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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
ALSOL CORPORATION, )  
SB BUILDING ASSOCIATES, LIMITED )  
PARTNERSHIP, )  
SB BUILDING GP, L.L.C. )  
UNITED STATES LAND RESOURCES, )  
L.P., UNITED STATES REALTY )  
RESOURCES, INC., LAWRENCE S. )  
BERGER, and 3.60 ACRES OF LAND, )  
More or Less, located at Block 58, Lot 1.01, )  
at 2 through 130 Ford Avenue in Milltown, )  
Middlesex County, New Jersey, )  
)  
Defendants. )  
\_\_\_\_\_ )

Civ. No. 2:13-cv-00380  
(KSH/CLW)

**NOTICE OF LODGING OF  
CONSENT DECREE AND  
REQUEST TO DEFER  
ENTRY PENDING 30 DAY  
NOTICE AND COMMENT  
PERIOD**

Plaintiff United States of America, on behalf of the United States Protection Agency, hereby serves notice that an Adjunct Consent Decree (“Consent Decree”) is being lodged on this date in the above captioned matter. The proposed Consent Decree is attached hereto as Exhibit 1. This Consent Decree will resolve the claims set forth in the Verified Complaint filed in this matter, asserted by the United States against Defendants Alsol Corporation (“Alsol”), SB Building Associates, LP (“SB Building”), SB Building GP, LLC (“SB-GP”), United States Land Resources, L.P. (“USLR”), United States Realty Resources, Inc. (“Realty Resources”), Lawrence S. Berger, and 3.60 Acres of Land in Milltown, New Jersey (collectively, “Defendants”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Michelin Powerhouse Site and the Michelin Building 3 Vat Site located within Tax Map Block 58, Lot 1.01, in the Borough of Milltown, Middlesex County, New Jersey. Defendants SB-GP, USLR, Realty Resources, and Lawrence S. Berger, have agreed, as provided by and subject to the terms and conditions of the Consent Decree and attached Settlement Agreement,

that they are liable for the payment of \$2,450,000 plus interest and certain costs in settlement of the claims alleged in the Verified Complaint.

The Consent Decree is being lodged with the Court pending solicitation and consideration of public comments. Consistent with Department of Justice policy and pursuant to 28 C.F.R. § 50.7, the Department of Justice will publish in the Federal Register a notice of the lodging of the Consent Decree and attached Settlement Agreement with the Court. The notice will solicit public comments concerning the consent decree for a period of 30 days from the date of publication in the Federal Register. After the close of the comment period, the United States will evaluate any comments received and will advise the Court as to whether the United States requests that the Consent Decree be entered.

The United States respectfully requests that this Court receive the proposed Consent Decree for lodging only, and that it refrain from acting upon the decree

pending the running of the public comment period and the United States' filing of its motion to enter the decree.

Respectfully submitted this 15<sup>th</sup> day of September, 2017.

s/ Steven A. Keller  
STEVEN A. KELLER  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044 7611  
(202) 514-5465  
[steve.keller@usdoj.gov](mailto:steve.keller@usdoj.gov)

OF COUNSEL:

Elizabeth LaBlanc  
U.S. Environmental Protection Agency,  
Region 2  
290 Broadway, 17<sup>th</sup> Fl.  
New York, NY 10007

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of September, 2017, a true and complete copy of the foregoing Notice of Lodging and proposed Adjunct Consent Decree was served electronically via ECF on counsel for Defendants:

William J. Pinilis  
PINILIS HALPERN, LLP  
160 Morris Street  
Morristown, New Jersey 07960

Counsel for Defendants  
Alsol Corporation,  
SB Building Associates, Limited Partnership,  
SB Building Gp, L.L.C.  
United States Land Resources, L.P.,  
United States Realty Resources, Inc., and  
Lawrence S. Berger

*s/ Steven A. Keller* \_\_\_\_\_  
Steven A. Keller  
Trial Attorney  
Environmental Enforcement Section  
U.S. Department of Justice

Counsel for Plaintiff United States

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

ALSOL CORPORATION, )

SB BUILDING ASSOCIATES, LIMITED )

PARTNERSHIP, )

SB BUILDING GP, L.L.C. )

UNITED STATES LAND RESOURCES, )

L.P., UNITED STATES REALTY )

RESOURCES, INC., LAWRENCE S. )

BERGER, and 3.60 ACRES OF LAND, )

More or Less, located at Block 58, Lot 1.01, )

at 2 through 130 Ford Avenue in Milltown, )

Middlesex County, New Jersey, )

Defendants. )

Civ. No. 2:13-cv-00380  
(KSH/CLW)

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**ADJUNCT CONSENT DECREE**

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The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a Complaint in this matter (referred to as “Alsol II” in the Settlement Agreement as defined below) against Defendants Alsol Corporation (“Alsol”), SB Building Associates, LP (“SB Building”), SB Building GP, LLC (“SB-GP”), United States Land Resources, L.P. (“USLR”), United States Realty Resources, Inc. (“Realty Resources”), and Lawrence S. Berger (collectively, “Defendants”), pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (“CERCLA”), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Michelin Powerhouse Site and the Michelin Building 3 Vat Site located within Tax Map Block 58, Lot 1.01, in the Borough of Milltown, Middlesex County, New Jersey (collectively, “the Site”). The United States also included an *in rem* claim against the Site property (the “*In Rem* Defendant”) for recovery of the response costs that are the subject of this action, based on the statutory lien on the Site property held by the United States under Section 107(1) of CERCLA, 42 U.S.C. § 9607(1).

Shortly after the United States filed its Complaint in this action, Defendants Alsol and SB Building (“BK Defendants”), as well as a related business, SB Milltown Industrial Realty Holdings, LLC (“SB Milltown”), filed separate

petitions for Chapter 11 bankruptcy protection on February 11, 2013, in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Proceedings”). The United States subsequently filed proofs of claim in the three Bankruptcy Proceedings for the past response costs that are the basis for the past costs claims set forth in the Complaint filed in this action, as well as for unpaid civil penalties and interest due under a consent decree entered in *United States v. Alsol Corp., et al.*, No. 2:09-cv-03026 (D.N.J.), a related CERCLA access penalty case (referred to herein and in the Settlement Agreement as “Alsol I”).

On May 15, 2017, BK Defendants and SB Milltown submitted to the bankruptcy court for approval a global settlement agreement, attached hereto as Appendix A (the “Settlement Agreement”). The Settlement Agreement has been signed by the three debtors in the Bankruptcy Proceedings as well as all parties in the instant case, and has been lodged with the bankruptcy court in connection with the Bankruptcy Proceedings. Under the Settlement Agreement, its terms are to be incorporated into a Plan of Reorganization under Chapter 11 to be filed by the three debtors in the Bankruptcy Proceedings.

The terms of the Settlement Agreement also provide that they shall be incorporated into this Adjunct Consent Decree in resolution of all claims set forth in the Complaint filed in the instant action as part of the global settlement embodied in the Settlement Agreement. By entering into this Adjunct Consent

Decree, Defendants admit no liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint filed in this action.

The United States has agreed to enter into this Adjunct Consent Decree as part of the global settlement of the claims identified in Paragraph 2 of the Settlement Agreement, which include the CERCLA past response costs claims set forth in the Complaint, instead of a consent decree that tracks the language of the model EPA consent decree in settlement of such claims, due to the unique circumstances attendant in this matter, including the fact that the settlement terms incorporated herein are dictated by a multijurisdictional global Settlement Agreement entered into by the parties to this Consent Decree and by others in connection with the Bankruptcy Proceedings as defined below. The agreement of the United States to the terms of the Adjunct Consent Decree is not intended to, nor does it, diminish or alter the rights of the United States not addressed by the terms of the Adjunct Consent Decree.

The United States and Defendants agree, and this Court by entering this Adjunct Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is  
ORDERED, ADJUDGED, AND DECREED:

**I. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Defendants. Solely for the purposes of this Consent Decree and the underlying Complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

**II. PARTIES BOUND**

2. This Consent Decree is binding upon the United States and upon Defendants and their successors and assigns, provided however, that this Consent Decree shall not be binding upon the BK Defendants until approval of the BK Defendants' entry into this Consent Decree is granted in the Bankruptcy Proceedings. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

### III. DEFINITIONS

3. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply; provided, however, that in the event of a conflict between these definitions and the definitions set forth in the Settlement Agreement, the definitions set forth in the Settlement Agreement shall control unless a definition set forth below expressly provides otherwise. The following terms shall have the meanings assigned to them in CERCLA or in regulations promulgated thereunder: “hazardous substance,” “release,” “response.” Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply:

“Adjunct Consent Decree” and “Consent Decree” shall mean this Consent Decree.

“Bankruptcy Proceedings” shall mean those bankruptcy cases pending before the United States Bankruptcy Court for the District of New Jersey captioned *In re S B Building Associates Limited Partnership*, Case No. 13-12682-VFP; *In re SB Milltown Industrial Realty Holdings, LLC*, Case No. 13-12685-VFP; and *In re Alsol Corporation*, Case No. 13-12689-VFP.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Coast Guard” shall mean the United States Coast Guard.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Debtors” shall mean Defendant Alsol, Defendant SB Building, and SB Milltown, each of which is a debtor in the Bankruptcy Proceedings.

“BK Defendants” shall mean Defendants Alsol and SB Building.

“Defendants” shall mean collectively Defendants Alsol, SB Building, SB-GP, USLR, Realty Resources, and Berger.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean, for purposes of this Consent Decree only and notwithstanding the definition provided in the Settlement Agreement, the date upon which the approval of this Consent Decree is recorded on the Court’s docket, or the date of entry of a final and non-appealable order confirming a Plan of Reorganization in the Bankruptcy Proceedings that incorporates the terms of the Settlement Agreement, whichever is later.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“*In Rem* Defendant” shall mean the real property designated as Block 58, Lot 1.01, on the tax map of the Borough of Milltown, Middlesex County, New Jersey.

“Interest” shall mean interest at the rate of 5% per annum accrued and payable in the manner set forth in Paragraph 13(a) of the Settlement Agreement.

“Non-BK Defendants” shall mean Defendants SB-GP, USLR, Realty Resources, and Berger.

“Oil Spill Trust Fund” shall mean the Oil Spill Liability Trust Fund established by the Internal Revenue Code, 26 U.S.C. § 9509.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and Defendants.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settlement Agreement” shall mean the settlement agreement submitted to the court in the Bankruptcy Proceedings, attached hereto as Appendix A, the terms and conditions of which are deemed incorporated into this Consent Decree.

“Site” shall mean collectively the Michelin Powerhouse Site and the Michelin Building 3 Vat Site, located within Block 58, Lot 1.01, at 2 through 130 Ford Avenue in Milltown, Middlesex County, New Jersey.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and the Coast Guard.

“U.S. Claim” shall have the meaning set forth in Paragraph 11 of the Settlement Agreement, which includes costs incurred by the United States under Section 107 of CERCLA in connection with the Site as of the Effective Date.

#### **IV. SETTLEMENT**

4. The terms of the settlement under this Consent Decree are governed by the provisions of the Settlement Agreement, which are incorporated as though fully set forth herein. Unless specifically stated herein, in the event of a conflict between the terms of the Settlement Agreement and the terms of this Consent Decree, the terms of the Settlement Agreement shall apply.



5. Pursuant to Paragraph 27 of the Settlement Agreement, Non-BK Defendants stipulate that they are liable under this Consent Decree for the U.S. Claim in the amount of \$2,450,000 plus any accrued Interest, foreclosure costs, and enforcement costs related to collection activities as provided by Paragraph 28 of the Settlement Agreement.

6. Defendants agree to waive claims against the United States, including claims against the EPA Hazardous Substance Superfund established under 26 U.S.C. § 9507, for these costs.

7. The liabilities identified in Paragraph 5 of this Consent Decree will become due and payable by Non-BK Defendants as provided under the terms of the Settlement Agreement.

8. All payments required under this Consent Decree shall be due and payable without any prior demand or notice from Plaintiff. Payments should be made by Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the U.S. Attorney’s Office for the District of New Jersey after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to Lawrence S.

Berger on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section V (Notices and Submissions).

9. Of the payments made to the United States pursuant to this Consent Decree, 99.1428% shall be deposited in the EPA Hazardous Substance Superfund and 0.8571% shall be deposited in the Oil Spill Trust Fund.

10. At the time of payment, Non-BK Defendants shall send notice that payment has been made to EPA and to DOJ in accordance with Section V (Notices and Submissions), and to the EPA Cincinnati Finance Center by email at [cinwd\\_acctsreceivable@epa.gov](mailto:cinwd_acctsreceivable@epa.gov) or by regular mail at EPA Cincinnati Finance Center, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall reference the CDCS Number, Site/Spill ID Number 02-US, and DJ Number 90-11-3-09697/1. Failure of the Non-BK Defendants to send notice that payment has been made shall not be treated as a default under this Consent Decree.

11. The obligation of Non-BK Defendants to pay any accrued Interest in accordance with the terms of Paragraph 13(a) of the Settlement Agreement continues to apply under this Consent Decree.

## V. NOTICES AND SUBMISSIONS

12. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

**As to DOJ by email:** [eescdcopy.enrd@usdoj.gov](mailto:eescdcopy.enrd@usdoj.gov)  
Re: DJ# 90-11-3-09697/1

**As to DOJ by mail:** EES Case Management Unit  
U.S. Department of Justice  
Environment and Natural Resources Division  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-11-3-09697/1

**As to EPA:** Site Attorney  
Michelin Powerhouse/Building 3 Vat Site  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

**As to Defendants:** Berger & Bornstein  
237 South Street  
P.O. Box 2049  
Morristown, NJ 07960-2049  
Attn: Lawrence S. Berger, Esq.

## **VI. RETENTION OF JURISDICTION**

13. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

## **VII. INTEGRATION / APPENDICES**

14. This Consent Decree, its appendices, and the Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree and the Settlement Agreement. The following appendices are attached to this Consent Decree: “Appendix A” is the Settlement Agreement, the terms of which are incorporated herein to the extent they are referenced in this Consent Decree.

## **VIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

15. This Consent Decree shall be lodged with the Court for a period of at least thirty days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is

inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

16. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### **IX. SIGNATORIES/SERVICE**

17. Each undersigned representative of a Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

18. Except as permitted under Paragraph 14, each Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

19. Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this

Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

## **X. FINAL JUDGMENT**

20. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017.

---

HON. KATHARINE S. HAYDEN  
United States District Judge  
District of New Jersey

Signature Page for Consent Decree Regarding Michelin Powerhouse Site and Michelin Building  
3 Vat Site

**FOR THE UNITED STATES OF AMERICA:**

THOMAS MARIANI  
Section Chief, Environmental Enforcement Section  
U.S. Department of Justice  
Environment and Natural Resources Division

Dated: September 15, 2017

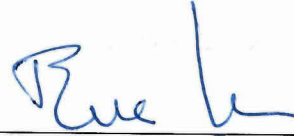
*s/Steven A. Keller*  
STEVEN A. KELLER  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
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Washington, D.C. 20044-7611  
[steve.keller@usdoj.gov](mailto:steve.keller@usdoj.gov)

ALLAN B. K. URGENT  
Assistant United States Attorney  
District of New Jersey  
970 Broad Street, Suite 700  
Newark, New Jersey 07102

Signature Page for Consent Decree Regarding Michelin Powerhouse Site and Michelin Building  
3 Vat Site

9/15/17

Dated



JOHN PRINCE

Acting Director, Emergency and Remedial  
Response Division

U.S. Environmental Protection Agency

Region 2

290 Broadway

New York, N.Y. 10007

Of Counsel:

ELIZABETH LA BLANC

KRISTA YACOVONE

Assistant Regional Counsel

U.S. Environmental Protection Agency

Region 2

290 Broadway

New York, N.Y. 10007



Signature Page for Consent Decree Regarding Michelin Powerhouse Site and Michelin Building  
3 Vat Site

**FOR ALSOL CORPORATION:**

August 25, 2017  
Dated

\_\_\_\_\_  
Name (print): Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049

**FOR SB BUILDING ASSOCIATES, LP:**

August 25, 2017  
Dated

\_\_\_\_\_  
Name (print): Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049

**FOR SB BUILDING GP, LLC:**

August 25, 2017  
Dated

\_\_\_\_\_  
Name (print): Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049

**FOR UNITED STATES LAND RESOURCES, LP:**

August 25, 2017  
Dated

\_\_\_\_\_  
Name (print): Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049

**FOR UNITED STATES REALTY RESOURCES, INC.:**

August 25, 2017  
Dated

\_\_\_\_\_  
Name (print): Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049

**FOR LAWRENCE S. BERGER:**

August 25, 2017  
Dated

\_\_\_\_\_  
Lawrence S. Berger  
Address: 237 South St.  
Morristown, NJ 07962-2049

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: Lawrence S. Berger  
Title: Authorized Representative  
Address: 237 South St.  
Morristown, NJ 07962-2049  
Phone: 973-993-8600  
email: lberger@uslandresources.com

# **APPENDIX A**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

*In re*

S B BUILDING ASSOCIATES LIMITED  
PARTNERSHIP, SB MILLTOWN INDUSTRIAL  
REALTY HOLDINGS, LLC, and  
ALSOL CORPORATION,

Debtors.

Chapter 11

Case Nos. 13-12682-VFP  
13-12685-VFP  
13-12689-VFP

Judge: Hon. Vincent F. Papalia

SETTLEMENT AGREEMENT

1. This settlement agreement (“Agreement”) is between the United States of America, on behalf of the U.S. Environmental Protection Agency (“USEPA”) and the U.S. Coast Guard (“Coast Guard”); S B Building Associates, LP, SB Milltown Industrial Realty Holdings, LLC, and Alsol Corporation (collectively “Debtors”); SB Building GP, LLC, United States Land Resources, LP, United States Realty Resources, Inc., and Mr. Lawrence S. Berger (collectively the “non-Debtor defendants”); Cherry Tree Property, LLC, Sass Muni IV, LLC, Sass Muni V, LLC, and Sass Muni VI, LLC (collectively the “Sass Parties”); and the Borough of Milltown.
2. This Agreement relates to all USEPA claims in the Milltown bankruptcy cases (*In re SB Building Associates, LP*, Case No. 13-12682 (Bankr. D.N.J.); *In re SB Milltown Industrial Realty Holdings, LLC*, Case No. 13-12685 (Bankr. D.N.J.); and *In re Alsol Corporation*, Case No. 13-12689 (Bankr. D.N.J.) (collectively the “Bankruptcies”)); the judgment entered in the *Alsol I* case (Case No. 09-3026 (D.N.J.)) against SB Building GP, LLC, United States Land Resources, LP, United States Realty Resources, Inc., and Mr. Lawrence S. Berger; and the claims asserted by the United States in the *Alsol II* case (Case No. 2-13-cv-00380 (D.N.J.)) against Alsol Corporation, S B Building Associates, LP, SB Building GP, LLC, United States Land Resources, LP, United States Realty Resources, Inc., and Mr. Lawrence S. Berger. This Agreement also relates to the United States’ claims against Cherry Tree Property, LLC and the Borough of Milltown in Adversary Proceeding No. 15-02149 (Bankr. D.N.J.) and its claims against the Sass Parties and the Debtors in Adversary Proceeding No. 14-1582 (Bankr. D.N.J.).
3. Debtors will substantively consolidate all three Bankruptcies prior to or concurrent with the filing of a Plan of Reorganization that incorporates the terms of this Agreement, and will make good faith efforts to secure the confirmation of such a Plan of Reorganization.
4. Debtors will file a Plan of Reorganization that incorporates the terms of this Agreement. The USEPA and the Coast Guard will not object to any provision of the Plan that is addressed by and is consistent with this Agreement.

5. All unsecured creditors of each of the Debtors' estates will be treated equally under the Plan of Reorganization or as otherwise agreed to by the Debtors and such creditor.
6. This Agreement will become effective immediately upon the date of entry of a final and non-appealable order confirming a Plan of Reorganization that incorporates the terms of this Agreement (the "Effective Date").
7. Prior to or concurrent with the filing of a Disclosure Statement and Plan of Reorganization that incorporates the terms of this Agreement, the Debtors will file a motion in the Bankruptcy Court for approval of a proposed consent order containing the terms of this Agreement. Such consent order must be approved by the Bankruptcy Court prior to or concurrent with the confirmation of a Plan of Reorganization.
8. The USEPA will withdraw from the pending motion for a Chapter 11 trustee filed by the USEPA and the U.S. Internal Revenue Service and will refrain from joining the U.S. Trustee's motion for a Chapter 11 trustee. However, the USEPA and the Coast Guard will not oppose the U.S. Trustee's motion for a Chapter 11 trustee.
9. This Agreement will be null and void if a Chapter 11 trustee is appointed prior to the Effective Date.
10. If a Plan of Reorganization is not confirmed prior to January 1, 2018, all parties will have the option to withdraw from this Agreement.
11. The United States' agreed allowed claim in the Debtors' Bankruptcies will equal \$2,450,000 ("U.S. Claim"). The U.S. Claim includes response costs incurred by the USEPA and the Coast Guard at the Milltown Properties identified in Paragraph 14. Of the U.S. Claim, \$2,429,000 will be deposited into the Superfund administered by USEPA and \$21,000 will be deposited into the Oil Spill Liability Trust Fund administered by Coast Guard. All payments toward satisfaction of the U.S. Claim will be apportioned to the USEPA and the Coast Guard on a pro rata basis.
12. Subject to Paragraph 9, the terms of this Agreement relating to the amount and priority of the U.S. Claim are binding in all state and federal forums, including in any subsequent bankruptcy, foreclosure, or condemnation proceedings.
13. (a) No interest will accrue or be paid on the U.S. Claim for twenty-seven (27) months from the date on which the Bankruptcy Court approves a consent order containing the terms of this Agreement (the "Agreement Date"). Debtors shall commence monthly interest-only payments at an interest rate of 5% per annum on the \$2,450,000 settlement amount on a date which is twenty-eight (28) months from the Agreement Date with a balloon payment for the outstanding amount of the U.S. Claim plus any unpaid amounts of interest that have accrued pursuant to this Paragraph on the earlier of (i) the date of closing (the "Closing Date") on the sale of any of the properties which secure the U.S. Claim (for the purposes of this Paragraph, the "Property") where the proceeds from such sale are sufficient to satisfy the then outstanding amount of the U.S. Claim, any unpaid amounts of interest on the U.S. Claim that have accrued under this Paragraph, and any claims superior in priority to the U.S. Claim, or (ii) six (6) years from the Agreement Date. The proceeds from any sale or disposition of the properties that is not

a condemnation, prior to the date on which the balloon payment is due under this Paragraph, will be promptly distributed to the creditors according to their respective priorities.

(b) If the disposition of the Property takes place pursuant to a condemnation proceeding under the New Jersey Eminent Domain Act, the Closing Date for the purposes of this Paragraph will be the earlier of:

(i) the date on which the condemnation court, upon application duly filed by the United States or application duly filed by Debtors requesting that the court release funds to the United States, releases to the United States funds sufficient to fully satisfy the U.S. Claim, plus any unpaid amounts of interest that have accrued under this Paragraph, where such funds represent the alleged fair market value of the Property as of the date on which the declaration of taking is filed (the "Taking Date") and as initially determined in the condemnation process (the "Initial FMV");

(ii) the date on which the condemnation court, upon application duly filed by the United States or application duly filed by Debtors requesting that the court release funds to the United States, releases to the United States additional funds after the entry of an order regarding the proper amount of the environmental remediation costs and other costs that should be deducted from the Initial FMV ("Escrowed Deductions"), if such funds, in addition to any funds already paid to the United States from the Initial FMV, are sufficient to fully satisfy the U.S. Claim, plus any unpaid amounts of interest that have accrued under this Paragraph; or

(iii) the date any funds being held in court, net of any Escrowed Deductions, are released to the United States (to be applied against the remaining U.S. Claim, plus any unpaid amounts of interest that have accrued under this Paragraph) after the final judicial determination of the fair market value of the Property on the Taking Date (the "Final FMV").

Upon the court's release of any condemnation funds that are owed to the United States and other Creditors, such proceeds shall be promptly distributed directly to the United States and other Creditors by the court upon respective applications duly filed by the United States and other Creditors (and shall not pass through Debtors or any other persons or entities) in the order of their respective priorities, as set forth in this Agreement, the Plan of Reorganization and agreements incorporated therein, and the U.S. Bankruptcy Code. The principal obligation of Debtors with respect to the U.S. Claim shall be reduced by the amounts of such condemnation funds distributed to the United States, and the sum on which interest is calculated, and the interest payable on such sum, shall likewise be reduced.

The United States reserves the right to file applications with the court seeking release of the condemnation funds (including the Initial FMV and the Final FMV) at any time after the Taking Date. The United States may file as many applications for release of funds with the court until such time as the U.S. Claim, plus any unpaid amounts of interest, is fully satisfied. Notwithstanding the foregoing, until such time as Debtors shall have waived their right to challenge the condemnation or such right has been exhausted, Debtors may oppose the release to the United States of any funds from court on the basis that the release could vitiate Debtors' right to challenge the condemnation. Debtors may not oppose the release of funds to the United States on any other basis.

14. The U.S. Claim will be secured by the United States' pre-petition CERCLA lien on Block 58, Lot 1.01, plus post-petition liens on all the property owned by each of the three Debtors in Milltown: Block 58, Lots 1.01, 1.02, 1.03, and 1.07; Block 59.01, Lots 5.01 and 10; and Block 60, Lot 1.01 (hereinafter the "Milltown Properties").

15. The United States will release its pre-petition lien on Block 58, Lot 1.02 as of the Effective Date.

16. The Sass Parties will agree to subordinate their secured claims on the Milltown Properties to the U.S. Claim, with such subordination to be effective as of the Effective Date.

17. The United States agrees, as of the Effective Date: (a) to release the Sass Parties from (i) all claims and objections of the United States with respect to the proofs of claim that the Sass Parties have filed in the Bankruptcies (the "Pending Sass POCs"), and in any subsequent Chapter 11 or 7 proceedings of the Debtors to the extent such claims are based on the same underlying tax sale certificates ("Future Sass POCs"), and (ii) any other claims of the United States that are based upon the pre-petition activities of the Sass Parties in connection with the acquisition of the tax sale certificates that underlie the Pending Sass POCs; and (b) to waive any right to object to the Pending Sass POCs and the Future Sass POCs. Nothing herein shall relieve the Sass Parties of any criminal liability, or preclude the United States from bringing claims against the Sass Parties in connection with the acquisition of tax sale certificates other than those particular certificates underlying the Pending Sass POCs; provided, however, that the rights hereby reserved by the United States shall not be used, directly or indirectly, to provide a basis for objecting to, seeking to avoid, or in any way attacking, by forfeiture proceeding or otherwise, the Pending Sass POCs, the Future Sass POCs, and/or the liens that underlie those proofs of claims.

18. On the Effective Date, the United States will dismiss, with prejudice, its claims against the Sass Parties and the Borough of Milltown that have been asserted in Adversary Proceeding No. 15-02149 (Bankr. D.N.J.) and will agree that it is barred and prohibited, with prejudice, from intervening or otherwise participating in Adversary Proceeding No. 14-1582 (Bankr. D.N.J.).

19. Once the Debtors have submitted a proposed Disclosure Statement and Plan of Reorganization that incorporate the terms of this Agreement to the Bankruptcy Court, the United States will withdraw, with prejudice, its objection to the Debtors' settlement with the Sass Parties (ECF Doc. 259) and will advise the Court that it does not object to the Sass-Debtors settlement.

20. The relative priorities of the U.S. Claim (as secured by the liens specified in Paragraph 14) and the liens held by the Borough of Milltown on the Milltown Properties (the "Milltown Lien") are as follows:

(a) The Milltown Lien will have priority over the U.S. Claim to the extent that the Milltown Lien is based on unpaid real estate taxes, municipal charges, penalties, and interest that is mature and owing as of the earlier of the Effective Date or January 1, 2018.

(b) The U.S. Claim will have priority over the Milltown Lien to the extent that the Milltown Lien is based on any amount of unpaid real estate taxes or municipal charges for any period of time after the earlier of the Effective Date or January 1, 2018.

(c) The U.S. Claim will have priority over the Milltown Lien with respect to any portion of the Milltown Lien based on the accrual of penalties, interest, or other charges after the earlier of the Effective Date or January 1, 2018, whether such penalty, interest, or other charge is related to real estate taxes or municipal charges due before or after such date.

(d) Any sale or auction of Certificates of Sale for unpaid taxes and municipal charges that accrue on the Milltown Properties from the Effective Date until such time as the U.S. Claim is fully satisfied shall be considered an assignment, and shall be binding upon the assigns and their successors. Prior to any such sale or auction, Milltown must notify the prospective buyer of the terms of this Agreement, and the prospective buyer must agree, in writing, to be bound by the terms of this Agreement. The U.S. Claim will be considered fully satisfied after the United States receives full payment of its \$2,450,000 allowed claim, plus full payment of all interest, foreclosure costs, and enforcement costs related to collection activities in accordance with Paragraph 28, if any, as provided in this Agreement.

(e) Any payments to the Borough for (i) real estate taxes, municipal charges, and penalties related to the Milltown Properties that are owing as of the Effective Date, and/or (ii) interest on such real estate taxes, municipal charges, and penalties, shall reduce, by the full amount of each such payment, the Borough's liens on the Milltown Properties, until such liens are extinguished.

21. The United States agrees that it will raise no objection to any proposed Plan of Reorganization based on Debtors' failure to pay pre-confirmation real estate taxes, utilities, and other municipal charges owed to the Borough of Milltown.

22. Debtors will pay their post-confirmation real estate taxes and other municipal charges, including electric and water/sewer utilities, which can become a lien against the Milltown Properties (hereinafter "Municipal Payments") as such payments become due. If Debtors fail to pay these sums, the Sass Parties shall have the right, but not the obligation, to pay the Municipal Payments in order to prevent an Event of Default (as defined in Paragraph 23) on the U.S. Claim.

23. With respect to the U.S. Claim, an "Event of Default" shall be the failure to make any payment to the United States under the confirmed Plan of Reorganization, and the failure to pay post-confirmation taxes or Municipal Payments to the Borough of Milltown, unless such failure is cured within fifteen (15) days after Debtors receive written notice of such failure. Immediately upon receipt of such notice from the Borough of Milltown, Debtors must notify the Sass Parties of such failure by electronic mail, facsimile, and certified mail. Debtors' failure to pay post-confirmation taxes or Municipal Payments to the Borough of Milltown will not constitute an Event of Default if such amounts are paid by the Sass Parties to the Borough of Milltown within the fifteen (15) day cure-period.

24. The United States shall have the following remedies in an Event of Default (including the expiration of any applicable cure period):

(a) All obligations to the United States shall accelerate and become immediately due and payable. The United States shall be permitted to pursue judgment against the Debtors and be permitted to commence and proceed with a foreclosure action against the Milltown Properties based on its pre-petition and post-petition liens. In the event that the United States proceeds with



a foreclosure action, the reasonable cost of such action will be added to the amount of the U.S. Claim and its liens. Debtors will be given credit for any payments made by Debtors and the non-Debtor defendants, and in no event shall the United States be permitted to collect, except as provided in Paragraph 28, more than the amount of the USEPA's Claim plus interest and any foreclosure costs. In no event shall the United States be entitled to collect any pre-confirmation enforcement costs or any stipulated penalties, except to the extent that they are already included in the existing *Alsol I* judgment (Case No. 09-3026 (D.N.J.)).

(b) The United States may also collect certain amounts from the non-Debtor defendants in accordance with the *Alsol II* (Case No. 2:13-cv-00380 (D.N.J.)) consent decree, and Paragraph 28, below.

25. Upon the subsequent bankruptcy filing of any or all of the Debtors, all obligations to the United States shall accelerate and become immediately due and owing, and the United States may collect payment from the non-Debtor defendants in accordance with the *Alsol II* (Case No. 2:13-cv-00380 (D.N.J.)) consent decree and Paragraph 28 of this Agreement, unless Debtors remain current on all payments owed to the United States and all post-confirmation taxes and Municipal Payments owed to the Borough of Milltown, which shall be paid pursuant to a Bankruptcy Court Order that shall be obtained by the Debtors no later than ninety (90) days from the date of any such bankruptcy filing.

26. The United States and the defendants in the *Alsol II* CERCLA cost recovery case (Case No. 2:13-cv-00380 (D.N.J.)) will file a joint request for a thirty (30)-day stay of all litigation deadlines in that case to facilitate further settlement negotiations and approvals.

27. The terms of this Agreement will also be incorporated into a consent decree filed in the *Alsol II* case (Case No. 2:13-cv-00380 (D.N.J.)). In that consent decree, the non-Debtor defendants will stipulate to liability for \$2,450,000 plus any accrued interest and foreclosure costs, but (as set forth below in Paragraph 28) such amounts would only become collectible from the non-Debtor defendants if an Event of Default (as defined in Paragraph 23) occurs, or if any or all of the Debtors file a subsequent bankruptcy petition and do not remain current on all payments owed to the United States and all post-confirmation taxes and Municipal Payments owed to the Borough of Milltown (per Paragraph 25).

28. In an Event of Default on the Chapter 11 Plan (as defined in Paragraph 23), or the subsequent bankruptcy filing of any or all of the Debtors (unless, per Paragraph 25, Debtors remain current on all payments owed to the United States and post-confirmation taxes and Municipal Payments owed to the Borough of Milltown), the sum of \$896,751.79 (which is the portion of the U.S. Claim that represents the amount of the judgment entered in the *Alsol I* case (Case No. 09-3026 (D.N.J.))), or the full unpaid amount of the U.S. Claim at the time of such Default in the event that such unpaid amount is less than \$896,751.79, will immediately become collectible from the non-Debtor defendants. If, after foreclosure and sale of the Milltown Properties securing the U.S. Claim, the U.S. Claim and any accrued interest pursuant to Paragraph 13 have not been paid in full, the United States may collect the unpaid amount of the U.S. Claim (with any unpaid interest pursuant to Paragraph 13 and foreclosure costs) from the non-Debtor defendants, plus enforcement costs related to collection activities pursuant to this Paragraph 28.

29. The United States will lodge the *Alsol II* consent decree in the District Court once the Debtors file the Disclosure Statement and Plan of Reorganization, and will file a motion to enter the *Alsol II* consent decree in the District Court upon the later of: (i) the entry of a final and non-appealable order confirming a Plan of Reorganization that incorporates the terms of this Agreement, or (ii) the expiration of the public notice and comment period for the lodged *Alsol II* consent decree, if public comment is solicited.

30. After this Agreement becomes effective, the United States will file a Satisfaction of Judgment to extinguish the judgment against non-Debtor defendants in the *Alsol I* case (Case No. 09-3026 (D.N.J.)).

31. The United States' consent to the Agreement is contingent upon the publication and solicitation of public comment on the Agreement for a period of at least 30 days. The United States reserves the right to withdraw its consent to the Agreement in the event that comments regarding the Agreement are received during the notice and comment period that disclose facts or considerations that indicate that the Agreement is inappropriate, improper, or inadequate.

FOR THE UNITED STATES OF AMERICA

THOMAS A. MARIANI, Jr.  
Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division



ANDREW W. KEIR  
STEVEN A. KELLER  
DONALD G. FRANKEL  
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Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 532-2228

5/3/2017

Date

FOR S B BUILDING ASSOCIATES, LP, SB MILLTOWN INDUSTRIAL REALTY HOLDINGS, LLC, AND ALSOL CORPORATION

\_\_\_\_\_

May 10, 2017  
Date

FOR SB BUILDING GP, LLC, UNITED STATES LAND RESOURCES, LP, AND UNITED STATES REALTY RESOURCES, INC.

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May 10, 2017  
Date

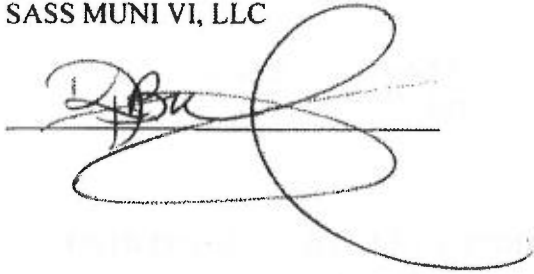
FOR MR. LAWRENCE S. BERGER

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Mr. Lawrence S. Berger

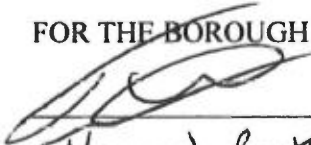
May 10, 2017  
Date

FOR CHERRY TREE PROPERTY, LLC, SASS MUNI IV, LLC, SASS MUNI V, LLC, AND  
SASS MUNI VI, LLC

A handwritten signature in black ink, appearing to be "D. B. K.", written over a horizontal line. The signature is highly stylized and loops around the line.

MAY 3, 2017  
Date

FOR THE BOROUGH OF MILLTOWN



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Thomas J. Buett  
Borough Attorney

5-5-17  

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Date