved by Settlement Class Counsel and Defendants.

5.3 A Settlement Class Member who elects to opt-out of the Settlement Class must follow the procedure established in this subsection. The opt-out right must be exercised individually by the individual Settlement Class Member, and not as a member of a group, and except in the case of a deceased, minor, or incapacitated Settlement Class member, not by the act of another person acting or purporting to act in a representative capacity. For Eligible Properties that are owned by more than one Person during the same time period, all Persons with an ownership interest in the property must opt out for the opt-out to be effective, and if all Persons with an ownership interest do not opt-out, all owners of the Eligible Property shall remain part of the Class.

5.4 Settlement Class Counsel, within seven (7) days from the running of the opt-out period, shall prepare or obtain from the Settlement Administrator, a preliminary list of the names and property descriptions for all Persons that submitted an Opt-Out Request and will

provide the list to Defendants' Counsel. Settlement Class Counsel shall provide to Defendants a final list of Persons who have elected to opt out of the Settlement Class within twenty-one (21) days from the running of the opt-out period. The Parties will file the final Opt-Out list with the Court as part of their Motion for Final Approval or as otherwise directed by the Court. Persons who submit a valid Opt-Out Request (and do not withdraw such request prior to the entry of the Final Approval Order) are not Settlement Class Members, and will not be bound by any final judgment entered in this case or the release contained in this Agreement. Opt-outs will also not be eligible for any of the Class Settlement Benefits provided to Settlement Class Members under this Agreement.

6. OBJECTION PROCEDURE

6.1 Settlement Class Members who do not request exclusion from the Settlement Class may object to the proposed class settlement. Settlement Class Members who choose to object to the proposed class settlement must file written notices of intent to object in accordance with this subsection. Any Settlement Class Member may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent allowed by the Court, applying applicable law, in opposition to the fairness, reasonableness and adequacy of the proposed class settlement, on the application for an award of attorneys' fees and costs, and on the applicable Settlement Class Representatives incentive awards. The right to object to the proposed class settlement must be exercised individually by an individual Settlement Class Member, not as a member of a group or subclass and, except in the case of a deceased, minor, or incapacitated Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity.

6.2 To be effective, a notice of intent to object to the settlement must:

- Contain a heading which includes the name of the case and case number;

- Provide the name, Eligible Property address(es), mailing address, telephone number and signature of the Settlement Class Member filing the objection;
- Provide documentary proof of membership in the Settlement Class;
- Indicate the specific reasons why the Settlement Class Member objects to the proposed class settlement;
- Contain the name, address, bar number and telephone number of the objecting Settlement Class Member's counsel, if represented by an attorney. If the Settlement Class Member is represented by an attorney, that attorney must comply with all applicable laws and rules for filing pleadings and documents in United States District Court for the District of New Jersey; and
- State whether the objecting Settlement Class Member ("Objector") intends to appear at the Fairness Hearing, either in person or through counsel.

In addition, a notice of intent to object must contain the following information, if the Settlement Class Member or his, her or its attorney requests permission to speak at the Fairness

Hearing:

- A detailed statement of the specific legal and factual basis for each and every objection;
- A list of any and all witnesses whom the Objector may call at the Fairness Hearing, with the address of each witness and a summary of his or her proposed testimony; and
- A detailed description of any and all evidence the Objector may offer at the Fairness Hearing, including photocopies of any and all exhibits which the Objector may introduce at the Fairness Hearing.

6.3 No later than forty five (45) days after the Notice Date, all objections shall be filed with the Court, sent to the Settlement Administrator by first class mail or hand delivery, and served upon each of the following counsel:

- (a) Settlement Class Counsel:
Steven J. German
German Rubenstein, LLP
19 West 44th Street, Suite 1500
New York, NY 10036; and

(b) Defendants' Counsel:
James D. Thompson III
Vinson & Elkins LLP
Texas Tower
845 Texas Avenue
Houston, TX 77002

6.4 Any Person who opts out of the class pursuant to Section 5 of this Agreement is not eligible to object to the proposed class settlement.

6.5 Any Settlement Class Member who does not file a timely notice of intent to object in accordance with this subsection shall waive the right to object or to be heard at the Fairness Hearing and shall be forever barred from making any objection to the proposed class settlement. Persons who own Eligible Property but do not wish to be Settlement Class Members have the right to exclude themselves from the proposed class settlement and pursue a separate and independent remedy against any or all Released Persons by complying with the exclusion provisions set forth in Section 5, above. Settlement Class Members who object to the proposed class settlement shall remain Settlement Class Members, and have voluntarily waived their right to pursue a remedy independent of this Litigation against Released Persons. To the extent any Settlement Class Member(s) objects to the proposed class settlement, and such objection is overruled in whole or in part, such Settlement Class Member(s) will be forever bound by the Final Approval Order. Potential Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions in Section 5, above.

7.FINAL COURT APPROVAL

7.1 After Notice is given pursuant to Paragraphs 4.1 through 4.4, the Settlement Class, acting by and through Settlement Class Counsel, and Defendants shall jointly move for

the Court's final approval of the class settlement set out in this Agreement, and agree to use their best efforts to obtain such approval under Federal Rule of Civil Procedure.

7.2 The Parties shall file with the Court an agreed proposed Final Approval Order, Judgment and Order of Dismissal that (i) approves the class settlement as fair, adequate and reasonable under Federal Rule of Civil Procedure 23, (ii) dismisses the Litigation with prejudice, (iii) enjoins all further litigation on the Released Claims against Released Persons, and (iv) enters final judgment (with continuing jurisdiction to administer the settlement), substantially in the form attached as Exhibit D ("Final Approval Order"). The proposed Final Approval Order shall be filed by the Parties prior to the Fairness Hearing.

7.3 The Settlement Class, acting by and through Settlement Class Counsel, shall use their best efforts to resolve any and all objections that may arise or be filed with respect to the proposed class settlement. Defendants will not be obligated to contribute any money for addressing or resolving any objector issue.

7.4 If any person, other than the Parties hereto, appeals the Court's Final Approval Order, the Parties will use their best efforts to defeat the appeal with each Party to bear its own costs.

7.5 The terms of this Agreement are conditioned upon the Court's Final Approval Order being entered substantially in the same form attached as Exhibit D to this Agreement; and, in the event the Final Approval Order is appealed, the dismissal of said appeals or affirmance of the Court's Final Approval Order.

7.6 In the event of any appeal, all dates triggered after the date of Preliminary or Final Approval are stayed for the pendency of the appeal.

8. TERMINATION

8.1 If the Court or any appellate court enters a final, non-appealable order altering this Agreement in a way that materially and adversely affects the Settlement Class or Defendants, the affected Party may void the Agreement within twenty (20) business days from the date that such order becomes final and non-appealable by giving written notice of intent to the other Party and the Court to void the Agreement as provided in this Agreement. Notwithstanding the above, the Court's entry of an order for Settlement Class Counsel's attorneys' fees, costs, expenses and incentive awards below the maximum fee and incentive award request (as described in Paragraph 10) shall not be grounds to void the class settlement between Defendants and the Settlement Class set out in this Agreement. The only remedy in the event of a fee request award below the maximum fee request shall be a separate appeal by Settlement Class Counsel of the attorneys' fees, costs, expenses and incentive awards award provided by the Court, and such appeal shall be severable from the final judgment as to the Settlement Class.

8.2 Defendants shall have the absolute right, in their sole discretion, to terminate this Agreement if the opt-out threshold equal to 29 Eligible Properties is reached. If Defendants in their discretion elect to terminate this Agreement, Defendants must provide notice of termination of this Agreement within ten (10) business days as provided in this Agreement after receipt of the Final List of Settlement Class Action Opt-Outs from the Settlement Class Counsel as described in Section 5.4.

8.3 The Parties agree that, if final approval of the Agreement is not achieved, or the Agreement is terminated and voided, the settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Parties, and the Parties

further agree to jointly move the Court to vacate all Orders issued pursuant to this Agreement and certification of the Settlement Class.

9.SETTLEMENT CLASS RELIEF

9.1 **The Settlement is Fair, Adequate and Reasonable**

9.1.1 Based on an analysis of the facts and the law and taking into account the burden and expense of litigation, as well as the fair, cost-effective, and assured method of resolving the claims of Settlement Class Members, Settlement Class Counsel has concluded that this Agreement: (1) is desirable to resolve in a final and complete manner the pending and potential claims of the Settlement Class related to the historical operation of the USMR Smelter and any pollution or contamination related to that operation as well as the environmental investigations and cleanup conducted by or on behalf of Defendants all of which are at issue in the Litigation; (2) provides meaningful Class Settlement Benefits to Settlement Class Members; and (3) is fair, adequate, and reasonable and they will submit this Agreement for Court approval.

9.1.2 The Parties have agreed in this Agreement to provide for the resolution of any and all disputes concerning the Released Claims, and believe that this Agreement provides substantial and meaningful benefits to the Settlement Class Members.

9.1.3 The Parties agree that this proposed class settlement does not terminate or modify USMR's obligations under the regulatory cleanup program currently being conducted in Carteret under the oversight of the NJDEP; nor does it impact any future action by the State of New Jersey in Carteret under applicable environmental laws.

9.1.4 Defendants expressly state that this Agreement does not resolve any claims they possess for, *inter alia*, contribution, indemnity or any independent causes of action against other Persons who are not Parties to this Agreement. All Parties agree that Defendants

preserve any and all claims against any other Person (except not including Settlement Class Members) and that such claims survive the execution of this Agreement notwithstanding any of the release language in this Agreement.

9.1.5 USMR has spent more than \$61 million to date on community outreach, sampling and analysis, environmental remediation, and reporting associated with NJDEP Program. The Class Settlement Benefits include the Plaintiffs' Counsel's contribution to the NJDEP Program including, but not limited to, technical review, comments, oversight, monitoring of the NJDEP Program, and an extensive deposition of the responsible oversight authority for the program (the "LSRP") which ultimately influenced and enhanced the USMR residential cleanup program within the Area of Concern ("AOC"). The majority of the cost for the NJDEP Program has been incurred during the course of this Litigation.

9.2 **Settlement Fund**

9.2.1 USMR shall make a payment totaling \$42,000,000 to the Settlement Fund Escrow Account established by the Settlement Administrator on or before the date 10 business days after the Effective Date.

9.2.2 Defendants have also negotiated a separate proposed settlement with certain property owners outside of the Class Area (the "Settling Individual Homeowners"). In the event that the total aggregate of payments to all Settling Individual Homeowners (which include Settlement Individual Homeowners' attorneys' fees and costs) is less than \$2 million, USMR will also pay the remaining amount to reach a total of \$2 million to the Settlement Fund Escrow Account (*e.g.*, payments to Settling Individual Homeowners plus this potential payment to the Settlement Fund Escrow Account equal \$2 million). USMR shall make the payment under this Section 9.2.2 (if any) to the Settlement Fund Escrow Account on or before

the date 10 business days after the later date of (i) the Effective Date, or execution of formal settlement documents and payments to all Settling Individual Homeowners.

9.2.3 Cash benefits will be distributed to the Settlement Class Members from the Settlement Fund Escrow Account by the Settlement Administrator. The payment structure to the Settlement Class Members is based on a per-property payment of the Eligible Property Payment Amount that is the same for each Eligible Property in the Class Area.¹ In cases where multiple Settlement Class Members have an ownership interest in an Eligible Property, the Settlement Class Members share the Eligible Property Payment Amount for that Eligible Property as set out in Section 9.3.4. All payments from the Settlement Fund shall be pursuant to the terms of the Escrow Agreement, included as Exhibit E.

9.2.4 The Settlement Administrator shall calculate the Eligible Property Payment Amount after (i) there is a final, non-appealable order on the amount of Settlement Class Counsel's attorneys' fees and costs, Settlement Class Representative incentive awards, and settlement administration costs to be deducted from the Settlement Fund, (ii) receipt of the payments under Sections 9.2.1 and 9.2.2 are complete, and (iii) the Settlement Administrator completes a list of all Eligible Properties and that list has been approved by Defendants and Settlement Class Counsel.

9.2.5 The Settlement Administrator will provide Settlement Class Counsel, Defendants, and the Court with a final report within thirty (30) days after completion of cash distributions to the Settlement Class Members, except as otherwise ordered by the Court. This final report shall provide an accounting of the claim forms received, those accepted for payment, the payment amounts, and the administrative costs. Upon reasonable notice and the

¹ There are a handful of Eligible Properties that changed use from "residential" to an excluded land classification during the Class Period. Owners of these properties will be eligible for a payment that is proportional to the time period the property was classified as residential.

request of Settlement Class Counsel, Defendants or the Court, the Settlement Administrator will provide periodic status reports during the pendency of the claims review and adjustment process.

9.3 **Claim Submission and Payment Requirements**

9.3.1 In order to be eligible for monetary benefits under this Agreement, each Settlement Class Member must execute a properly-completed Claim Form, including a declaration under the penalties of perjury, that all of the factual matters set out on the Claim Form are true and correct. The Claim Form shall be substantially equivalent to the form attached to the draft individual notice included with the Preliminary Approval Order attached as Exhibit A. Complete Claim Forms must be received before the payment of any monetary benefit to Settlement Class Member. To the extent any Settlement Class Member is unable to produce a deed; HUD-1 Settlement Statement, consolidated Closing Disclosure, or other recognized closing statement form; or other government record evidencing ownership as required by Section 9.3.3 herein, the Settlement Class Member shall cooperate with the Settlement Administrator in providing such other and further information as may be reasonably requested to verify ownership of the relevant Eligible Property, including a signed records authorization release that may be utilized by the Settlement Administrator to obtain other pertinent and necessary records to verify ownership of the relevant Eligible Property. Failure to cooperate with the Settlement Administrator in a timely manner shall be a sufficient basis for denial of the claim, in whole or in part. The Parties will obtain a confidentiality agreement from the Settlement Administrator requesting that it treat any private information obtained from Settlement Class Members as confidential, subject to the requirements of the Court.

9.3.2 New Claims Forms or previously filed claims adding new properties will not be accepted after the date 45 days after the Notice Date. Notwithstanding the above, the Settlement Administrator may approve a reasonable opportunity to cure deficiencies in timely submitted Claim Forms as well as the late-acceptance of new Claim Forms where the Settlement Administrator finds excusable neglect, but in no event shall the Settlement Administrator process Claim Forms that are filed, or remain incomplete or deficient after the date 60 days after the deadline for submission of Claim Forms. Any exceptions to these deadlines not expressly approved by both Class Counsel and Defendants may be made only by the Court following petition by the Settlement Administrator.

9.3.3 The Settlement Administrator shall ensure that the Settlement Class Member demonstrates ownership of the relevant Eligible Property prior to making a payment to that Settlement Class Member. In general, demonstrating evidence of proof of record title ownership by the Settlement Class Member must be supported by a deed; HUD-1 Settlement Statement, consolidated Closing Disclosure, another recognized closing statement form; other government record evidencing ownership, or the provided declaration supported by other valid proof of ownership as requested by the Settlement Administrator. With prior written approval of Settlement Class Counsel and Defendants, the Settlement Administrator may establish additional rule(s) for ownership determinations that facilitate proof of record title ownership to reasonable degree of certainty and prevent fraud. If the Settlement Administrator determines that additional information is needed from the Settlement Class Member to verify record title ownership during the Class Period, the Settlement Administrator will attempt to contact the Settlement Class Member to obtain the information.

9.3.4 A single Settlement Class Member who owns multiple Eligible Properties within the Class Area may make a claim for each Eligible Property. For a single Eligible Property owned by the same multiple individuals over the Class Period, the Eligible Property Payment Amount will be made payable jointly to all of the individual property owners. If the Eligible Property changed ownership during the Class Period, then the Eligible Property Payment Amount will be divided among the owners/owner groups for that Eligible Property on a time weighted basis over the Class Period.

9.3.5 The Parties hereby authorize the Settlement Administrator to adopt reasonable rules and implementation procedures for purposes of distributing the Settlement Fund consistent with the terms of Agreement. The Parties have agreed to recommend a Settlement Administrator to the Court that has experience in administering environmental class actions. While the Settlement Administrator is encouraged to consult with Settlement Class Counsel and counsel for Defendants regarding such decisions, determinations based on reasonable rules that are consistent with this Agreement implemented by the Settlement Administrator are final for purposes of this Agreement.

9.3.6 Settlement Class Members must possess a social security number or federal tax ID number and provide that number with their Claim Form.

9.3.7 In the event that the owner or owner group for an Eligible Property during all or a portion of the Class Period opt(s) out; or fail(s) to complete the Claim and Release Form; or provides a Claim and Release Form with incomplete or inaccurate ownership documentation and fails to correct or supply such information after given reasonable notice of and an opportunity to do so, the settlement payment that such owner or owner group would have been entitled to will be considered unclaimed funds and will be subject to the reversion to

USMR and then, if the reversion cap is met, allocated to Class Members, as set forth in Paragraph 9.4 of this Agreement.

9.3.8 All payments issued to Class Members via check will state, on the face of the check, that the check will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that a check issued to a Class Member(s) is not cashed within ninety (90) days after the date of issuance, the check will be void, and such funds shall revert to the Settlement Fund, to be distributed as unclaimed funds. To the extent that no claim is made for an Eligible Property within the claims period, the unclaimed funds shall be distributed to the reversion to USMR and then, if the reversion cap is met, allocated to the Class Members who have filed complete and accurate claim forms pro rata, as set forth in Paragraph 9.4 of this Agreement.

9.4 **Reversion of Funds to USMR.** After the Settlement Administrator determines that all valid and timely Claim Forms have been adjusted and paid according to the terms of this Settlement Agreement, any remaining monies in the Class Settlement Fund, if any, shall revert to USMR. Notwithstanding the above, however, the reversion to USMR shall not exceed 30% of the amount in the Settlement Fund after deduction of Class Counsel's attorneys' fees, costs and expenses, and payment of approved incentive awards. If there are remaining monies after payment of this reversion amount to USMR, such monies shall be distributed to Class Members filing valid and timely Claim Forms pro rata.

9.5 **Execution of Individual Releases.** Each Settlement Class Member shall as part of submission of his or her Claim Form (i) execute an individual general release that is consistent with the provisions of Section 12 of this Agreement and in a form approved by the Parties, and (ii) agree not to disparage USMR's regulatory cleanup program. Failure to

execute such a general release and non-disparagement agreement will result in denial of payment of any settlement sums, but it will not serve to exclude the Settlement Class Member from the Settlement Class.

9.6 **Prior Agreements Not Voided.** Prior individual access agreements and other documents signed by Settlement Class Members in connection with the NJDEP Program shall remain in place and are not voided by this Agreement.

10. ATTORNEYS' FEES, COSTS, EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARDS

10.1 The Parties agreed to all substantive terms of this Agreement prior to reaching any agreement concerning attorneys' fees. Settlement Class Counsel shall be paid reasonable attorneys' fees and out-of-pocket costs and expenses arising from their representation of the Settlement Class Members to be paid from the Settlement Fund. Settlement Class Counsel shall file a motion with the Court seeking such fees, costs and expenses, but in no event shall Settlement Class Counsel seek an amount in fees, costs and out-of-pocket expenses that exceeds 33% of the Class Settlement Benefits, but in any case not to exceed 50% of the Class Settlement Fund. The Defendants agree to not oppose Settlement Class Counsel's fee application if it is otherwise consistent with this paragraph. Receipt by German Rubenstein, LLP of the attorneys' fees, costs and expenses payment shall be deemed as receipt thereof by each and every Settlement Class Counsel, and shall fully and completely release the Released Persons from any and all claims for any further payment for attorneys' fees, costs and expenses. The Parties acknowledge and agree that the amount of potential attorney fees, costs and expenses was not agreed until after the terms related to the Class Settlement Benefits were reached.

10.2 Settlement Class Counsel may at their sole discretion file a motion with the Court seeking incentive awards for the individual Settlement Class Representatives and the prior Class Representatives Leroy Nobles and Betty Nobles, and the Defendants agree to not oppose Settlement Class Counsel's motion for Settlement Class Representatives' incentive awards, as long as all incentive awards are drawn exclusively from the Settlement Fund and the amount of any one incentive award does not exceed \$15,000 per individual.

10.3 The Settlement Administrator shall pay the attorneys' fees, costs and incentive awards described in Paragraphs 10.1 and 10.2 from the Settlement Fund Escrow Account to German Rubenstein, LLP within 10 days after the completion of all of the following events (i) the Effective Date, (ii) entry of a final, non-appealable order by the Court awarding Settlement Class Counsel's attorneys' fees and costs and Settlement Class Representatives incentive awards, and (iii) payments to the Settlement Fund by USMR described in Sections 9.2.1 and 9.2.2.

10.4 Each Settlement Class Member who submits a Claim Form for processing under this Agreement may be represented by Settlement Class Member's counsel of the Settlement Class Member's choice, but all fees and expenses for an individual Settlement Class Member's counsel shall be paid by the Settlement Class Member pursuant to individual retainer agreement. The Released Persons shall have no obligation to pay any attorneys' fees of any Settlement Class Member, including without limitation any objecting Settlement Class Members, except as expressly set out in Paragraph 10.1 of this Agreement.

11.COSTS OF CLAIMS ADMINISTRATION

11.1 All of the Settlement Administrator's costs and expenses that are necessary for the notice to the Settlement Class described in the Preliminary Approval Order attached as Exhibit A, establishment and operation of the Settlement Fund, including the claims administration

procedures described in this Agreement, and execution of the terms of the proposed class settlement up to \$250,000 shall be paid by USMR, and any settlement administration costs in excess of \$250,000 shall be paid from the Settlement Fund with approval by Defendants, Settlement Class Counsel, and the Court.

11.2 The Settlement Administrator shall also be entitled to a reasonable fee based upon fees and expenses actually incurred.

11.3 The Settlement Administrator shall perform certain pre-Effective Date administrative services, including printing and distribution of the class notice, establishment and staffing of a toll-free phone number and website to provide information to potential Settlement Class Members, receipt of Claim Forms, development of claims administration procedures and rules, and receipt and tabulation of opt-out notices. The Settlement Administrator shall be entitled to a reasonable fee for such services according to the provisions of this Agreement and the Preliminary Approval Order; but in no event shall the Settlement Administrator engage in any pre-Effective Date services except where the services were expressly authorized in writing in advance by Settlement Class Counsel and Defendants or their designated representatives.

11.4 In addition to all other rights under applicable law upon reasonable notice, Settlement Class Counsel and Defendants shall have the right to examine all books and records of the Settlement Administrator related to the processing of Settlement Fund claims under this Agreement.

12.SETTLEMENT CLASS MEMBERS' RELEASE AND EXCLUSIVE REMEDY

12.1 **Complete Release.** Settlement Class Members and each of them, hereby release and forever discharge the Released Persons and each of them of and from each, every and all Released Claims as defined in Section 1.21 of this Agreement.

12.2 In connection with the complete release in Section 12.1 and to the extent allowed by law, Settlement Class Representatives and Settlement Class Members acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those which they now know or believe to be true with respect to the Released Claims. Nevertheless, it is the intention of the Settlement Class Representatives and the Settlement Class Members to fully, finally and forever settle and release all such Released Claims, and all claims in connection with such Released Claims, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action) and arise from facts occurring from the beginning of time through execution of this Settlement Agreement. In this regard, Settlement Class Representatives and the Settlement Class Members expressly waive, to the extent allowed by law, any potentially applicable statutory or common law provisions that arguably provide otherwise.

12.3 **Exclusive Remedy.** Submission of a Claim Form in accordance with the procedures set forth in this Agreement is the EXCLUSIVE method and remedy of all Settlement Class Members for any and all Released Claims. A Claim Form submitted hereunder shall be in lieu of any other remedy or right of action against the Released Persons for the Released Claims. Accordingly, no Released Person shall be subject to liability or expense of any kind to any Settlement Class Member with respect to any Released Claims, other than as set forth in this Agreement.

12.4 **Covenant Not To Sue.** Settlement Class Members shall not commence, prosecute, or cause to be commenced or prosecuted against Released Persons, or with regard to the asserted conduct of any Released Persons any action or other proceedings based upon any

Released Claims. No Settlement Class Member has assigned, sold, or otherwise transferred any Released Claims of any kind within the scope of this paragraph.

12.5 **Injunction Against Additional Litigation.** Upon Final Approval, all Settlement Class Members shall be enjoined from filing or becoming part of any action, including, without limitation, any putative class actions, filed against the Released Persons or any other person or entity in connection with any of the Released Claims or otherwise interfere with this Agreement or the settlement of the class action claims generally.

12.6 **Settlement Class Members are Responsible for All Liens.** The Settlement Class Members are responsible for satisfying any homeowners' insurance subrogation liens or interests, and all other similar or related expenses pertaining to, arising out of or in connection with the Released Claims. Defendants' monetary obligations under this Agreement are expressly limited to the settlement amounts set forth in Sections 9.2 and 11.1 of this Agreement, which represent the ONLY monetary obligations of Defendants in this Agreement.

12.7 Nothing contained herein releases, nor shall be construed to release, any continuing rights of Settlement Class Members resulting from this Agreement and the remedies and benefits created and conferred hereby.

13.EFFECTIVE DATE OF THE AGREEMENT

13.1 The Effective Date on which the Agreement shall become effective and final is the last of all of the following events and conditions that have been met or have occurred:

13.1.1 The Parties, through their respective counsel, have executed this Agreement; and

13.1.2 The Court has, by entry of a Preliminary Approval Order, (i) certified the Settlement Class, and authorized Notice to be sent to the Settlement Class, and (ii) preliminarily found that the settlement set forth in this Agreement is fair, reasonable and valid,

subject to any objections that may be raised at the Fairness Hearing, and (iii) approved the method of providing notice to the relevant Settlement Class set forth herein; and

13.1.3 The Court has entered a Final Approval Order approving this Agreement as fair, adequate and reasonable under Federal Rule of Civil Procedure 23; and entered a Final Judgment substantially identical to that attached as Exhibit D; and

13.1.4 Five (5) business days have passed after the latest of the following has occurred: (i) the time to appeal from the Final Approval Order and Final Judgment has expired and no notice of appeal has been filed; (ii) in the event of an appeal, any appeal from the Final Approval Order and Final Judgment has been finally dismissed or the Final Approval Order and Final Judgment has been affirmed on appeal in a form substantially identical to the form orders entered by the Court; (iii) the time to petition for review with respect to any appellate decision affirming the Final Approval Order and Final Judgment has expired; and (iv) if a petition for review of an appellate decision is filed, the petition has been denied or dismissed, or, if granted, has resulted in affirmance of the Final Approval Order and Final Judgment by the Court in a form substantially identical to the forms entered by the Court.

14.NOTICE

14.1 Any notice required to be given to the Settlement Class or its counsel or Defendants on their counsel shall be given by United States mail or delivery service or by certified mail, return receipt requested, to:

FOR SETTLEMENT CLASS:

Steven J. German
German Rubenstein, LLP
19 West 44th Street, Suite 1500
New York, NY 10036

FOR DEFENDANTS:

James D. Thompson III
Vinson & Elkins LLP
Texas Tower
845 Texas Avenue
Houston, TX 77002

**15.SETTLEMENT CLASS COUNSEL’S REPRESENTATIONS AND
WARRANTIES**

Settlement Class Counsel represent and warrant as follows:

15.1 that Settlement Class Counsel will use reasonable efforts to encourage all potential Settlement Class Members to remain in the class and not opt-out;

15.2 that the consideration paid by USMR under this Agreement is paid in full satisfaction of all liability for all Released Claims of all Settlement Class Member(s); and

15.3 that Settlement Class Counsel is authorized to enter into this Agreement on behalf of all of the Settlement Class Representatives.

16.MISCELLANEOUS

16.1 No press release to the news media shall be issued by Settlement Class Counsel or Defendants’ Counsel regarding this Class Settlement Agreement or the resolution of this matter unless the content of such press release is first agreed to by Settlement Class Counsel and Defendants’ Counsel. Nothing in this paragraph shall limit any attorney’s ability to reference this Settlement Agreement or their work in connection with this matter in on-line or print attorney advertising, attorney bios, or promotional law firm materials.

16.2 Settlement Class Counsel and Defendants’ Counsel agree to return to the producing Party or certify to the destruction of all produced documents and expert reports produced by the other Party in the Litigation. Notwithstanding the above, counsel may

maintain the documents necessary to meet the minimum requirements of its professional insurance coverage or other ethical obligations.

16.3 This Agreement constitutes the entire settlement among the Parties and supersedes all prior agreements or understandings between them relating to the settlement of the Litigation.

16.4 No modifications to this Settlement Agreement may be made without written agreement of all Parties and Court approval.

16.5 This Settlement Agreement shall not inure to the benefit of any third party.

16.6 The Agreement shall be governed, construed by, and follow the laws of the State of New Jersey. Jurisdiction and venue for all proceedings in connection with the Agreement, or arising as a result of any matter relating to this settlement, or addressed in the Agreement, shall be in the United States District Court for the District of New Jersey with the Honorable Judge Michael A. Hammer presiding to conduct all proceedings by the consent of the Parties in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

16.7 The Parties may agree in writing to reasonable extensions of time to carry out any of the provisions of the Agreement, subject to approval by the Court.

16.8 To the extent any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

16.9 The failure of any Party to perform any of its obligations hereunder shall not subject any Party to any liability or remedy for damages, or otherwise, where such failure is occasioned in whole or in part by Acts of God, fires, accidents, other natural disasters, interruptions or delays in communications or transportation, labor disputes or shortages, shortages of material or supplies, governmental laws, rules or regulations of other

governmental bodies or tribunals, acts or failures to act of any third parties, or any other similar or different circumstances or causes beyond the reasonable control of such Party. The Parties acknowledge that this Agreement constitutes a negotiated compromise between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. The Parties agree that any rule of construction under which any ambiguities are construed against the drafter of a legal document is not applicable and shall not apply to this Agreement. Except as expressly set forth in this Agreement, no Party has relied on any representation or statement made by the other Party in the negotiation, drafting, or execution of this Agreement. No Party has any fiduciary or other duty to the other Party in respect of the negotiating, drafting, or execution of this Agreement.

16.10 This Agreement may be executed in separate counterparts and shall be binding upon each Party and all Parties executing this or any counterpart.

Dated as of ____ day of March 2023.

Defendants

**Scott
Statham**

Digitally signed by Scott Statham
Date: 2023.03.27 09:28:08 -07'00'

By: _____
K. Scott Statham
United States Metals Refining Company

Scott Statham

Digitally signed by Scott
Statham
Date: 2023.03.27 09:28:35 -07'00'

By: _____
K. Scott Statham
Freeport Minerals Corporation

**Scott
Statham**

Digitally signed by Scott
Statham
Date: 2023.03.27 09:29:00
-07'00'

By: _____
K. Scott Statham
Freeport-McMoRan Inc.

Scott Statham

Digitally signed by Scott
Statham
Date: 2023.03.27 09:29:24
-07'00'

By: _____
K. Scott Statham
United States Metals Refining Company, on behalf
of its predecessor in interest Amax Realty
Development, Inc.

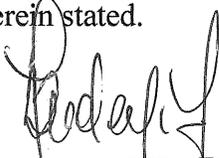
**Plaintiffs individually and as representatives
Of the Settlement Class**

SIGNED this 24 day of March, 2023.

BY: Juan Duarte
Juan Duarte

THE STATE OF NEW JERSEY §
COUNTY OF Middlesex §

BEFORE ME, the undersigned authority, on this day personally appeared Juan Duarte known to me to be the person whose name is subscribed to the foregoing Class Settlement and Release Agreement, and expressly acknowledged to me that he has read the same, and that he has executed the same for the purposes of the consideration therein expressed, and in the capacity therein stated.



JEANNINE B JOO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires: **MARCH 19, 2027**

SWORN TO AND SUBSCRIBED BEFORE ME, by the said _____, on this the 24 day of March, 2023

Notary Public in and for the State of New Jersey
Notary's Printed Name: Jeannine B. Joo
Commission Expires: March 19, 2027

SIGNED this 24 day of March, 2023.

BY: Betsy Duarte
Betsy Duarte

THE STATE OF NEW JERSEY §
COUNTY OF Middlesex §

BEFORE ME, the undersigned authority, on this day personally appeared Betsy Duarte known to me to be the person whose name is subscribed to the foregoing Class Settlement and Release Agreement, and expressly acknowledged to me that she has read the same, and that she has executed the same for the purposes of the consideration therein expressed, and in the capacity therein stated.

SWORN TO AND SUBSCRIBED BEFORE ME, by the said _____, on this the 24 day of March, 2023

Notary Public in and for the State of New Jersey
Notary's Printed Name: Jeannine B. Joo
Commission Expires: March 19, 2027



JEANNINE B JOO
NOTARY PUBLIC OF NEW JERSEY
Commission Expires: **MARCH 19, 2027**

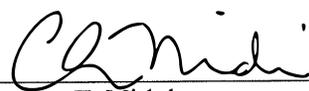
**Settlement Class acting by and through
Settlement Class Counsel**

SIGNED this 24th day of March XX, 2023.

By: 

Steven J. German
German Rubenstein, LLP

SIGNED this 24 day of March XX, 2023.

By: 

Christopher T. Nidel
Nidel & Nace PLLC

SIGNED this 23 day of March XX, 2023.

By: 

Alex Brown
The Lanier Law Firm, P.C.

SIGNED this 24 day of March XX, 2023.


By: _____
Boris Shmaruk
Vlasac & Shmaruk LLC