IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec"), Defendant GEEP USA, Inc., and Defendant GEEP Holdings, Inc. (with Defendant GEEP USA, Inc. and Defendant GEEP Holdings, Inc. referred to as the "Settlors") move the Court to enter an order approving the settlement agreement attached hereto as Exhibit A as a

final judgment in accordance with Federal Rules of Civil Procedure 54(b) and 58. This motion is supported by the attached Memorandum in Support and the attached settlement agreement.[1]

For the Court's convenience, a proposed order has been attached hereto.

MEMORANDUM IN SUPPORT

I. Background

Plaintiffs and Settlors have negotiated a settlement agreement and seek the Court's approval of the settlement agreement attached hereto as Exhibit A ("the Settlement Agreement"). The Settlement Agreement resolves Plaintiffs' claims against Settlors pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and Ohio common law, for past and projected response costs to clean up cathode ray tubes and other electronic wastes (collectively, "E-Waste") at Garrison's two contiguous warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio[2] and at Olymbec's warehouse located at 2200 Fairwood Avenue in Columbus, Ohio (collectively, the "Facility").

Defendant Closed Loop Refining and Recovery, Inc. ("Closed Loop") leased the Facility or portions thereof from the Plaintiffs, and Closed Loop or Closed Loop Glass Solutions, LLC (an affiliate of Closed Loop) then received, stockpiled, and abandoned E-Waste received from or otherwise attributed to their customers at the Facility. Declaration of Karl R. Heisler ("Heisler Decl."), ¶¶ 4, 5 (Exhibit B); Declaration of Randall B. Womack ("Womack Decl."), ¶¶ 4, 5 (Exhibit C). Plaintiffs allege that the E-Waste constitutes hazardous substances subject to CERCLA, based on total lead content from samples collected from the Facility and common

[1] Unless otherwise indicated, all references to the court docket will be to the court docket in the Garrison action (Case No. 2:17-cv-783).
[2] Garrison sold 1655 Watkins Road after cleaning it up with settlement funds obtained in this case.

industry knowledge. Heisler Decl., ¶ 7; Womack Decl., ¶ 7. Plaintiffs retained consultants to estimate the total weight of E-Waste in the Facility and to estimate the necessary costs that Plaintiffs will incur to remove it, to lawfully dispose of it, and to decontaminate the Facility by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. Heisler Decl., ¶ 8; Womack Decl., ¶ 8. The consultants estimated that the Facility at that time contained approximately 159,104,489 pounds (79,552 tons) of E-Waste, and that the response costs would be approximately $21,125,046. Heisler Decl., ¶¶ 8, 9; Womack Decl., ¶¶ 8, 9.

Plaintiffs have obtained Closed Loop records providing detailed accounts of the weight of E-Waste that Closed Loop received from or otherwise attributed to its customers, including accounting spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping documentation. Heisler Decl., ¶ 6; Womack Decl., ¶ 6. According to these records, and as confirmed by Settlors' reasonable inquiry, Settlors collectively arranged for the transport of the weight of E-Waste to the Facility that appears in Appendix A to the Settlement Agreement. Heisler Decl., ¶ 6; Womack Decl., ¶ 6.

Plaintiffs have been using a straightforward cost recovery formula in settlement negotiations that allocates a percentage to each potentially responsible party ("PRP") based on records that identify the total weight of E-Waste that the PRP shipped to the Facility, as compared to the total weight of the E-Waste shipped to the Facility by all PRPs. Heisler Decl., ¶ 11; Womack Decl., ¶ 11. Plaintiffs then applied this percentage to the cleanup cost estimate of $21,125,046. Heisler Decl., ¶ 11; Womack Decl., ¶ 11. Using this formula, Plaintiffs calculated Settlors' share for settlement purposes at $643,030. Heisler Decl., ¶ 11; Womack Decl., ¶ 11.

Plaintiffs, however, have noted in prior motions for approval of settlement agreements that Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant, such as a PRP that is unable to pay its allocated share. Settlors have informed Plaintiffs that Settlors are unable to pay the share assigned to their E-Waste contributions at the Facility under Plaintiffs' cost recovery formula and have provided Plaintiffs with a sworn affidavit and confidential financial statements to demonstrate this point. Exh. D, Affidavit of Derrick Phelps on behalf of Defendant GEEP USA, Inc. ("Phelps Aff.").[3] Plaintiffs have examined this affidavit and these confidential financial statements and concur with Settlors' representation. Heisler Decl., ¶ 11; Womack Decl., ¶ 11. Based on the sworn affidavit, all of the assets of Defendant GEEP USA, Inc. were sold on December 13, 2019. Phelps Aff.., ¶ 3. Based on the confidential financial statements, the additional expense of the share assigned to Settlors for E-Waste contributions to the Facility cannot be funded from company assets or any projected cashflow that might occur in the near future. Heisler Decl., ¶ 11; Womack Decl., ¶ 11. Consequently, Plaintiffs have agreed to settle their claims against Settlors for $500,000. See Appendix A of the Settlement Agreement.

This Court has ruled that it is reasonable to consider a defendant's compromised financial position when evaluating the fairness of CERCLA settlements. *See, e.g.,* Doc. # 536 (approving settlement agreements with Defendant American Retroworks, Inc. and Defendant Comprenew, which were based in part on inability to pay); Doc. # 683 (approving settlement agreement with Defendant CompuPoint USA, LLC, which was based in part on inability to pay); *Responsible Envtl. Solutions Alliance v. Waste Mgmt., Inc*., 2011 WL 382617, No. 3:04-cv-013, *3-*4, *10

[3] If requested, the confidential financial statements can be made available in a subsequent filing under seal, with leave of Court upon motion, and for good cause shown.

(S.D. Ohio, Feb. 3, 2011); *United States v. Atlas Lederer Co.*, 494 F. Supp.2d 629, 637-38 (S.D. Ohio 2005).

Based on this information and these considerations, the Settlement Agreement is fair, adequate, and reasonable. Heisler Decl., ¶ 13; Womack Decl., ¶ 13; Exh. E, Declaration of Stephen Riccardulli on behalf of Settlors ("GEEP Decl."), ¶ 6.

It is also worth noting that the State of Ohio will not object to the Settlement Agreement and will consider Settlors' CERCLA liability to the State of Ohio satisfied, subject to certain preconditions, including this Court's issuance of contribution protection pursuant to CERCLA Section 113(f)(1). *See* Exhibit F.

Plaintiffs and Settlors now ask the Court to approve the Settlement Agreement. Pursuant to Section 6 of the Settlement Agreement, consummation of the settlement is contingent on the entry of an Order providing that Settlors' settlement payment be credited *pro tanto*, and not *pro rata*, in determining the equitable share of defendants other than Settlors. Plaintiffs and Settlors ask the Court to enter an Order to that effect.

Plaintiffs and Settlors also request the Court to discharge and/or bar all past, present, and future counterclaims, cross-claims and other claims against Settlors relating to the Facility, including any claims that have been or which could be made by any party to this case or any other person, except for certain claims listed in Paragraphs 4 and 9 of the Settlement Agreement and claims for express breach of contract and contractual indemnification, consistent with this Court's September 27, 2021 Opinion and Order. These exceptions include a reopener in Paragraph 9 if new information reveals that the weight of materials attributable to Settlors is twenty percent (20%) or more in excess of the weight of materials identified in Appendix A to the Settlement Agreement, or that the weight of materials attributable to Settlors is at least

50,000 lbs in excess of the weight of the materials identified in Appendix A to the Settlement Agreement, whichever is lower. This reopener is designed to make sure that Settlors pay their fair share even if evidence obtained in future discovery discloses that the Settlors are responsible for a quantity of E-Waste not considered in calculating the settlement amount in the Settlement Agreement. Since no other claims for express breach of contract or contractual indemnification have been filed against Settlors in this action, the Parties request that the Settlors be dismissed from the case.

II. Argument

A. The Settlement Agreement Should Be Approved By The Court Because Settlements Are Favored, And The Settlement Agreement Is Fair, Reasonable, And Satisfies The Requirements of CERCLA.

"The general policy of the law is to support voluntary settlements." *United States v. Cantrell*, 92 F. Supp. 2d 718, 723 (S.D. Ohio 2000) (approving CERCLA consent decrees). *See also United States v. Cannons Eng'g Corp.*, 899 F.2d 79, 84 (1st Cir. 1990) ("In the first place, it is the policy of the law to encourage settlements."). While a trial court must evaluate a settlement agreement, "public policy generally supports 'a presumption in favor of voluntary settlement' of litigation." *United States v. Lexington-Fayette Urban Cnty. Gov't*, 591 F.3d 484, 490 (6th Cir. 2010) (quoting *United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1436 (6th Cir. 1991)).

The Sixth Circuit has stated that district courts must evaluate a CERCLA settlement for "fairness, reasonableness and consistency with the statute." *Akzo Coatings*, 949 F.2d at 1426. *Accord Cannons Eng'g*, 899 F.2d at 85. The same standards apply to CERCLA settlements between private parties. *Responsible Envtl. Solutions Alliance v. Waste Mgmt., Inc.*, No. 3:04-cv-013, 2011 WL 382617, at *2 (S.D. Ohio Feb. 3, 2011).

A district court is not required to delve into the fine points of a settlement, or to determine if other options are available. It is not the court's "function to determine whether [a settlement] is the best possible settlement that could have been obtained, but only whether it is fair, adequate and reasonable." *Akzo Coatings*, 949 F.2d at 1436. As explained in Subsections 1 through 4 below, the proposed settlement is fair, reasonable, and consistent with CERCLA.

1. The Settlement Negotiations Satisfy Procedural Fairness.

A CERCLA settlement "must be both procedurally and substantively fair." *Responsible Envtl. Solutions*, 2011 WL 382617 at *2 (citing *Cannons Eng'g*, 899 F.2d at 86). With respect to procedural fairness, "[t]here is a strong presumption in favor of voluntary settlements in CERCLA litigation." *United States v. 3M Co.*, No. 3:14-cv-32, 2014 WL 1872914, at *5, (S.D. Ohio May 8, 2014) (citing *Akzo Coatings,* 949 F.2d at 1436).

The procedural component is satisfied if the negotiations were conducted fairly. "To measure procedural fairness, a court should ordinarily look to the negotiation process and attempt to gauge its candor, openness, and bargaining balance." *Cannons Eng'g*, 899 F.2d at 86. While "there can be no easy-to-apply check list of relevant factors" to measure fairness, one factor to be considered is whether all defendants have "had an opportunity to participate in the negotiations." *Id*. at 86-87. "The Court must determine that the negotiators bargained in good faith." *Cantrell,* 92 F. Supp. 2d at 724 (citing *Kelley v. Thomas Solvent Co.*, 717 F. Supp. 507, 517 (W.D. Mich. 1989)). *See also id.* ("The Court should gauge the candor, openness, and bargaining balance of the negotiations" (citing *Cannons Eng'g.*)).

In this case, Plaintiffs have reviewed Closed Loop's records as well as discovery responses made by the existing Defendants to identify the PRPs that arranged for E-Waste to be transported to the Facility. Heisler Decl., ¶ 12; Womack Decl., ¶ 12. Plaintiffs' counsel have, by

letter, electronic mail, and/or telephone, invited PRPs to negotiate settlements to pay for the removal and/or remediation of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent only a *de minimis* amount of E-Waste that will cost no more than $6000 to clean up. Heisler Decl., ¶ 12*;* Womack Decl., ¶ 12. Plaintiffs have negotiated with those PRPs that have expressed an interest in negotiations, and those negotiations are continuing. Heisler Decl., ¶ 12*;* Womack Decl., ¶ 12. These negotiations led to the settlement with Settlors, and may result in other settlements. Heisler Decl., ¶ 12; Womack Decl., ¶ 12.

The parties to the Settlement Agreement were represented in negotiations by independent counsel. Heisler Decl., ¶ 13; Womack Decl.; ¶ 13; GEEP Decl., ¶ 4. These negotiations included, but were not limited to, evaluations of Settlors' potential liability, the strengths and weaknesses of the evidence tying Settlors to Plaintiffs' Facility, the defenses asserted by Settlors, the potential legal fees and costs if settlement does not occur, and past and projected response costs. Heisler Decl., ¶ 13; Womack Decl.; ¶ 13; GEEP Decl., ¶ 5. Thus, the settlement is the product of arm's length negotiations conducted in good faith. Plaintiffs' counsel have used and will continue to consider the same factors to negotiate settlements with other PRPs, except where warranted by unusual circumstances. Heisler Decl., ¶ 13; Womack Decl., ¶ 13. Thus, the procedural fairness test has been met.

2. <u>The Settlement Agreement Is Substantively Fair.</u>

The substantive fairness test relates to the actual harm caused by a party at the subject site. "[A] party should bear the cost of the harm for which it is legally responsible." *3M Co.*, 2014 WL 1872914 at *5 (quoting *Cannons Eng'g*, 899 F.2d at 87). But "[t]here is no universally

correct approach" to determining substantive fairness. *United States v. Atlas Lederer*, 494 F. Supp. 2d 629, 636 (S.D. Ohio 2005) (quoting *Cannons Eng'g*, 899 F.2d at 87).

Settlements must be "based upon, and roughly correlated with, some acceptable measure of comparative fault, apportioning liability among the settling parties according to rational (if necessarily imprecise) estimates of how much harm each PRP has done." *Cannons Eng'g*, 899 F.2d at 87. A settlement, however, is not held to a rigid formula for comparing fault, but can "diverge from an apportionment formula in order to address special factors not conducive to regimented treatment," such as uncertainty about a settlor's liability and discounts for early settlements. *Id*. at 87-88. "There is no universally correct approach" for assessing comparative fault, and a settlement allocation with "a plausible explanation" will be approved. *Id*. at 87.

The Settlement Agreement contains a reopener that allows Plaintiffs to seek additional cleanup costs against Settlors if new information reveals that the weight of materials attributable to Settlors is twenty percent (20%) or more in excess of the weight of materials identified in Appendix A to the Settlement Agreement, or that the weight of materials attributable to Settlors is at least 50,000 lbs in excess of the weight of the materials identified in Appendix A to the Settlement Agreement, whichever is lower. Thus, Plaintiffs and Settlors have entered into a Settlement Agreement that is fair to everyone and satisfies the substantive fairness test.

3. <u>The Settlement Agreement Is Reasonable Because It Reflects Settlors' Actual or Potential Liability.</u>

The Court has the task of determining if a settlement agreement compensates "for the actual (and anticipated) costs of remedial and response measures." *Cannons Eng'g,* 899 F.2d at 90. Plaintiffs have evaluated the alleged quantity of E-Waste attributed to Settlors, and have determined that the Settlors' settlement amount is fair and reasonable given the past and

projected response costs and Settlors' connection to the Facility. Heisler Decl., ¶¶ 11, 13; Womack Decl., ¶¶ 11, 13.

The strength of the evidence and the probability of success on the merits also come into play in determining if a specific settlement agreement is reasonable. *Cannons Eng'g*, 899 F.2d at 90. Thus, a "reasonableness equation relates to the relative strengths of the parties' litigation positions." *Id.* The strengths and weaknesses of plaintiffs' and defendants' evidence in a contribution action will by necessity impact the outcome of settlement negotiations.

The negotiations between Plaintiffs and Settlors included, but were not limited to, evaluations of Settlors' potential liability, the strengths and weaknesses of the evidence tying Settlors to Plaintiffs' Facility, the defenses asserted by Settlors, potential legal fees and costs if settlement does not occur, and past and projected response costs. Heisler Decl., ¶ 13; Womack Decl.; ¶ 13; GEEP Decl., ¶ 5. Based on these considerations, Plaintiffs and Settlors believe that the Settlement Agreement is fair, adequate, and reasonable. Heisler Decl., ¶ 13; Womack Decl.; ¶ 13; GEEP Decl., ¶ 6. Thus, this settlement is reasonable, since it is based on the relative strengths and weaknesses of the evidence and the chances of prevailing on the merits for both Plaintiffs and Settlors.

4. <u>The Settlement Agreement Is Consistent With CERCLA.</u>

The primary policy underlying CERCLA's provisions is "to ensure prompt and efficient cleanup of hazardous waste sites and to place the costs of those cleanups on the PRPs." *Akzo Coatings*, 949 F.2d at 1417. Settlement agreements with PRPs further the primary policy of CERCLA to investigate and remediate hazardous substances in a prompt and efficient manner. Settlement funds help to continue the work commenced by Plaintiffs to address the E-Waste.

In addition, the settlement furthers CERCLA's goal of requiring that "those responsible for problems caused by the disposal … bear the costs and responsibility for remedying the

harmful conditions they created." *3M Co.*, 2014 WL 1872914 at *7 (quoting *Cannons Eng'g*, 899 F.2d at 90-91). *See also Nurad, Inc. v. William E. Hooper & Sons Co.*, 966 F.2d 837, 841 (4th Cir. 1992), *cert. denied*, 506 U.S. 940 (1992) ("The statute encourages private cleanup of such [environmental] hazards by providing a cause of action for the recovery of costs incurred in responding to a 'release' of hazardous substances at any 'facility.'").

Finally, the Settlement Agreement relieves the settling parties and the Court of the burden of proceeding with the claims against Settlors all the way to trial, thereby conserving the Court's and the parties' resources in time and in money. The Settlement Agreement reached with Settlors is consistent with the underlying intent and policies of CERCLA.

B. The Court Should Approve the Contribution Bar in the Settlement Agreement.

The Court should approve the contribution bar in the Settlement Agreement so that Settlors can be dismissed from this case without facing contribution claims from other PRPs. Defendants who wish to settle will have little incentive to do so if they cannot exit the litigation and avoid additional monetary claims from non-settlors. The previous motions for approval of settlement agreements by Plaintiffs and settling defendants have explained the legal basis and the rationale for applying a contribution bar in this case. For the sake of efficiency, Plaintiffs and Settlors hereby incorporate by reference the argument advocating for this contribution bar contained in the motion to approve the Great Lakes Electronics Corporation and Accurate IT Services Ltd. settlements. Doc. # 832, PageId ## 10215-10219. This Court has applied the contribution bar in the instant case for each of the previous settlements approved by the Court. Doc. # 312, PageId ## 3656-3657, ¶ 3; Doc. # 400, PageId # 4506, ¶ 3; Doc. # 536, PageId ## 6035-6036, ¶ 3; Doc. # 683, PageId # 8371, ¶ 3; Doc. # 808, PageId ## 9986-9987, ¶ 2; Doc. #

820, PageId ## 10171-10172, ¶ 2; Doc. # 838, PageId # 10328, ¶ 2; Doc. # 839, PageId # 10331, ¶ 2; Doc. # 848, PageId # 10504, ¶ 2.

Plaintiffs have served a copy of this Motion for Approval of the Settlement Agreement on all defendants and will soon send it to any other currently known PRPs. Heisler Decl., ¶ 14; Womack Decl., ¶ 14. Plaintiffs and Settlors request that the contribution bar apply to all claims that could be asserted against Settlors, except for any claims for express breach of contract and contractual indemnification, consistent with this Court's September 27, 2021 Opinion and Order.

C. Settlors' Payments Should Be Credited *Pro Tanto*, and Not *Pro Rata*, in Determining Other Defendants' Equitable Shares at Trial.

The Court's order approving the Settlement Agreement should credit Settlors' settlement payments *pro tanto* and not *pro rata* in determining other defendants' equitable shares of response costs, just as the Court has done for the previous settlements in the instant case. Doc. # 312, PageId # 3657, ¶ 4; Doc. # 400, PageId # 4506, ¶ 4; Doc. # 536, PageId # 6036, ¶ 4; Doc. # 683, PageId ## 8370-8371, ¶ 4; Doc. # 808, PageId # 9987, ¶ 3; Doc. # 820, PageId # 10172, ¶ 3; Doc. # 838, PageId ## 10328-10329, ¶ 3; Doc. # 839, PageId ## 10331-10332, ¶ 2; Doc. # 848, PageId # 10504, ¶ 3. Furthermore, this Court has determined that "[t]he circumstances of this case now dictate uniform application of the pro tanto method in crediting approved settlements."). *Garrison*, 2021 WL 4397865, at *8. The previous motions for approval of settlement agreements by Plaintiffs and settling defendants have explained the legal basis and the rationale for crediting payments *pro tanto* in this case. Plaintiffs and Settlors hereby incorporate by reference the argument advocating for the *pro tanto* treatment contained in the motion to approve the Great Lakes Electronics Corporation and Accurate IT Services Ltd. settlements. Doc. # 832, PageId ## 10219-10225. As explained therein, *pro tanto* crediting encourages early

settlements, encourages voluntary site cleanups, promotes faster site remediation, and reduces trial time.

D. The Court Should Enter the Settlement Agreement as a Final Judgment.

The Court's order approving the Settlement Agreement merits entry as a final judgment pursuant to Federal Rules of Civil Procedure 54(b) and 58. On-site cleanup activities have now commenced at the Facility, and Plaintiffs have a limited window to complete the cleanup in accordance with the schedule set forth in the closure plans that the Ohio Environmental Protection Agency approved. These activities are being, and will be, paid for with settlement proceeds from this litigation in furtherance of hazardous waste closure plans and CERCLA engineering evaluation/cost analysis ("EE/CAs") approved by the Ohio Environmental Protection Agency ("Ohio EPA").[4] Without the additional layer of finality in judgment provided by the entry of an order pursuant to Rules 54(b) and 58, Plaintiffs cannot commit the settlement proceeds from Settlors to these cleanup efforts without risking substantial financial exposure, as Plaintiffs would otherwise retain the risk of having to return the settlement proceeds to Settlors until court approval of the Settlement Agreement is final and non-appealable. Plaintiffs are entitled to know if they will obtain the benefit of the bargain reached with Settlors before incurring these costs.

The Court has entered final judgment on all of the settlements it has approved in this case. *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.*, No. 2:17-cv-783, 2021 WL 1611325, at *1 (S.D. Ohio, Apr. 26, 2021); Doc. # 808, PageId ## 9987-9991;

[4] Garrison and Olymbec voluntarily submitted the closure plans and EE/CAs to demonstrate compliance with, among other things, the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. See https://www.ensafe.com/closedloop/ (providing the full administrative records, including responses to public comments, for Watkins Road and Fairwood Avenue).

Doc. # 820, PageId # 10172, ¶ 5; Doc. # 838, PageId # 10329, ¶ 5; Doc. # 839, PageId # 10332, ¶ 5; Doc. # 848, PageId # 10505, ¶ 5. Consistent with these prior settlement agreements, and for all the reasons set forth above and below, Plaintiffs and Settlors herein request that the Court direct the entry of final judgment and find that there is no just reason to delay an appeal.

1. Fed. R. Civ P. 54(b)

As this Court opined in these consolidated cases in an order certifying orders approving prior settlements under Rule 54(b), achieving finality pursuant to Rule 54(b) involves a two-step analysis: "the district court must expressly 'direct the entry of final judgment as to one or more but fewer than all the claims or parties in a case'" and then the court must "'expressly find that there is no just reason' to delay appellate review." *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.,* No. 2:17-cv-783, 2021 WL 1611325, at *1 (S.D. Ohio, Apr. 26, 2021) (citing *Gen. Acquisition, Inc. v. GenCorp., Inc.,* 23 F.3d 1022, 1026 (6th Cir. 1994). *See also Ball v. Kasich*, No. 2:16-cv-282, 2020 WL 4528822, at *3 (S.D. Ohio, Aug. 6, 2020), *appeal docketed*, No. 20-3927 (6th Cir., Sept. 3, 2020).

a. Step 1: Final Judgment

Rule 54(b) authorizes the Court "to direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Emphasis added. This first step is implicated in the ultimate disposition of one or more but fewer than all claims or parties in a multi-claim/multi-party action, as is presented in the instant CERCLA litigation. The rule "relaxes the traditional finality requirement for appellate review," and is specifically "designed to facilitate the entry of judgment on one or more claims, or as to one or more parties, in a multi-claim/multiparty action." *Gen. Acquisition,* 23 F.3d at 1026 (citing *Solomon v. Aetna Life Ins. Co.,* 782 F.2d 58, 60 (6th Cir. 1986)).

To satisfy this first step: "A district court must first determine that it is dealing with a 'final judgment.' It must be a 'judgment' in the sense that it is a decision upon a cognizable claim for relief, and it must be 'final' in the sense that it is 'an ultimate disposition of an individual claim entered in the course of a multiple claims action.'" *Gen. Acquisition*, 23 F.3d at 1027 (quoting *Curtis-Wright Corp. v. Gen. Elec. Corp.*, 446 U.S. 1, 7 (1980)). *See also United States v. Cannons Eng'g Corp.*, 720 F. Supp. 1027, 1053 (D. Mass. 1989), *aff'd, United States v. Cannons Eng'g Corp.*, 899 F.2d 79 (1st Cir. 1990) (internal citations omitted) (finding that, for purposes of Fed. R. Civ. P. 54(b), (1) CERCLA "Consent Decrees constitute 'judgments' because they resolve all liability of the settling defendants on 'cognizable claim[s] for relief' brought by plaintiffs under CERCLA" and (2) the "judgment is 'final' because the Consent Decrees constitute an 'ultimate disposition of an individual claim entered in the course of a multiple claims action.'").

To satisfy step one, the Court should direct the Clerk to enter an order approving the Settlement Agreement as having the full force and effect of a final judgment under Federal Rule of Civil Procedure 54(b).

b. Step 2: Delay

Rule 54(b) authorizes the Court "to direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." Emphasis added. This second step is required to "determine that there is no just reason for delay in certifying a final judgment." *Garrison,* 2021 WL 1611325, at *1. The opinion accompanying the judgment entry must also provide a reasoned analysis of the grounds for such a determination. *Corrosioneering, Inc. v. Thyssen Envtl. Sys., Inc.*, 807 F.2d 1279, 1284-85 (6th Cir. 1986). This analysis involves, among other things, "strik[ing] a balance between the

undesirability of more than one appeal in a single action and the need for making review available in multiple-party or multiple-claim situations at a time that best serves the needs of the litigants." *Gen. Acquisition*, 23 F.3d at 1027 (quoting WRIGHT, MILLER & KANE, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2D § 2655 (1983 & Supp. 1993)).

Citing the Sixth Circuit's decision in *Corrosioneering*, this Court has articulated the following non-exhaustive factors to consider in making a determination that "there is no just reason for delay" for purposes of the second step of the Rule 54(b) analysis:

> (1) the relationship between the adjudicated and non-adjudicated claims; (2) the possibility that the need for appellate review might become moot due to future developments in the district court; (3) the possibility that the appellate court might be required to hear the same issue twice; (4) the presence or absence of a claim or counterclaim that might result in a set-off against the final judgment; and (5) other miscellaneous factors, including "delay, economic and solvency considerations, shortening the time of trial, frivolity of competing claims, expense, and the like."

Garrison, 2021 WL 1611325, at *2 (quoting *U.S. Citizens Ass'n v. Sebelius*, 705 F.3d 588, 596 (6th Cir. 2013). Each factor is addressed below.

First, with respect to any relationship between adjudicated and non-adjudicated claims, the proposed order dismisses only those claims asserted, to be asserted, or which could be asserted against Settlors, including, by incorporation of the Settlement Agreement, the "Claims brought in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al*., Case No. 2:17-cv-00783-EAS-EPD (S.D. Ohio), and *Olymbec USA LLC v. Closed Loop Refining and Recovery, Inc., et al*., Case No. 2:19-cv-01041-EAS-EPD (S.D. Ohio), against SETTLORS." *See, e.g.*, Exh. A, Settlement Agreement, ¶ 6. As stated in the Court's decision certifying the final judgment for prior settlements in this case, "[t]he adjudicated claims do not prevent the non-adjudicated claims from being fully and fairly adjudicated." *Garrison*, 2021 WL 1611325, at *2. Indeed, CERCLA contemplates that there can be adjudication or disposal of claims against

one or more versus all parties to an action. CERCLA clearly authorizes a court to immunize PRPs like Settlors "for claims for contribution regarding matters addressed in the settlement," despite the existence of claims left to be adjudicated, given that the settlement "reduces the potential liability of the others by the amount of the settlement." 42 U.S.C. § 9613(f)(2). The same concept applies in private cost recovery actions where contribution protection is provided via CERCLA § 113(f)(1). Any construction to the contrary would constitute an end run around CERCLA's statutory scheme to immunize settling parties from liability despite the "corresponding detriment to their more recalcitrant counterparts." *Cannons Eng'g*, 899 F.2d at 91. *See also United States v. Pretty Prods., Inc*., 780 F. Supp. 1488, 1496 n. 7 (S.D. Ohio 1991) (barring contractual indemnification claim by non-settling party against settling party pursuant to CERCLA § 113(f)(2), and noting "this Court would be skeptical of any attempt to make an end run around CERCLA's contribution immunity").

Second, there is no possibility that the need for appellate review might become moot due to future developments in the district court if the Court grants this motion and accompanying proposed order. As with prior settlements in this case, the issues that would be presented for appellate review are limited to whether the Settlement Agreement with Settlors is fair and reasonable, and whether the terms of the proposed order extending contribution protections to Settlors are consistent with CERCLA and applicable law. *Garrison*, 2021 WL 1611325, at *2. These issues are specific to Settlors, which would be dismissed from the case with prejudice. There will accordingly be no future rulings in this Court involving Settlors that would moot any need for appellate review of these issues.

Third, there is little possibility that the appellate court might be required to hear the same issue twice for all of the reasons noted immediately above: the appellate review would be

specific to Settlors, which would be dismissed from the case with prejudice if the Court grants this motion and accompanying proposed order. *Id*. This concern is further mitigated by the fact that approval of settlements is "committed to the discretion of the district court," with such "discretion to be exercised in light of the strong policy in favor of voluntary settlement of litigation." *Cannons Eng'g Corp.*, 720 F. Supp. at 1053 (granting a motion for entry of the "Major PRP Consent Decree" as a final judgment pursuant to Fed. R. Civ. P. 54(b)).

Fourth, with respect to claims or counterclaims that might result in a "set-off" against the final judgment, set-offs are not only contemplated, but commanded, in CERCLA litigation. *Garrison*, 2021 WL 1611325, at *2 (noting that "[t]his is par for the course in CERCLA litigation and furthers CERCLA's goal of effectuating prompt cleanup of hazardous waste sites by imposing cleanup costs on responsible parties."). CERCLA settlements reduce the amount of the remaining liable parties' liability by the dollar amount of the settlements. *Id*. This Court has found on multiple occasions that payments by the settling defendants to Plaintiffs should be credited *pro tanto*, thus reducing the liability of the remaining liable parties by the dollar amount of settling defendants' payments. For all of the reasons set forth above and in prior motions to approve settlement agreements, Plaintiffs and Settlors similarly request a *pro tanto* approach because it "will best serve the purposes of CERCLA at this time given that the approach is known to facilitate settlement among holdout defendants. . . ." Doc. # 536, PageId # 6034.

Fifth, there are several other miscellaneous factors that weigh in favor of a finding that there is no just reason for delay. Perhaps most notably, the prospect of an appeal of this Settlement Agreement years from now would undermine the primary policy of CERCLA to remediate hazardous substances in a "prompt and efficient" manner. *Akzo Coatings*, 949 F.2d at 1417. It would "disserve a principal end of [CERCLA] – achievement of prompt settlement and a

concomitant head start on response activities – to leave matters in limbo until more precise information was amassed." *Cannons Eng'g,* 899 F.2d at 88. *See also Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 576 (9th Cir. 2018) (finding that the appellate court had jurisdiction under Fed. R. Civ. P. 54(b) to hear the appeal because "[t]his is a complex case that has been ongoing for fourteen years, and the entry of partial judgment against Teck would help ensure that a responsible party promptly pays for the contamination of the Upper Columbia River, advancing CERCLA's goals and easing the Tribes' burden of financing the litigation effort"). As stated by the Court in this case, a final judgment "will facilitate faster cleanup of the e-waste at issue in this case and mitigate Plaintiffs' risk that settlement funds will have to be refunded potentially several years down the line." *Garrison*, 2021 WL 1611325, at *2.

In this case, Plaintiffs' burden of financing this litigation has been compounded with the burden of financing ancillary litigations, including litigation with insurance carriers for multiple Defendants. Separate and apart from these litigations, Plaintiffs have further "suffered severe financial losses" in connection with Closed Loop's abandonment of the Facility, including lost rent and attorneys' fees, much of which is not recoverable under CERCLA. Doc. # 539; PageId # 6025, n. 6. These losses and the prospect of future financial risk merit serious consideration in entering this Settlement Agreement as a final judgment.

Equitable factors specific to CERCLA cost recovery actions likewise warrant a finding that there is no just reason for delay. As discussed by the lower court (and as affirmed on appeal) in *United States v. Cannons Engineering Corp*:

> Moreover, in view of the complexity of this litigation, the public interest in prompt cleanup, and the statutory goal of providing finality to settling defendants, the court finds that there is no just reason to delay the entry of final judgment. The settling defendants who have negotiated a settlement of their claims in good faith should not have to wait until the resolution of plaintiffs' claims against non-settling defendants to learn whether the settlements are final, particularly because CERCLA expressly authorizes the United

> States to enter into settlements which do not involve all potential defendants. *See* 42 U.S.C. § 9622. The settling defendants are, under the Consent Decrees, obligated to make payments and/or perform work. They are entitled to know if they will obtain the benefit of their bargains before incurring these substantial costs.

720 F. Supp. at 1053. *See also Evansville Greenway & Remediation Tr. v. S. Ind. Gas & Elec. Co.,* No. 3:07-CV-66-SEB-WGH (filed May 21, 2007) (routinely approving joint motions to approve CERCLA settlement agreements as final, appealable judgments pursuant to Rule 54(b) (*e.g.*, Doc. ## 873, 874, 882, 893, 898).

2. Fed. R. Civ. P. 58

Rule 58 requires that "[e]very judgment . . . must be set out in a separate document" subject to certain delineated exceptions that do not apply here. The Court should accordingly enter an order approving this Settlement Agreement as a document separate and apart from the Court's opinion in order to satisfy Rule 58.

III. Conclusion

For all the foregoing reasons, Plaintiffs and Settlors request that the Court grant the Order approving the Settlement Agreement as a final judgment under Rules 54(b) and 58.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 26, 2022, a copy of the foregoing Motion to Approve the Settlement Agreement was filed electronically with the Court's CM/ECF system, which will send notification to all attorneys registered to receive such service. Parties may access this filing through the Court's electronic filing system.

/s/ Jack A. Van Kley
Jack A. Van Kley (#0016961)
Trial Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

ORDER APPROVING SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

This matter having come before the Court on the Motion for Approval of Settlement Agreement Executed by Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), Defendant GEEP USA, Inc., and Defendant GEEP Holdings, Inc. (with Defendant GEEP USA, Inc. and Defendant GEEP Holdings, Inc. referred to as the "Defendants") and any response thereto, and for good cause shown and as there is no just reason for delay, it is hereby ordered as follows:

1. The Motion for Approval of Settlement Agreement ("Motion") is granted.

2. The Settlement Agreement between Plaintiffs and Defendants ("Settlement Agreement"), attached to the Motion as Exhibit A, is approved, and the terms and conditions of the Settlement Agreement are hereby incorporated by reference into this Order as if fully restated herein.

3. Except for the exceptions stated in the Settlement Agreement and for claims for express breach of contract and contractual indemnification, all claims asserted, to be asserted, or which could be asserted against Defendants by persons who are defendants or third-party defendants in this case (whether by cross-claim or otherwise) or by any other person or entity (except the U.S. Environmental Protection Agency ("U.S. EPA"), the United States acting on U.S. EPA's behalf, the Ohio Environmental Protection Agency ("Ohio EPA"), and the State of Ohio acting on Ohio EPA's behalf) in connection with the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, remediation, monitoring, or engineering control of electronic waste at, to or migrating from Garrison's property located at 1675 Watkins Road in Columbus, Ohio, Garrison's former property located at 1655 Watkins Road in Columbus, Ohio, and Olymbec's property located at 2200 Fairwood Avenue in Columbus, Ohio under Sections 107 or 113 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9607 and § 9613, and/or any other federal, state or local statute, regulation, rule, ordinance, law, contract, common law, or any other legal theory are hereby discharged, barred, permanently enjoined, dismissed with prejudice, satisfied, and are otherwise unenforceable in this case or in any other proceeding.

4. The payments made by Defendants to Plaintiffs shall be credited *pro tanto,* and not *pro rata,* during any equitable allocation of response costs among liable parties by the Court

in this matter pursuant to 42 U.S.C. § 9613(f)(1). The liability of the remaining liable parties shall accordingly be reduced by the dollar amounts of these settlement payments, and the Court need not determine Defendants' proportionate share of liability.

5. It appearing that no cross-claims for express breach of contract and contractual indemnification have been asserted against the Defendants, the Defendants are dismissed from this case.

6. This order shall have the full force and effect of a final judgment under Fed. R. Civ. P. 54 and 58. This Court nevertheless retains jurisdiction and shall retain jurisdiction after entry of final judgment in this case to enforce the terms and conditions of the Settlement Agreement.

7. IT IS SO ORDERED, and the Clerk is directed to enter this judgment as a separate document pursuant to Fed. R. Civ. P. 58(a).

Dated: _____

_____
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT A
(Settlement Agreement)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

WATKINS ROAD – FAIRWOOD AVENUE SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** ("Agreement") is entered into on this 20 day of ~~March~~ April 2022 by, between, and among Garrison Southfield Park LLC ("GARRISON"), Olymbec USA LLC ("OLYMBEC"), GEEP USA, Inc., and GEEP Holdings, Inc. GEEP USA, Inc. and GEEP Holdings, Inc. are each referred to herein as a "Party" and are collectively referred to herein as "SETTLORS." GARRISON, OLYMBEC, and SETTLORS are each referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

WHEREAS, GARRISON was the owner of 1655 Watkins Road, Columbus, Ohio 43207; is the owner of 1675 Watkins Road, Columbus, Ohio 43207; and OLYMBEC is the owner of 2200 Fairwood Avenue, Columbus, Ohio 43207.

WHEREAS, Closed Loop Refining and Recovery, Inc. ("Closed Loop") leased 1675 Watkins Road, Columbus, Ohio 43207 and space within 1655 Watkins Road, Columbus, Ohio 43207 (collectively, "Watkins Road") from GARRISON; and leased space within 2200 Fairwood Avenue, Columbus, Ohio 43207 ("Fairwood Avenue") from OLYMBEC (with all three properties collectively referred to herein as the "Facility").

WHEREAS, at all times relevant, Closed Loop operated the Facility.

WHEREAS, GARRISON and OLYMBEC currently estimate that Closed Loop received and stockpiled approximately 80,000 tons of cathode ray tubes and other electronic waste at the Facility, before abandoning both Watkins Road and Fairwood Avenue in or around April 2016.

WHEREAS, GARRISON and OLYMBEC currently estimate the costs of environmental cleanup at the Facility at more than $21 million.

WHEREAS, the Ohio Environmental Protection Agency ("Ohio EPA") has referred this matter to the Ohio Attorney General's Office to "initiate all necessary legal and/or equitable civil actions as may be deemed necessary and seek appropriate penalties against [Closed Loop and Closed Loop Glass Solutions, LLC] and any other appropriate persons for the violations of ORC Chapter 3734 and the rules adopted thereunder."

WHEREAS, GARRISON and OLYMBEC allege that SETTLORS are potentially responsible parties under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. §§ 9601, *et seq.* ("CERCLA"), the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, *et seq.* ("RCRA"), Ohio Revised Code Chapter 3734, comparable Ohio statutes, federal or state regulations promulgated thereunder, and Ohio common law in connection with the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, and remediation of hazardous substances (as that term is defined in CERCLA Section 101(14), 42 U.S.C. § 9601(14)), and other wastes arising from the stockpiling and subsequent abandonment of cathode ray tubes and other electronic waste (collectively, "E-Waste") at, to or migrating from the Facility.

WHEREAS, due to the uncertainties, costs, time and legal issues associated with litigation, the Parties desire to resolve any and all claims involving SETTLORS' alleged liability relating to the Facility that have been asserted or could be asserted either now or in the future, whether known or unknown, including, without limitation, claims under CERCLA, RCRA, Ohio Revised Code Chapter 3734, comparable Ohio statutes, federal or state regulations promulgated thereunder, common law, or any other legal theory in connection with the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility (including, without limitation, all claims involving remedial investigations and feasibility studies, records of decision, response actions, removal actions, remedial design and remedial action or any other activity related to E-Waste associated with the Facility) subject, however, to the limitations set forth herein.

WHEREAS, for the consideration described herein, including SETTLORS' payment of the Settlement Amount as defined in Section 5(a) and as identified in Appendix A, and except as specifically limited by this Agreement, GARRISON and OLYMBEC have agreed:

i. to release and covenant not to sue either SETTLOR with respect to, subject to Section 4, any and all Released Claims, as defined in Section 3, that have been or could be asserted either now or in the future against such SETTLOR with respect to the Facility;

ii. to move the U.S. District Court for the Southern District of Ohio ("S.D. Ohio") for the entry of an order pursuant to a joint motion for approval of the Agreement that extends contribution protection to SETTLORS in keeping with CERCLA Section 113(f)(1), 42 U.S.C. § 9613(f)(1); and

iii. to identify SETTLORS to the State of Ohio as entities that have settled their liability with GARRISON and OLYMBEC and to ask the State of Ohio to refrain from pursuing enforcement against either SETTLOR with respect to the Facility.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. INCORPORATION OF RECITALS

The recitals above are incorporated into the body of this Agreement as if fully set forth herein.

2. DEFINITION OF CLAIM

"Claim" shall mean any civil lawsuit or administrative case, and any causes of action asserted or relief requested therein.

3. MUTUAL RELEASE OF CLAIMS

a. Subject to Section 4 and other limitations set forth in this Agreement, GARRISON and OLYMBEC each release and covenant not to sue either SETTLOR, and each SETTLOR releases and covenants not to sue GARRISON and OLYMBEC, with respect to any and all Claims

that have been asserted or could be asserted now or in the future under CERCLA, RCRA, Ohio Revised Code Chapter 3734, any comparable Ohio statutes, or federal or state regulations promulgated thereunder, as they now exist, may be amended in the future, or as may come into effect in the future, or common law or any other causes of action, whether presently known or unknown, arising out of, or in connection with, the alleged presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, remediation, monitoring, or engineering control of E-Waste at, to or migrating from the Facility, including natural resource damages, and including, without limitation, the Claims asserted in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al.*, Case No. 2:17-cv-00783-EAS-EPD (S.D. Ohio) and *Olymbec USA LLC v. Closed Loop Refining and Recovery, Inc., et al.*, Case No. 2:19-cv-01041-EAS-EPD (S.D. Ohio) against SETTLORS ("Released Claims").

b. Subject to Section 4 and other limitations set forth in this Agreement, the following persons and entities shall also receive the same releases of liability and covenants not to sue as the Parties: the past and present directors, officers, members, shareholders, insurers, partners, agents, or employees of each Party; each Party's successors, predecessors, assigns, parents, Affiliates, and subsidiaries; and the past and present directors, officers, members, shareholders, insurers, partners, agents, or employees of each Party's successors, predecessors, assigns, parents, Affiliates, and subsidiaries (collectively, "Beneficiaries," and each a "Beneficiary"). For purposes of this Agreement, "Affiliates" and "Affiliated" mean related to, by shareholdings or means of control other than through arms-length transacting.

4. NON-RELEASED CLAIMS

Notwithstanding anything to the contrary contained herein, the releases and covenants not to sue in Section 3 shall not extend, and shall not be construed to extend, to the following (collectively, "Non-Released Claims"):

a. any Claims arising from or related to an alleged breach of this Agreement;

b. any Claims not arising from or related to the presence, generation, transportation, arranging, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility;

c. any Claims by GARRISON or OLYMBEC arising from or related to Claims asserted by a SETTLOR Beneficiary against GARRISON or OLYMBEC or any of their Beneficiaries;

d. any Claims by either SETTLOR arising from or related to Claims asserted by a GARRISON or OLYMBEC Beneficiary against either SETTLOR or any of its Beneficiaries;

e. any Claims by GARRISON or OLYMBEC arising from or related to Claims asserted by either SETTLOR against any GARRISON or OLYMBEC Beneficiary; and

f. any Claims by GARRISON or OLYMBEC arising from or related to E-Waste not attributable to either SETTLOR asserted against any SETTLOR Beneficiary.

5. CONSIDERATION

a. In consideration of the agreements herein, SETTLORS agree to pay to GARRISON and OLYMBEC the settlement amount identified in Appendix A ("Settlement Amount") within ninety (90) days after the Effective Date. Payment of the Settlement Amount shall be made to GARRISON, which shall route the funds to OLYMBEC and/or directly into an escrow account pursuant to an escrow agreement between Ohio EPA and GARRISON with such escrow agreement specifying that the Settlement Amount will be dispersed from the escrow account to pay necessary removal or remediation costs that Ohio EPA determines are consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300 ("NCP"). In any case, the Settlement Amount will be used by GARRISON and OLYMBEC to pay necessary removal or remediation costs that Ohio EPA determines are consistent with the NCP or to reimburse GARRISON or OLYMBEC for such costs previously incurred.

b. In consideration of the agreements herein, each SETTLOR agrees not to challenge any removal or remedial measures selected for or undertaken at the Facility.

c. In consideration of the agreements herein, except for Non-Released Claims, each SETTLOR agrees not to assert any Claim against (i) any person or entity that GARRISON or OLYMBEC agreed to indemnify in connection with the Facility; (ii) GARRISON or OLYMBEC, except for failure to perform under this Agreement; or (iii) any person or entity not a party to this Agreement who is alleged to be a potentially responsible party for removal or remedial costs at the Facility pursuant to CERCLA. This Section 5(c) shall not, however, preclude either SETTLOR from asserting against any such person or entity (y) any Claims not arising from or related to the presence, generation, transportation, arranging, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility; or (z) any counterclaims to Claims arising from or related to the presence, generation, transportation, arranging, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility, which are first filed against such SETTLOR by such persons or entities and/or by GARRISON or OLYMBEC pursuant to Section 9, provided that such SETTLOR dismisses any such counterclaims if and when the Claims filed against such SETTLOR are dismissed.

d. In consideration of the agreements herein, except for Non-Released Claims, each SETTLOR waives any right to object to past and future agreements to settle Claims between and among GARRISON, OLYMBEC, and any person or entity that is not a Party to this Agreement, including, without limitation, agreements that allocate removal or remedial costs for the Facility to other persons or entities. This provision shall no longer be binding on a SETTLOR if a Claim is made against such SETTLOR pursuant to Section 9.

e. In consideration of the agreements herein, except for Non-Released Claims, each SETTLOR hereby assigns to GARRISON and OLYMBEC all rights, claims and causes of action arising from such SETTLOR's alleged liability relating to the Facility, including, without limitation, causes of action for cost recovery or contribution against any person or entity not a party to this Agreement who is a potentially responsible party for removal or remedial costs at the Facility pursuant to CERCLA. This Section 5(e) shall not, however, preclude either SETTLOR from asserting any counterclaims to Claims arising from or related to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility, which are first filed against such

SETTLOR by any person or entity, provided that such SETTLOR dismisses any such counterclaims if and when the Claims filed against such SETTLOR are dismissed.

6. JUDICIAL APPROVAL

The Parties hereby agree to move the S.D. Ohio jointly for the entry of an order pursuant to a joint motion for judicial approval of the Agreement. This Agreement is contingent upon entry of an order that grants the Parties' joint motion for judicial approval of the Agreement that specifically provides that (i) the S.D. Ohio discharge and bar all past, present, and future counterclaims, cross-claims, and other claims relating to the Facility, as contemplated by this Agreement, including claims for contribution under 42 U.S.C. § 9613(f)(1), which have been made or could be made against either SETTLOR by any person or entity, except for Non-Released Claims and claims for express breach of contract and contractual indemnification, (ii) the Settlement Amount as defined in Section 5(a) and as identified in Appendix A shall be credited *pro tanto*, and not *pro rata*, in determining the equitable share at trial of defendants other than SETTLOR; and (iii) the S.D. Ohio dismisses the Claims brought in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc., et al.*, Case No. 2:17-cv-00783-EAS-EPD (S.D. Ohio) and *Olymbec USA LLC v. Closed Loop Refining and Recovery, Inc., et al.*, Case No. 2:19-cv-01041-EAS-EPD (S.D. Ohio) against SETTLORS except for cross-claims for express breach of contract and contractual indemnification. Should such an order as specified in this Section 6 not be entered, and the Parties hereto fail to agree otherwise, SETTLORS will be entitled to a reimbursement of the Settlement Amount, and this Agreement shall be null and void.

7. PERFORMANCE UNDER THIS AGREEMENT

a. To obtain the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLORS, SETTLORS authorize GARRISON and OLYMBEC to execute on their behalf an administrative order, consent decree, settlement agreement, or other instrument necessary to secure such assurance for the benefit of SETTLORS, provided, however, that no such action, if undertaken by GARRISON or OLYMBEC, shall increase either SETTLOR's obligations to GARRISON or OLYMBEC beyond those stated in this Agreement or the obligations of GARRISON or OLYMBEC to either SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON or OLYMBEC, increase either SETTLOR's obligations to the State of Ohio or any person or entity not a party to this Agreement beyond those stated in this Agreement without such SETTLOR's consent.

b. Nothing set forth in Section 7(a) or otherwise herein shall obligate GARRISON or OLYMBEC to request or obtain a covenant not to sue or contribution protection from the State of Ohio. SETTLORS nevertheless authorize GARRISON and OLYMBEC to execute on their behalf an administrative order, consent decree, settlement agreement, or other instrument necessary to secure such covenant not to sue or contribution protection for the benefit of SETTLORS, provided, however, that no such action if undertaken by GARRISON or OLYMBEC shall increase either SETTLOR's obligations to GARRISON or OLYMBEC beyond those stated in this Agreement or the obligations of GARRISON or OLYMBEC to either SETTLOR beyond those stated in this Agreement. Nor shall any such action, if undertaken by GARRISON or OLYMBEC, increase

either SETTLOR's obligations to the State of Ohio or any person or entity not a party to this Agreement beyond those stated in this Agreement without such SETTLOR's consent.

c. Each SETTLOR waives any right to assert Claims against GARRISON and OLYMBEC in connection with the efforts of GARRISON or OLYMBEC to secure a covenant not to sue, contribution protection, or the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLORS. Each SETTLOR also waives any right to assert Claims against GARRISON and OLYMBEC in connection with the terms of any related administrative order, consent decree, settlement agreement, or other instrument.

d. Each SETTLOR shall reasonably cooperate with GARRISON and OLYMBEC to prepare a settlement agreement, motion for judicial approval of the settlement agreement, or any other instrument necessary to seek a covenant not to sue, to apply for contribution protection, or to request the State of Ohio's assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLORS.

e. Each SETTLOR acknowledges that the State of Ohio or the S.D. Ohio may not agree to provide a covenant not to sue or contribution protection for SETTLORS on terms acceptable to the Parties and that the State of Ohio may not agree to provide an assurance that it will not object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLORS on terms acceptable to the Parties. If the S.D. Ohio does not provide contribution protection, then the Agreement shall be null and void. The failure to obtain from the State of Ohio a covenant not to sue, contribution protection, or an assurance not to object to the Agreement or to the extension of CERCLA Section 113(f)(1) contribution protection to SETTLORS shall not terminate this Agreement.

f. Each SETTLOR agrees to forward to GARRISON and OLYMBEC all relevant and non-privileged records in its possession, custody, or control as of the Effective Date, or which are received by either SETTLOR after the Effective Date, relating to the Facility. GARRISON and OLYMBEC agree to enter into confidentiality agreements, as appropriate, to protect information a SETTLOR deems to be a trade secret pursuant to Ohio Revised Code § 1333.61(D) or Ohio Administrative Code § 3745-49-03.

g. In addition to the obligation to cooperate provided in Section 7(d), each SETTLOR agrees, at the request of GARRISON or OLYMBEC, to reasonably cooperate with GARRISON and OLYMBEC in connection with other activities pertaining to the Facility. Nothing set forth in this Section 7(g), however, shall be construed to obligate either SETTLOR to pay GARRISON or OLYMBEC more than the Settlement Amount identified in Appendix A or to obligate either SETTLOR to undertake removal or remedial actions at the Facility.

h. Notwithstanding any other provision of this Agreement, each SETTLOR acknowledges that GARRISON and OLYMBEC will file or maintain a suit or suits pursuant to CERCLA and common law in the S.D. Ohio against SETTLORS until such time that the S.D. Ohio enters the order contemplated by Section 6 or, if such an order is not issued, until the Claims in the suit or suits against SETTLORS are otherwise resolved via settlement, voluntary dismissal, or in a final, non-appealable decision rendered by the S.D. Ohio.

8. REPRESENTATIONS OF SETTLOR

a. SETTLORS represent to GARRISON and OLYMBEC that, to the best of their knowledge, as of the Effective Date:

i. SETTLORS did not collectively transport, arrange for the transport, or otherwise contribute E-Waste to the Facility that is twenty percent (20%) or more in excess of the weight of materials identified in Appendix A to this Agreement, or that is at least 50,000 lbs in excess of the weight of the materials identified in Appendix A to this Agreement, whichever is lower;

ii. SETTLORS have signed no other agreements and have made no other commitments in connection with the Facility that obligate them to undertake removal or remedial actions or pay money;

iii. SETTLORS have disclosed to Ohio EPA all known, relevant, and non-privileged information about (1) the weight and nature of E-Waste transported to the Facility, either directly or indirectly, by SETTLORS or any agent of a SETTLOR, and (2) relevant direct or indirect transactions regarding the Facility; and

iv. SETTLORS have not altered, mutilated, discarded, destroyed, or otherwise disposed of any records or other information relating to its potential liability relating to the Facility after notification of potential liability as a potentially responsible party at the Facility.

b. SETTLORS recognize and agree that their representations to GARRISON and OLYMBEC set forth herein constitute a material inducement to GARRISON and OLYMBEC to enter into this Agreement and that, but for such representations, neither GARRISON nor OLYMBEC would have entered into this Agreement. In accordance with its representations herein, SETTLORS shall sign the Certification and Agreement attached hereto and incorporated herein as Appendix C.

9. REOPENER

Notwithstanding any other provision of this Agreement, GARRISON and OLYMBEC maintain the right to seek further relief from SETTLORS in the event that Significant New Information is discovered demonstrating that (i) either SETTLOR was Affiliated with another non-settling, potentially responsible party in connection with this matter prior to the Effective Date, or (ii) that the weight of materials collectively attributable to SETTLORS is twenty percent (20%) or more in excess of the weight of materials identified in Appendix A to this Agreement, or that the weight of materials collectively attributable to SETTLORS is at least 50,000 lbs in excess of the weight of the materials identified in Appendix A to this Agreement, whichever is lower. In the event of such a reopener, the Settlement Amount paid by SETTLORS shall be retained by GARRISON and OLYMBEC, but shall be deducted from any future allocation of removal or remedial costs to SETTLORS. For purposes of this subsection "Significant New Information" includes any information not known by GARRISON and OLYMBEC as of the Effective Date,

including, without limitation, any information relating to the weight of E-Waste attributable to SETTLOR.

10. RESERVATION OF RIGHTS

a. Nothing in this Agreement is intended to be, nor shall be, construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which GARRISON or OLYMBEC has against either SETTLOR or any SETTLOR Beneficiary for Non-Released Claims.

b. Nothing in this Agreement is intended to be, nor shall be, construed as a release or covenant not to sue for any claim or cause of action, past or future, in law or in equity, which either SETTLOR or any SETTLOR Beneficiary has against GARRISON, GARRISON Beneficiaries, OLYMBEC, or OLYMBEC Beneficiaries for Non-Released Claims.

c. Nothing herein is intended to waive or release any of GARRISON's or OLYMBEC's claims, causes of action or demands in law or equity against any person, firm, partnership, corporation, organization, governmental entity or any person or entity other than SETTLORS or SETTLOR Beneficiaries for any liability, including, without limitation, any liability that may arise out of or may relate in any way to the presence, generation, transportation, storage, treatment, disposal, abandonment, release, threatened release, removal, or remediation of E-Waste at, to or migrating from the Facility.

11. NO ADMISSION OF LIABILITY

The compromise and settlement contained in this Agreement is for the administrative convenience of the Parties and does not constitute an admission of liability by any Party. The execution of this Agreement shall not, under any circumstances, be construed as an admission by any Party of any liability with respect to the Facility or with respect to any E-Waste allegedly contributed to the Facility. This Agreement shall not constitute or be used by the Parties as (a) evidence, (b) an admission of any liability or fact, or (c) a concession of any question of law. Nor shall this Agreement be admissible in any proceeding except in an action to seek enforcement of any terms herein, to obtain contribution protection for SETTLORS, or for the purpose of obtaining judicial approval of this Agreement as contemplated in Section 6 of this Agreement.

12. EFFECTIVE DATE

This Agreement shall be effective upon execution by the date when the last Party to sign has executed the Agreement ("Effective Date").

13. NO WINDFALL

a. GARRISON, based on principles of fairness and equity, shall refund to SETTLORS all or part of the Settlement Amount identified in Appendix A, if GARRISON is successful in its efforts to fully recover and actually receive the costs of the environmental investigation and cleanup, attorneys' fees, consultant fees, lost rent, and other costs incurred by GARRISON and OLYMBEC arising from or relating to the Facility through enforcement of the final judgment entry in *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.,*

et al. (Franklin County Court of Common Pleas Case No. 16-CV-002317) and *Garrison Southfield Park LLC v. Closed Loop Refining and Recovery, Inc.* (Franklin County Court of Common Pleas Case No. 15-CV-006697).

b. GARRISON and OLYMBEC, based on principles of fairness and equity, shall refund to SETTLORS a proportionate share of the Settlement Amount identified in Appendix A, if, and to the extent that, the funds recovered from all persons and entities other than GARRISON and OLYMBEC exceed the environmental investigation and cleanup costs, attorneys' fees, consultant fees, lost rent, and other costs incurred by GARRISON and OLYMBEC arising from or relating to the Facility.

14. MISCELLANEOUS PROVISIONS

a. **Governing Law.** This Agreement shall be construed according to the laws of the State of Ohio regardless of any conflict of law provisions which may apply. Any and all actions at law or in equity that may be brought by any of the Parties to enforce or interpret this Agreement shall be brought only in the State of Ohio.

b. **Severability.** In the event that any provision of this Agreement is determined by a court to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in force.

c. **Successors and Assigns Included as Parties.** Whenever in this Agreement one of the Parties hereto is named or referenced, the successors and permitted assigns of such Party shall be included, and all covenants and agreements contained in this Agreement by or on behalf of any of the Parties hereto shall bind and inure to the benefit of their respective successors and permitted assigns, whether so expressed or not.

d. **Attorneys' Fees and Litigation Expenses.** Each Party is responsible for its own attorneys' fees and other costs incurred in any legal action or proceeding arising from or related to E-Waste at the Facility, including, without limitation, the suit or suits filed or maintained by GARRISON or OLYMBEC pursuant to CERCLA and common law as referenced in Section 7(h).

e. **Insurance.** The Parties do not hereby make any agreement or take any action intended to prejudice the Parties with respect to their insurers.

f. **Relationship of the Parties.** This Agreement does not create and shall not be construed to create, any agency, joint venture, or partnership relationship(s) between or among the Parties.

g. **Section Headings.** The headings of sections of this Agreement are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

h. **Modification of the Agreement.** Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by all Parties.

i. **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties and supersedes all prior contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the Parties represents that it has read each of the provisions of the Agreement and understands the same.

j. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall constitute but one original document. Electronic copies of original signatures, for all purposes, shall be deemed to be originally executed counterparts of this Agreement.

k. **Advice of Counsel.** Each Party represents that it has sought and obtained the legal advice it deemed necessary prior to entering into this Agreement.

l. **Notices.** Notices effectuating the requirements of this Agreement shall be directed as follows:

To GARRISON:

GARRISON SOUTHFIELD PARK LLC
c/o Karl R. Heisler
King & Spalding LLP
110 N. Wacker Drive, Suite 3800
Chicago, IL 60606

To OLYMBEC:

OLYMBEC USA LLC
c/o Randall Womack
Glankler Brown, PLLC
6000 Poplar Avenue, Suite 400
Memphis, TN 38119

To SETTLOR:

GEEP USA, INC. and GEEP HOLDINGS, INC.
c/o Stephen Riccardulli
Holland & Knight LLP
31 West 52nd Street
New York, New York 10019

GEEP USA, LLC and GEEP Holdings, Inc.
c/o GEEP USA, LLC
Attn: Andre Kuyntjes
Giampaolo Group
Suite 301 - Kenview Blvd.
Brampton, ON L6T 5E6
Canada

All notices or demands required or permitted under this Agreement shall be in writing and shall be effective if hand-delivered, delivered by a commercial delivery service with a return receipt, or sent by registered or certified mail, postage prepaid and return receipt requested. Notice shall be deemed received at the time delivered. Any Party may also give notice by electronic mail, which shall be effective upon confirmation by the Party receiving the notice that such electronic mail has been received by the Party to whom the notice has been addressed. Nothing in this Section shall prevent the giving of notice in such manner as prescribed by the Federal Rules of Civil Procedure or the Ohio Rules of Civil Procedure for the service of legal process. Any Party may change its address by giving written notice.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement designated on their respective signature pages. Each Party and the individual executing this Agreement represent and warrant that the individual executing this Agreement has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By: _____
Signature / Position

Kevin Treacy, Authorized Signatory
Printed Name

04/25/2022
Date

OLYMBEC

By: _____
Signature / Position

_____
Printed Name

_____
Date

SETTLORS

By: _____
Signature / Position

Christopher Galifi, Chief Executive Officer
Printed Name

April 20, 2022
Date

For: **Geep USA, Inc. and GEEP Holdings, Inc.**
Company Name

_____
Federal Employer ID No.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement designated on their respective signature pages. Each Party and the individual executing this Agreement represent and warrant that the individual executing this Agreement has been duly authorized to enter into this Agreement by, and to bind the Party on whose behalf such individual is executing.

GARRISON

By: _____

Signature / Position

_____

Printed Name

_____

Date

OLYMBEC

By: _____ / EVP Operations & General Counsel

Signature / Position

JASON BERGER

Printed Name

04/25/2022

Date

SETTLORS

By: _____

Signature / Position

Christopher Galifi, Chief Executive Officer

Printed Name

April 20, 2022

Date

For: **Geep USA, Inc. and GEEP Holdings, Inc.**

Company Name

_____

Federal Employer ID No.

APPENDIX A
SETTLEMENT AMOUNT

Based on SETTLORS' reasonable inquiry, SETTLORS arranged for the transport of no more than 3,972,790 lbs. of E-Waste to the Facility, starting in or around September 2012 and extending into or around May 2015. SETTLOR agrees to pay to GARRISON and OLYMBEC $500,000 as their share of the environmental cleanup costs at the Facility.

APPENDIX B
NOTICE LETTER

_____
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street, 25th Floor
Columbus, Ohio 43215

RE: Watkins Road – Fairwood Avenue Settlement Agreement

[DATE]

Dear _____:

The purpose of this letter is to notify the Ohio Attorney General's Office, acting on behalf of the Ohio Environmental Protection Agency, that _____ has entered into a settlement with Garrison Southfield Park LLC and Olymbec USA LLC for an environmental cleanup at 1655/1675 Watkins Road, Columbus, Ohio 43207, and 2200 Fairwood Avenue, Columbus, Ohio 43207. Thank you for your attention to this matter.

Sincerely,

[SIGNATURE]

cc: Karl Heisler, King & Spalding LLP
Randall Womack, Glankler Brown, PLLC

APPENDIX C
CERTIFICATION AND AGREEMENT

Notwithstanding any other provision of this Agreement, SETTLOR certifies and agrees specifically as follows:

1. In accordance with statutory obligations, and to the best of the SETTLORS' knowledge and belief, SETTLORS have completely and accurately responded to any and all information requests received from the U.S. Environmental Protection Agency ("U.S. EPA"), Ohio EPA, or any other relevant governmental agencies, including, without limitation, requests for information pursuant to CERCLA, RCRA, Ohio Revised Code Chapter 3734, comparable Ohio statutes, and federal or state regulations promulgated thereunder relating to SETTLORS' alleged generation, transportation, disposal, arrangement for disposal or other contribution of E-Waste to the Facility ("Information Requests"); and

2. In accordance with statutory obligations, SETTLORS have and shall continue to provide U.S. EPA, Ohio EPA, or other relevant governmental agencies with complete, accurate and legally sufficient responses to any and all Information Requests, including, without limitation, forwarding to U.S. EPA, Ohio EPA, or other relevant governmental agencies information that modifies or supplements SETTLORS' previous response to any Information Requests in keeping with SETTLORS' continuing obligation to supplement any such response.

By: _____
Signature / Position

Christopher Galifi, Chief Executive Officer
Printed Name

April 20, 2022
Date

For: **GEEP USA, Inc. and GEEP Holdings, Inc.**
Company Name

Federal Employer ID No.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS
OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT B
(Declaration of Plaintiff Garrison Southfield Park LLC)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF KARL HEISLER IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

Pursuant to 28 U.S.C. § 1746, Karl R. Heisler declares the following:

1. I offer this declaration in support of the settlement agreement executed by Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), Defendant GEEP USA, Inc., and Defendant GEEP

Holdings, Inc. (with Defendant GEEP USA, Inc. and Defendant GEEP Holdings, Inc. referred to as the "Settlors"). I have personal knowledge of the facts stated herein.

2. The law firm of King & Spalding LLP is one of the law firms that represent Garrison in this matter. I am a partner of this law firm and work in its Chicago, Illinois office, which is located at 110 N. Wacker Dr., Suite 3800, Chicago, IL 60606. I am admitted to practice in this case *pro hac vice*.

3. My familiarity with this matter arises out of my representation of Garrison. My knowledge of the facts in this declaration is based on documentary evidence, firsthand observations, communications with the State of Ohio, and expert consulting advice that my law firm has obtained and reviewed.

4. During the period at issue, Garrison owned two contiguous warehouses located at 1655 and 1675 Watkins Road in Columbus, Ohio. Garrison leased 1675 Watkins Road and space within 1655 Watkins Road to Closed Loop Refining and Recovery, Inc. ("Closed Loop"), which received, stockpiled, and abandoned cathode ray tubes and other electronic wastes ("E-Waste") at these warehouses from 2012 and extending into 2016.

5. According to the declaration of Randall B. Womack, counsel for Olymbec, Closed Loop rented a warehouse owned by Olymbec that is located near Garrison's warehouses. *See* Exhibit C to the Motion for Approval of the Settlement Agreement. That declaration states that Closed Loop and/or Closed Loop Glass Solutions (an affiliate of Closed Loop) received, stockpiled, and abandoned E-Waste at Olymbec's warehouse from 2014 and extending into 2016.

6. Garrison has obtained and reviewed Closed Loop records as well as records produced by other defendants providing detailed accounts of the weight of E-Waste that Closed Loop

received from its customers, including accounting spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping documentation. According to these records, Settlors arranged for the transport of the weight of E-Waste to Garrison's warehouses and/or to Olymbec's warehouse (collectively, the "Facility") that appears in Appendix A to the Settlement Agreement.

7. AECOM, an environmental consultant, collected samples of the E-Waste at Garrison's warehouses. The laboratory analyses of these samples using the Toxicity Characteristic Leaching Procedure reflect that the E-Waste has a total lead content that far exceeds the 5.0 mg/L regulatory threshold under federal and state hazardous waste laws, which is consistent with common industry knowledge of lead content in cathode ray tubes. Based on these analyses and common industry knowledge, the E-Waste is a hazardous substance as defined by Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14).

8. Atwell, LLC ("Atwell"), an environmental consultant, in consultation with electronic waste recyclers and abatement contractors, estimated the total weight of E-Waste in Garrison's warehouses at approximately 128,187,373 pounds prior to the initiation of the removal actions. EnSafe Inc. ("EnSafe"), an environmental consultant, was retained to prepare the CERCLA action memorandum, the CERCLA engineering evaluation/cost analysis, and the hazardous waste closure plan, as well as to estimate the costs that Garrison would incur to remove the E-Waste, to lawfully recycle or dispose of it, and to decontaminate the warehouses by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. Based on Atwell's assessment, proposals from

electronic waste recyclers and abatement contractors, and experience with on-site removal activities at Garrison's warehouses, EnSafe had estimated that these costs, including past costs, would be approximately $16,272,528.

9. According to Randall Womack's declaration, there were an estimated 30,917,116 pounds of E-Waste at Olymbec's warehouse prior to the initiation of removal action, and the costs, including past costs, of environmental cleanup for that warehouse were estimated at about $4,852,518. *See* Exhibit C.

10. The State of Ohio requested that the Plaintiffs negotiate joint settlements in which each potentially responsible party ("PRP") pays one sum for all of its E-Waste in the three warehouses, because Closed Loop operated all three warehouses as a single facility. Closed Loop stored the same type of E-Waste at all three warehouses and in the same manner; Garrison's warehouse is a six minute drive from Olymbec's warehouse; and Closed Loop's records reflect the fact that millions of pounds of the E-Waste were transferred from Garrison's warehouses to Olymbec's warehouse, without any documentation regarding which E-Waste came from which defendant. The State of Ohio also expected the same or substantially identical cleanup remedy at each warehouse, and the Plaintiffs retained the same environmental consulting firm to help design that remedy in consultation with the State of Ohio and in compliance with the U.S. Environmental Protection Agency National Contingency Plan.

11. Plaintiffs have been using a straightforward cost recovery formula in settlement negotiations that allocates response costs to each PRP based on records that identify the total weight of the E-Waste that the PRP shipped to the Facility, as compared to the total weight of E-Waste shipped by all PRPs. Plaintiffs then applied this percentage to the combined cleanup cost

estimate of $21,125,046. Using this formula, Plaintiffs calculated the costs for removing the E-Waste sent to the Facility by Settlors to be $643,030. Plaintiffs, however, have noted in prior motions for approval of settlement agreements that Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant, such as a PRP that is unable to pay its allocated share. Settlors have informed Plaintiffs that Settlors are unable to pay the share assigned to their E-Waste contributions at the Facility under Plaintiffs' cost recovery formula and have provided Plaintiffs with a sworn affidavit and confidential financial statements to demonstrate this point. Plaintiffs have examined this affidavit and these confidential financial statements and concur with Settlors' representation. Based on the sworn affidavit, all of the assets of Defendant GEEP USA, Inc. were sold on December 13, 2019. Based on the confidential financial statements, the additional expense of the share assigned to Settlors for E-Waste contributions to the Facility cannot be funded from company assets or any projected cashflow that might occur in the near future. Consequently, Plaintiffs have agreed to settle their claims against Settlors for $500,000.

12. Garrison has reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. Garrison's counsel have, by letter, electronic mail, and/or telephone, invited these PRPs to negotiate settlements to pay for the removal of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent a *de minimus* amount of E-Waste that will cost no more than $6000 to clean up. Garrison's counsel have negotiated with all PRPs that have expressed in interest in negotiations, and those negotiations are continuing. These negotiations have resulted in a settlement with Settlors, and may result in other settlements.

13. The parties to the Settlement Agreement were represented in negotiations by independent counsel. These negotiations included, but were not limited to, evaluations of each Settlor's potential liability, the strengths and weaknesses of the evidence tying each Settlor to the Facility, the defenses asserted by each Settlor, the potential legal fees and costs if settlement did not occur, Settlors' financial condition, past and projected response costs, the allocation formula for calculating Settlors' fair share of cleanup costs, and the services of an independent, third party mediator. Based on these considerations and the allocation formula described in Paragraph 11 above, Garrison believes that the Settlement Agreement is fair, adequate, and reasonable. Garrison's counsel have used and will continue to consider the same factors to negotiate settlements with other PRPs, except where warranted by unusual circumstances.

14. Plaintiffs have served a copy of the Motion for Approval of the Settlement Agreement on all defendants in these cases and will soon send it to any other currently known existing PRPs, even if they are not defendants.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2022.

/s/ Karl R. Heisler

_____

Karl R. Heisler

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al.*, Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al.*, Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT C

(Declaration of Plaintiff Olymbec USA LLC)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS
OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF RANDALL B. WOMACK IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

Pursuant to 28 U.S.C. § 1746, Randall B. Womack declares the following:

1. I offer this declaration in support of the settlement agreement executed by Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), Defendant GEEP USA, Inc., and Defendant GEEP

Holdings, Inc. (with Defendant GEEP USA, Inc. and Defendant GEEP Holdings, Inc. referred to as the "Settlors"). I have personal knowledge of the facts stated herein.

2. The law firm of Glankler Brown, PLLC is one of the law firms that represent Olymbec in this matter. I am a member of this law firm, which is located at 6000 Poplar Avenue, Suite 400, Memphis, TN 38119. I am admitted to practice in this case *pro hac vice*.
3. My familiarity with this matter arises out of my representation of Olymbec. My knowledge of the facts in this declaration is based on documentary evidence, firsthand observations, communications with the State of Ohio, and expert consulting advice that my law firm has obtained and reviewed.
4. During the period at issue, Olymbec owned a warehouse located at 2200 Fairwood Avenue in Columbus, Ohio. Olymbec leased this warehouse to Closed Loop Refining and Recovery, Inc. ("Closed Loop"), and Closed Loop and/or Closed Loop Glass Solutions (an affiliate of Closed Loop), which received, stockpiled, and abandoned cathode ray tubes and other electronic wastes ("E-Waste") at this warehouse from 2014 and extending into 2016.
5. According to the declaration of Karl Heisler, counsel for Garrison, Closed Loop also rented two warehouses owned by Garrison that are located near Olymbec's warehouse. *See* Exhibit B to the Motion for Approval of the Settlement Agreement. That declaration states that Closed Loop received, stockpiled, and abandoned E-Waste at Garrison's warehouses from 2012 and extending into 2016.
6. Olymbec has obtained and reviewed Closed Loop records as well as records produced by other defendants providing detailed accounts of the weight of E-Waste that Closed Loop received from its customers, including accounting spreadsheets, commodity purchase agreements, bills of lading, weight tickets, purchase orders, and related shipping

documentation. According to these records, Settlors arranged for the transport of the weight of E-Waste to Garrison's warehouses and/or to Olymbec's warehouse (collectively, the "Facility") that appears in Appendix A to the Settlement Agreement.

7. Max Environmental collected samples of the E-Waste at Olymbec's warehouse. The laboratory analyses of these samples using the Toxicity Characteristic Leaching Procedure reflect that the E-Waste has a total lead content that far exceeds the 5.0 mg/L regulatory threshold under federal and state hazardous waste laws, which is consistent with common industry knowledge of lead content in cathode ray tubes. Based on these analyses and common industry knowledge, the E-Waste is a hazardous substance as defined by Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14).

8. DEC Enviro Inc. ("DEC"), an environmental consultant, in consultation with electronic waste recyclers and abatement contractors, estimated the total weight of E-Waste in Olymbec's warehouse at approximately 30,917,116 pounds prior to the initiation of the removal actions. EnSafe Inc. ("EnSafe"), an environmental consultant, was retained to prepare the CERCLA action memorandum, the CERCLA engineering evaluation/cost analysis, and the hazardous waste closure plan, as well as to estimate the costs that Olymbec would incur to remove the E-Waste, to lawfully recycle or dispose of it, and to decontaminate the warehouse by removing the lead dust deposited on the floors, walls, columns, rafters, and contents, all consistent with the U.S. Environmental Protection Agency National Contingency Plan at 40 C.F.R. Part 300. Based on DEC's assessment and proposals from electronic waste recyclers and abatement contractors, EnSafe had estimated that these costs would be approximately $4,852,518.

9. According to Karl Heisler's declaration, there were an estimated 128,187,373 pounds of E-Waste at Garrison's warehouses, and the costs of environmental cleanup for those warehouses were estimated at about $16,272,528. *See* Exhibit B.

10. The State of Ohio requested that the Plaintiffs negotiate joint settlements in which each potentially responsible party ("PRP") would pay one sum for all of its E-Waste in the three warehouses, because Closed Loop operated all three warehouses as a single facility. Closed Loop stored the same type of E-Waste at all three warehouses and in the same manner; Olymbec's warehouse is a six minute drive from Garrison's warehouse; and Closed Loop's records reflect the fact that millions of pounds of the E-Waste were transferred from Garrison's warehouses to Olymbec's warehouse, without any documentation regarding which E-Waste came from which defendant. The State of Ohio also expected the same or substantially identical cleanup remedy at each warehouse, and the Plaintiffs retained the same environmental consulting firm to help design that remedy in consultation with the State of Ohio and in compliance with the U.S. Environmental Protection Agency's National Contingency Plan.

11. Plaintiffs have been using a straightforward cost recovery formula in settlement negotiations that allocates response costs to each PRP based on records that identify the total weight of the E-Waste that the PRP shipped to the Facility, as compared to the total weight of the E-Waste shipped by all PRPs. Using this formula, Plaintiffs calculated the costs for removing the E-Waste sent to the Facility by Settlors to be $643,030. Plaintiffs, however, have noted in prior motions for approval of settlement agreements that Plaintiffs may make exceptions to this formula for some PRPs when circumstances warrant, such as a PRP that is unable to pay its allocated share. Settlors have informed Plaintiffs that Settlors are unable to pay the share

assigned to their E-Waste contributions at the Facility under Plaintiffs' cost recovery formula and have provided Plaintiffs with a sworn affidavit and confidential financial statements to demonstrate this point. Plaintiffs have examined this affidavit and these confidential financial statements and concur with Settlors' representation. Based on the sworn affidavit, all of the assets of Defendant GEEP USA, Inc. were sold on December 13, 2019. Based on the confidential financial statements, the additional expense of the share assigned to Settlors for E-Waste contributions to the Facility cannot be funded from company assets or any projected cashflow that might occur in the near future. Consequently, Plaintiffs have agreed to settle their claims against Settlors for $500,000.

12. Olymbec has reviewed Closed Loop's records to identify the PRPs that arranged for E-Waste to be transported to the Facility. Olymbec's counsel and/or Garrison's counsel have, by letter, electronic mail, and/or telephone, invited these PRPs to negotiate settlements to pay for the removal of the E-Waste that they contributed to the Facility, except for bankrupt, dissolved, or defunct PRPs and PRPs that sent a *de minimus* amount of E-Waste that would cost no more than $6000 to clean up. Olymbec's counsel have negotiated with all PRPs that have expressed in interest in negotiations, and those negotiations are continuing. These negotiations have resulted in a settlement with Settlors, and may result in other settlements.
13. The parties to the Settlement Agreement were represented in negotiations by independent counsel. These negotiations included, but were not limited to, evaluations of each Settlor's potential liability, the strengths and weaknesses of the evidence tying each Settlor to the Facility, the defenses asserted by each Settlor, the potential legal fees and costs if settlement did not occur, Settlors' financial condition, past and projected response costs, the allocation formula for calculating Settlors' fair share of cleanup costs, and the services of an

independent, third party mediator. Based on these considerations and the allocation formula described in Paragraph 11 above, Olymbec believes that the Settlement Agreement is fair, adequate, and reasonable. Olymbec's counsel has used and will continue to consider the same factors to negotiate settlements with other PRPs, except where warranted by unusual circumstances.

14. Plaintiffs have served a copy of the Motion for Approval of the Settlement Agreement on all defendants in these consolidated cases and will soon send it to any other currently known existing PRPs, even if they are not defendants.

15. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2022.

/s/ Randall B. Womack

Randall B. Womack

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al.*, Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al.*, Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT D
(Phelps Affidavit)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC,	:	Case No.: 2:17-CV-00783-EAS-EPD
Plaintiff,	:	Chief Judge Edmund A. Sargus, Jr.
vs.	:	Magistrate Judge Elizabeth Preston Deavers
CLOSED LOOP REFINING AND RECOVERY, INC., et al.,	:	
Defendants.	:	

OLYMBEC USA, LLC,	:	Case No.: 2:19-CV-01041-EAS-EPD
Plaintiff,	:	Chief Judge Edmund A. Sargus, Jr.
vs.	:	Magistrate Judge Elizabeth Preston Deavers
CLOSED LOOP REFINING AND RECOVERY, INC., et al.,	:	
Defendants.	:	

AFFIDAVIT OF DERRICK PHELPS IN SUPPORT OF SETTLEMENT

I, Derrick Phelps, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY: being first duly sworn, deposes and says:

1. I hold the position of Chief Financial Officer with each of GEEP USA, Inc. and GEEP Holdings, Inc. (collectively, "GEEP"). In such capacity, I have access to the business and financial records of GEEP USA, Inc. I make this affidavit in connection with the settlement of the above captioned matters.

2. In connection with the settlement of the above captioned matters, I was asked to provide a statement of the current assets of GEEP USA, Inc.

3. In response to the request, I attach hereto at Exhibit A the "Comparative Balance Sheet" for GEEP USA, Inc., which states the total assets and liabilities through January 31, 2021. As all of the assets of GEEP USA, Inc. were sold on the 13th day of December, 2019, it no longer

operates as a business unit. The January 31, 2021 Comparative Balance Sheet reflects the current assets and liabilities as of December 17, 2021.

4. The Comparative Balance Sheet is maintained by GEEP USA, Inc. in the regular course of its business, as business records of GEEP USA, Inc. It was the regular practice and regular course of business of GEEP USA, Inc. for an employee or representative of GEEP USA, Inc. with knowledge of the act, event, condition, opinion, or diagnosis recorded to make, keep, or transmit the recorded information. The created records were made at or near the time or reasonably soon thereafter. It is GEEP USA, Inc.'s typical practice to rely upon the contents of the Comparative Balance Sheet, the circumstances surrounding which indicate their trustworthiness.

5. The Comparative Balance Sheet is maintained in electronic form. Exhibit A is a true and correct copy of a screen shot of the electronic from.

6. GEEP USA, Inc. considers the information contained in Exhibit A as confidential information, that if disclosed, would cause substantial injury to the competitive position of GEEP.

7. GEEP has taken measures to prevent the disclosure of the information to anyone other than those who have been selected to have access for limited purposes, and GEEP intends to continue to take such measures.

8. The information is not, and has not been, reasonably obtainable without our consent by other persons by use of legitimate means.

9. The information has not been released into the public domain.

SWORN BEFORE ME at the City of Brampton

this 20th day of December, 2021.

Derrick Phelps

ANDRIES PIETER KUYNTJES
A Notary Public & Commissioner for
Oaths in and for the Province of ONTARIO

My commission does not expire.
LSUC # 56403D

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT E
(Riccardulli Declaration)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

DECLARATION OF STEPHEN RICCARDULLI IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

Pursuant to 28 U.S.C. § 1746, Stephen Riccardulli declares the following:

1. I offer this declaration in support of the settlement agreement executed by Plaintiff Garrison Southfield Park LLC ("Garrison"), Plaintiff Olymbec USA LLC ("Olymbec," along with Garrison referred to as the "Plaintiffs"), Defendant GEEP USA, Inc., and Defendant GEEP

Holdings, Inc. (with Defendant GEEP USA, Inc. and Defendant GEEP Holdings, Inc. referred to as the "Settlors"). I have personal knowledge of the facts stated herein.

2. I represent Settlors in this matter.

3. My familiarity with this matter arises out of my representation of Settlors in these consolidated cases.

4. The Settlement Agreement between Plaintiffs and Settlors was negotiated independently by Plaintiffs' counsel and Settlors' counsel.

5. In negotiating the Settlement Agreement, Settlors considered their potential liability, the strengths and weaknesses of the evidence tying Settlors to Plaintiffs' warehouses, the defenses asserted by each Settlor, the potential legal fees and costs if settlement did not occur, Settlors' financial condition, the past and projected response costs, the allocation formula for calculating Settlors' fair share of cleanup costs, and the services of an independent, third party mediator.

6. Based on these considerations, Settlors believe that the Settlement Agreement is fair, adequate, and reasonable.

7. I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 24, 2022.

/s/ Stephen Riccardulli

Stephen Riccardulli

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARRISON SOUTHFIELD PARK LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:17-cv-783-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

OLYMBEC USA LLC, Plaintiff, v. CLOSED LOOP REFINING AND RECOVERY, INC., *et al*., Defendants.	Case No. 2:19-cv-1041-EAS-EPD JUDGE EDMUND A. SARGUS, JR. MAGISTRATE JUDGE ELIZABETH PRESTON DEAVERS

EXHIBIT F

(Draft Letter from State of Ohio)

OF THE MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT EXECUTED BY PLAINTIFF GARRISON SOUTHFIELD PARK LLC, PLAINTIFF OLYMBEC USA LLC, DEFENDANT GEEP USA, INC., AND DEFENDANT GEEP HOLDINGS, INC.

DAVE YOST
OHIO ATTORNEY GENERAL

Environmental Enforcement
Office: (614) 466-2766
Fax: (614) 644-1926

[Date]

[Address Block]

Re: Closed Loop Refining and Recovery, Inc.
1675 and 1655 Watkins Road, 2200 Fairwood Ave.
Columbus, Ohio

Dear XX:

Thank you for sending notice of your settlement with Garrison Southfield Park LLC (Garrison) and Olymbec USA LLC (Olymbec) for environmental cleanup at 1675/1655 Watkins Road and 2200 Fairwood Avenue, Columbus, Ohio 43207 (the Properties). Ohio Environmental Protection Agency (Ohio EPA), through the Ohio Attorney General's Office, acknowledges and does not object to your settlement with Garrison and Olymbec in satisfaction of Garrison and Olymbec's CERCLA claims in the Southern District of Ohio.

Monies collected as part of Garrison and Olymbec's settlements with you and other potentially responsible parties will be placed in escrow accounts pursuant to escrow agreements between Ohio EPA and Garrison and Olymbec. The escrow agreements specify that this money will be dispersed from the escrow accounts to pay necessary removal or remediation costs at the Properties that Ohio EPA determines are consistent with the U.S. Environmental Protection Agency National Contingency Plan in 40 C.F.R. Part 300.

When the funds from your settlement are deposited in the escrow accounts, the State of Ohio will consider your CERCLA liability satisfied, provided that: 1) you fully cooperate with any additional State investigation at the Properties; 2) the State does not receive information that your e-waste contribution was materially higher than is reflected in your settlement; 3) the State does not discover that you are affiliated with another potentially responsible party who has not settled; and 4) the Southern District of Ohio issues a bar order under CERCLA § 113(f).

Sincerely,

Elizabeth Ewing
Assistant Attorney General

cc: Mitchell Mathews, Ohio EPA
Todd Anderson, Ohio EPA