

**REDACTED**

IN THE MATTER OF:	)	SETTLEMENT AGREEMENT
	)	
J&W PALLET AND DRUM COMPANY	)	U.S. EPA Region 4
SUPERFUND SITE,	)	CERCLA Docket No. 04-2008-3772
ATLANTA, FULTON COUNTY,	)	
GEORGIA	)	PROCEEDING UNDER SECTION
	)	122(h)(1) OF CERCLA
JESSE JAMES WOODS, JR. and	)	42 U.S.C. § 9622(h)(1)
ANTHONY TYRONE JONES	)	
(PREVIOUSLY D/B/A J&W PALLET	)	
AND DRUM COMPANY),	)	
	)	
SETTLING PARTIES;	)	
	)	
AND	)	
	)	
THE 1121 ALLENE AVENUE LLC,	)	
	)	
PROPERTY BROKER	)	
	)	

*GAD 984 310797*

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## **I. JURISDICTION**

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and further redelegated from the Regional Administrator through the Director of the Superfund Division (formerly the Waste Management Division), through the Associate Division Director of the Office of Superfund and Emergency Response, to the Chief of the Superfund Enforcement and Information Management Branch, by EPA Regional Delegation No. R-14-14-D. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated to the Chief of the Environmental Enforcement Section.

2. This Settlement Agreement is made and entered into by Jesse James Woods, Jr. and Anthony Tyrone Jones (previously d/b/a J&W Pallet and Drum Company) (collectively the "Settling Parties"), The 1121 Allene Avenue LLC (the "Property Broker") and EPA. The Settling Parties and the Property Broker consent to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

## **II. BACKGROUND**

3. This Settlement Agreement concerns the J&W Pallet and Drum Company Superfund Site ("Site"), located at 1121 Allene Avenue, Atlanta, Fulton County, Georgia. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. The following events have occurred:

a. EPA conducted a Removal Action at the Site from June 22, 2004 through March, 2006, which included clearing the warehouse and property, demolishing the fallen sections of the warehouse roof, bulking the waste, excavating contaminated soil, disposing of RCRA-empty drums and totes, disposing of the waste and contaminated soil, and restoring the drain to the City of Atlanta sewer system.

b. EPA has determined that No Further Action is necessary at the Site by EPA.

c. On July 28, 2004, EPA filed a lien on the Site property pursuant to Section 107(l) of CERCLA, 42 U.S.C. § 9607(l).

5. In performing response actions at the Site, EPA has incurred response costs of \$601,373.

6. EPA alleges that the Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by the Settling Parties to determine whether they are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA has determined that the Settling Parties have limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. To facilitate resolution of EPA's claims against them, the Settling Parties herein agree to transfer their entire interest in the Property to the Property Broker, which will take ownership of the Property for the sole purpose of selling it in accordance with the terms of this Settlement Agreement.

9. EPA, the Settling Parties and the Property Broker recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by the Settling Parties and the Property Broker in accordance with this Settlement Agreement do not constitute an admission of any liability. The Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

### **III. PARTIES BOUND**

10. This Settlement Agreement shall be binding upon EPA and upon the Settling Parties and the Property Broker and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of the Settling Parties or the Property Broker, including but not limited to any transfer of assets or real or personal property, shall in no way alter the Settling Parties' and the Property Broker's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

### **IV. STATEMENT OF PURPOSE**

11. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Parties to make a cash payment to address their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section X, subject to the Reservations of Rights by EPA in Section XI. To facilitate this arrangement, the Property Broker is included as a Party to this Settlement Agreement, and will take ownership of and then sell the Property on behalf of EPA and the Settling Parties in exchange for a portion of the proceeds in accordance with Section VI (Payment of Response Costs).

## V. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Best Efforts to Sell" shall mean taking all actions reasonably necessary to facilitate and expedite the sale of the Property in a commercially reasonable manner, including, but not limited to, listing the Property with a broker or agent who deals with commercial and/or industrial property and advertising the Property for sale on at least a monthly basis in a real estate publication or a newspaper of general circulation covering the region where the Property is located.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XIX (Effective Date).

f. "Fair Market Value as Clean" shall mean \$150,000, that being the price, established through the Real Estate Appraisal by Oracle, at which the Property would change hands between a willing buyer and a willing seller under actual market conditions as if the Property were clean and not impacted by the releases of hazardous substances giving rise to the response actions which have been undertaken and/or are ongoing at the Site, neither the willing buyer nor the willing seller being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts.

g. "Financial Information" shall mean those financial documents identified in Appendix A.

h. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Net Sales Proceeds" shall mean the total value of all consideration received by Property Broker from sale of the Property less: i) any brokerage commission or fee reasonably incurred and actually paid by the Property Broker; ii) any legal fees, relating to the Property and/or this Settlement Agreement, reasonably incurred and actually paid by the Property Broker between February 15, 2008 and the date EPA files a Release of Notice of Federal Lien pursuant to Section IX, but not to exceed \$2,000; iii) costs for maintenance of the Property reasonably incurred and actually paid by the Property Broker between June 15, 2008 and the date the Property is sold, but not to exceed \$2,500; iv) property taxes actually paid on the Property by the Property Broker between the Effective Date and the date the Property is sold; and v) federal and state taxes owed on the proceeds. Property Broker shall provide EPA with documentation sufficient to show the total value of all consideration received by Property Broker from sale or auction of the Property at the time of sale or auction, the amount of the proceeds, and the amount corresponding to items i) through v) above.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA, the Settling Parties and the Property Broker.

l. "Public Auction" shall mean an auction of the Property to the highest bidder, open to the public and conducted by a disinterested party with no affiliation with or relation to the Settling Parties or the Property Broker, and licensed in the State of Georgia to conduct such an auction. If a party who has an affiliation with or relation to any Party to this Settlement Agreement wishes to bid on the Property, the minimum permissible bid from such a party shall be the Fair Market Value as Clean.

m. "Property" shall mean the property owned by Settling Parties as of June 11, 1993 and generally identified in this Settlement Agreement as the Site. The Property is approximately 0.34 acres and is located at Atlanta, Fulton County, Georgia, generally designated by the following property description:

All of that tract or parcel of land lying and being in Land Lot 106 of the 14<sup>th</sup> District of Fulton County, Georgia, and being more particularly described as follows:

Beginning at the point of intersection of the westerly right-of-way line of Allene Avenue and the southerly right-of-way line of Warner Street, and running thence in a southerly direction along the westerly right-of-way line of Allene Avenue, a distance of 100.0 feet to a point; running thence in a westerly direction along line which is parallel to the southerly right-of-way line of Warner Street, a distance of 150.0 feet to a point located on the easterly side of a 10-foot alley; running thence in a northerly direction along the easterly side of said alley, a distance of 100.0 feet to a point located on the southerly right-of-way line of Warner Street; running then in an easterly direction along said right-of-way line, a distance of 150.0 feet to the point of beginning; being improved property know as No. 1121

Allene Avenue, according to the present system of numbering in the city of Atlanta, Georgia; the above-described property being Lots 11 and 12 of Subdivision of the I. N. Ragsdale property, recorded in Plat Book 5, Page 198, Fulton County Records.

n. "Property Broker" shall mean The 1121 Allene Avenue LLC, a limited liability corporation formed for the express purpose of taking possession of, maintaining and selling the Property.

o. "Real Estate Appraisal by Oracle" shall mean the real estate appraisal conducted of the Property on September 13, 2007 by Oracle Real Estate Services LLC, a Georgia licensed and certified commercial real estate appraiser in compliance with the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Standards Board. The Real Estate Appraisal by Oracle is attached as Appendix C.

p. "Required Sale Date" shall mean three years from the Effective Date.

q. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

r. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

s. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

t. "Settling Parties" shall mean Jesse James Woods, Jr. and Anthony Tyrone Jones (previously d/b/a J&W Pallet and Drum Company).

u. "Site" shall mean the J&W Pallet and Drum Company Superfund Site, located at 1121 Allene Avenue, Atlanta, Fulton County, Georgia and generally shown on the map attached as Appendix B.

v. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

## **VI. PAYMENT OF RESPONSE COSTS**

### **13. Payment of Proceeds of Sale of Property**

#### **a. Sale of Property**

i. Within 30 days after the Effective Date, the Settling Parties shall, for the sum of \$10 (ten dollars) to be paid by the Property Broker, execute a quitclaim deed conveying their entire interests in the Property to the Property Broker.

ii. The Property Broker shall undertake Best Efforts to Sell the Property by the Required Sale Date. If the Property or any portion of the Property remains unsold by the Required Sale Date, the Property Broker shall submit the Property for sale by Public Auction within 60 days of the Required Sale Date.

iii. Within 60 days after the Effective Date, the Property Broker shall submit to EPA, in accordance with Section XVI (Notices and Submissions), information documenting its Best Efforts to Sell the Property. The Property Broker shall thereafter submit an update documenting its continuing Best Efforts to Sell the Property every 90 days, with the first update due 150 days from the Effective Date.

iv. The Property Broker shall notify EPA in writing, in accordance with Section XVI (Notices and Submissions), within 3 business days of receipt of any offer to purchase the Property. The Property Broker shall at that time provide EPA with a copy of the offer. The Property Broker shall address offers to purchase the property as follows: 1) if the offer is below the Fair Market Value as Clean, the Property Broker may not accept the offer and sell the Property without EPA's prior written consent; 2) if the offer is equal to or greater than the Fair Market Value as Clean, and does not contain unreasonable contingencies or terms, the Property Broker may accept the offer and sell the Property without further consent from EPA; however 3) if the offer was made by a party who has an affiliation with or relation to any Party to this Settlement Agreement, the Property Broker may not accept the offer and sell the Property without EPA's prior written consent, regardless of the offer amount.

v. If the Property Broker sells the Property, either by acceptance of an offer pursuant to Paragraph 13(a)(iv) or at Public Auction pursuant to Paragraph 13(a)(ii), it shall notify EPA within 10 days of the date of closing date or auction date, in accordance with Section XVI (Notices and Submissions), and shall include with such notification a copy of the closing binder, including final executed documentation for the conveyance and a work sheet setting forth the Net Sales Proceeds and the amount payable to EPA pursuant to Paragraph 13(b).

b. **Payment Amount.** If the Property Broker sells the Property, either by acceptance of an offer pursuant to Paragraph 13(a)(iv) or at Public Auction pursuant to Paragraph 13(a)(ii), the Property Broker shall be entitled to and may retain the lesser of 20% of the Net Sales Proceeds or \$30,000 (thirty thousand dollars). The Property Broker shall pay the remainder of the Net Sales Proceeds to EPA within 30 days of the closing date or auction date.

Payment shall be made by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to the Property Broker by EPA Region 4 and shall be accompanied by a statement identifying the Property Broker's name and address, the Site name, the EPA Region and Site/Spill ID # A4FG, and the EPA Docket Number for this action.

c. Failure to Sell the Property. If the Property Broker fails to sell the Property, either by acceptance of an offer pursuant to Paragraph 13(a)(iv) or at Public Auction pursuant to Paragraph 13(a)(ii), the United States shall be entitled to enforce or execute its lien on the Property, through measures including, but not limited to, foreclosing upon and/or auctioning the Property, or suing *in rem*. If the United States enforces or executes its lien on the Property under this provision, the United States shall retain the entirety of the resulting proceeds, which shall be deposited by EPA into the EPA Hazardous Substance Superfund. The United States shall not enforce or execute its lien on the Property under this provision before the Required Sale Date, and the additional 60 days permitted for sale by Public Auction, have expired. Completion of a foreclosure and/or auction by the United States under this provision shall constitute receipt by EPA of all amounts required by this Section for purposes of Section X (Covenant Not to Sue By EPA).

14. At the time payment is made pursuant to Paragraph 13(b), the Property Broker shall also send notice that payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID # A4FG and the EPA Docket Number for this action.

15. The total amount paid pursuant to Paragraph 13 shall be deposited by EPA into the EPA Hazardous Substance Superfund.

## **VII. TOLLING OF STATUTE OF LIMITATIONS**

16. Settling Parties agree that the period commencing on the Effective Date and ending upon the sale of the Property pursuant to Paragraph 13, inclusive (the "Tolling Period"), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States pursuant to Section 107(a) CERCLA for, *inter alia*, cost recovery relating to the Site (the "Tolled Claims"). Any defenses of laches, estoppel, or waiver, or other similar equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims. Settling Parties shall not assert, plead, or raise against the United States in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

## **VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT**

17. Interest on Late Payments. If the Property Broker fails to make any payment required by Paragraph 13 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.



18. Stipulated Penalty.

a. If any amount due under Paragraph 13 is not paid by the required date, the Property Broker shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 17, \$1,000 (one thousand dollars) per violation per day that such payment is late.

b. If a Settling Party or the Property Broker does not comply with any other obligations of Paragraph 13, the non-compliant Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$500 (five hundred dollars) per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Party making payment, the Site name, the EPA Region and Site/Spill ID # A4FG, and the EPA Docket Number for this action, and shall be sent to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

d. At the time of each payment, the Party making payment shall send notice that such payment has been made to EPA in accordance with Section XVI (Notices and Submissions). Such notice shall identify the Region and Site/Spill ID # A4FG and the EPA Docket Number for this action.

e. Penalties shall accrue as provided above regardless of whether EPA has notified the affected Party or Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

19. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of a Party's failure to comply with the requirements of this Settlement Agreement, if any Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, the noncompliant Party

shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settling Agreement. A Party's payment of stipulated penalties shall not excuse that Party from payment as required by Paragraph 13, or from performance of any other requirements of this Settlement Agreement.

#### **IX. RELEASE OF NOTICE OF FEDERAL LIEN**

21. Within 30 days after receiving payment as required by Paragraph 13, EPA shall file a Release of Notice of Federal Lien in the Office of the Fulton County Register of Deeds, State of Georgia. The Release of Notice of Federal Lien shall release the Notice of Federal Lien filed on June 28, 2004, and shall not release any other lien or encumbrance which may exist upon the Property.

#### **X. COVENANT NOT TO SUE BY EPA**

22. Except as specifically provided in Section XI (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against the Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of all amounts required by Section VI (Payment of Response Costs) and any amount due under Section VIII (Failure to Comply with Settlement Agreement). This covenant not to sue is conditioned upon the satisfactory performance by each Settling Party of its obligations under this Settlement Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by each Settling Party. If any of the Financial Information provided by a Settling Party is subsequently determined by EPA to be false or, in any material respect, inaccurate, that Settling Party shall forfeit all payments made pursuant to this Settlement Agreement and the covenant not to sue that Settling Party shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from that Settling Party's provision of false or materially inaccurate information. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

#### **XI. RESERVATIONS OF RIGHTS BY EPA**

23. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 22. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

a. liability for failure of a Settling Party to meet a requirement of this Settlement Agreement;

- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon a Settling Party's operation of the Site, or upon a Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Agreement by that Settling Party;
- e. liability, based upon a Settling Party's reacquisition of ownership of the Site after the Site has been conveyed to the Property Broker pursuant to Paragraph 13(a)(i); and
- f. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

24. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by a Settling Party, or the financial certification made by a Settling Party in Section XV (Certification), is false or in any material respect inaccurate.

25. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

## **XII. COVENANT NOT TO SUE BY SETTLING PARTIES**

26. The Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Georgia, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 28 (Waiver of Claims) and Paragraph 31 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 23(c)-(f), but only to the extent that the Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

27. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

28. The Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

### **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION**

29. Except as provided in Paragraph 28, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not identified as a Settling Party in this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

30. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against the Settling Parties coming within the scope of such reservations. In the event that a Settling Party waiver of claims becomes inapplicable in accordance with Paragraph 28, the Parties further agree that this Settlement Agreement constitutes an

administrative settlement pursuant to which Settling Parties have resolved their liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

31. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, the Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section X (Covenant Not To Sue By EPA).

#### **XIV. SITE ACCESS**

32. Commencing upon the Effective Date, the Settling Parties and the Property Broker agree to provide EPA and its representatives and contractors access at all reasonable times to the Site and to any other property owned or controlled by the Settling Parties to which access is determined by EPA to be required for the implementation of this Settlement Agreement, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. monitoring, investigation, removal, remedial or other activities at the Site;
- b. verifying any data or information submitted to EPA;
- c. conducting investigations relating to contamination at or near the Site;
- d. obtaining samples; and
- e. assessing the need for, planning, or implementing response actions at or near the Site.

33. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **XV. CERTIFICATION**

34. Each Settling Party hereby certifies that, to the best of his knowledge and belief, after thorough inquiry, he has:

- a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site since his notification of potential liability by the United States or the state or the filing of a suit against him regarding the Site and that he has fully complied with any and all EPA requests for

documents or information regarding the Site and his financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time he executes this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

## **XVI. NOTICES AND SUBMISSIONS**

35. Whenever, under the terms of this Settlement Agreement, 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA, the Settling Parties and the Property Broker.

**As to EPA:**

Paula V. Painter  
Superfund Enforcement and Information Management Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

Teresa Mann  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303

**As to Jesse James Woods, Jr.**

Jesse James Woods, Jr.  
2210 Sheriff Road  
Atlanta, GA 30349

**As to Anthony Tyrone Jones:**

Anthony Tyrone Jones  
4159 Church Street, Apt. 160  
Clarkston, GA 30021-1774

As to the Property Broker:  
Alan M. Brown  
Manager of The 1121 Allene Avenue LLC  
2028 Chesterfield Drive, N.E.  
Atlanta, GA 30345-3704

#### **XVII. INTEGRATION/APPENDICES**

36. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is a list of the financial documents submitted to the United States by Settling Parties.

Appendix B is a map of the Site, not including the areal extent of contamination originating at the Site.

Appendix C is the Real Estate Appraisal by Oracle.

#### **XVIII. PUBLIC COMMENT**

37. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

#### **XIX. EFFECTIVE DATE**

38. The Effective Date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Settling Parties and the Property Broker that the public comment period pursuant to Section XVIII (Public Comment) has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

In the matter of the J&W Pallet and Drum Superfund Site, Docket No. CERCLA-04-2008-3772

For Settling Party Jesse James Woods, Jr.:

By: Jesse J. Woods  
Jesse James Woods, Jr.  
2210 Sheriff Road  
Atlanta, GA 30349

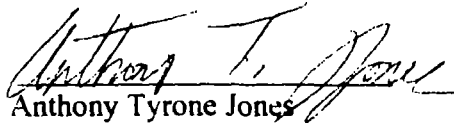
7-16-02  
Date



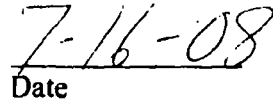
In the matter of the J&W Pallet and Drum Superfund Site, Docket No. CERCLA-04-2008-3772

For Settling Party Anthony Tyrone Jones:

By:

  
Anthony Tyrone Jones

4159 Church Street, Apt. 160  
Clarkston, GA 30021-1774

  
Date

In the matter of the J&W Pallet and Drum Superfund Site, Docket No. CERCLA-04-2008-3772

For the Property Broker, The 1121 Allene Avenue LLC:

By: Alan M. Brown  
Alan M. Brown  
Manager of The 1121 Allene Avenue LLC  
2028 Chesterfield Drive, N.E.  
Atlanta, GA 30345-3704

July 16, 2008  
Date

In the matter of the J&W Pallet and Drum Superfund Site, Docket No. CERCLA-04-2008-3772

For the U.S. Department of Justice:

By:



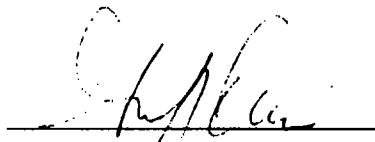
Ellen M. Mahan  
Deputy Section Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

8/15/08  
Date

In the matter of the J&W Pallet and Drum Superfund Site, Docket No. CERCLA-04-2008-3772

For the U.S. Environmental Protection Agency:

By:

A handwritten signature in black ink, appearing to be "S. M. Lee", written over a horizontal line.

8/22/08  
Date

Chief  
Superfund Enforcement and Information  
Management Branch  
Superfund Division  
U.S. Environmental Protection Agency  
Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303