

TABLE OF CONTENTS

| | | |
|--------|---------------------------------------------------------------|----|
| I. | JURISDICTION | 1 |
| II. | BACKGROUND | 1 |
| III. | PARTIES BOUND | 2 |
| IV. | STATEMENT OF PURPOSE | 2 |
| V. | DEFINITIONS..... | 2 |
| VI. | PAYMENT OF RESPONSE COSTS..... | 4 |
| VII. | FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT..... | 7 |
| VIII. | COVENANTS BY EPA | 9 |
| IX. | RESERVATIONS OF RIGHTS BY EPA..... | 9 |
| X. | COVENANTS BY SETTLING PARTIES AND SETTLING FEDERAL AGENCIES. | 10 |
| XI. | EFFECT OF SETTLEMENT/CONTRIBUTION | 11 |
| XII. | NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY. | 13 |
| XIII. | ACCESS | 13 |
| XIV. | RETENTION OF RECORDS AND CERTIFICATION..... | 13 |
| XV. | NOTICES AND SUBMISSIONS | 14 |
| XVI. | INTEGRATION /APPENDICES | 15 |
| XVII. | PUBLIC COMMENT | 15 |
| XVIII. | ATTORNEY GENERAL APPROVAL | 15 |
| XIX. | EFFECTIVE DATE..... | 15 |

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 (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 (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). 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 Deputy Section Chief of the Environmental Enforcement Section and the Chief of the Environmental Defense Section, Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA and Carter Jackson, Inc., and the Estate of Charles E. Carter (the last two are collectively referred to as Settling Parties), and the United States Defense Logistics Agency (Settling Federal Agency). Settling Parties and the Settling Federal Agency consent to and will not contest EPA's authority to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Cannon Drive Drum Superfund Site in Social Circle, Walton County, Georgia (the Site). 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. Settling Party Carter Jackson, Inc. has held title to the Property from approximately 1988 until the present, and during all relevant times Settling Party Charles E. Carter (now the Estate of Charles E. Carter) has been the sole owner of Carter Jackson, Inc., and leased a portion of the Site where Wynn Housel, from approximately 1993 to 2000, transported hazardous substances to the Site and abandoned them there. Materials Mr. Housel purchased from the Settling Federal Agency were among the materials abandoned at the Site. Due to the hazardous nature of some of the substances, and the manner in which they were stored, EPA conducted an emergency removal action on or about 2007.

5. In performing a response action at the Site, EPA incurred \$1,313,995.72 in response costs, not inclusive of interest.

6. EPA alleges that Settling Parties and the Settling Federal Agency 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 at the Site.

7. EPA has reviewed the Financial Information and Insurance Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information and

Insurance Information, EPA has determined that Settling Parties have limited financial ability to pay for response costs incurred at the Site.

8. EPA and Settling Parties and the Settling Federal Agency 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 Settling Parties and the Settling Federal Agency in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Parties and the Settling Federal Agency 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

9. This Settlement Agreement shall be binding upon EPA and upon the Settling Federal Agency, and upon the Settling Parties and their heirs, successors, and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties' 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

10. By entering into this Settlement Agreement, the mutual objectives of the Parties is to avoid difficult and prolonged litigation by allowing the Settling Federal Agency to make a cash payment into the EPA Hazardous Substance Superfund and by allowing the Settling Parties to market and sell the Site Property and provide the proceeds thereof to EPA, and address their alleged civil liability for the Site as provided in the Covenants by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that 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 its appendices, the following definitions shall apply:

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

“Day” or “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 or state holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XIX.

“EPA” shall mean the United States 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.

“Financial Information” shall mean those financial documents identified in Appendix B.

“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.²

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

“Parties” shall mean EPA, the Settling Federal Agency and the Settling Parties.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or the U.S. Department of Justice on behalf of EPA has paid at or in connection with the Site through December 30, 2015, plus accrued Interest on all such costs through such date.

“Property” and “Site Property” shall mean the real property at 148 Cannon Drive, Social Circle, Georgia that is owned by Carter-Jackson, Inc. that is where contamination was addressed by EPA.

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

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

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

“Settling Parties” shall mean Carter Jackson, Inc., and The Estate of Charles E. Carter.

² The Superfund currently is invested in 52-week MK notes. The interest rate for these MK notes changes on October 1 of each year. Current and historical rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

“Settling Federal Agency” shall mean the United States Defense Logistics Agency.

“Site” shall mean the Cannon Drive Drum Superfund Site, encompassing approximately 4 acres, located at 148 Cannon Drive, Social Circle, Georgia, and generally shown on the map included in Appendix A.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and Settling Federal Agency.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

VI. PAYMENT OF RESPONSE COSTS

12. Payment of Net Proceeds of Sale of Property.

a. Funding Obligations. In signing this Agreement, Settling Parties certify that they will maintain a fund containing enough resources as necessary to carry out the obligations set forth in the Agreement.

b. Taxes. Settling Parties shall pay any taxes due on the Property before signing this Agreement and within 30 days of payment shall send certification of payment to EPA at the following address:

Lisa Ellis
Associate Regional Counsel
US EPA – Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

and

Christopher Jones
Enforcement Project Manager
US EPA – Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

Thereafter, Settling Parties shall pay all taxes due on the Property annually and within 30 days of payment shall send certification of payment to EPA at the address listed above. Settling Party will continue to pay taxes until the Property is sold and the real estate closing has occurred.

c. Appoint Contact for EPA. Within 15 days after the Effective Date, Settling Parties shall inform the EPA contacts listed in Paragraph 12.b of this Agreement of the Settling Parties' contact who will be available to EPA to contact regarding Settling Parties' obligations under this Agreement.

d. Appraisal of Property. Settling Parties shall ensure as a condition of sale that a prospective purchaser of the Property performs an appraisal of the Property and that a copy of the appraisal is submitted to the EPA contact listed in Paragraph 12.b of this Agreement within 30 days of completion of the appraisal and no later than 30 days prior to the anticipated sale date. Submission of the appraisal to EPA is required before the sale of the Property can be finalized. The appraiser performing the appraisal shall be certified to meet the Uniform Standards of Professional Appraisal Practice by a nationally recognized organization of professional real estate appraisers. Settling Parties shall be responsible for all appraisal fees not covered by the purchaser. If the Property is not sold within one year of the date of the appraisal, and if EPA so requests, Settling Parties shall obtain a new appraisal of the Property, in accordance with this Paragraph.

e. Maintenance of the Property. Until the Property is sold, Settling Parties shall, at their own expense: (i) maintain and make necessary repairs to the Property; (ii) keep the Property insured against loss from casualty and liability if insurance coverage is available for the Property; (iii) timely pay or cause to be paid all real property taxes; and (iv) timely pay all water and sewer bills regarding the Property.

f. Marketing of the Property. No later than 30 days after the Effective Date of this Settlement Agreement, Settling Parties shall commence using best efforts to sell the Property. "Best efforts" for purposes of this Paragraph includes: (i) entering into a listing agreement, for the purpose of marketing and selling the Property, with a real estate broker, dealer, or agent licensed in the State of Georgia who customarily deals with real property similar to the Property; (ii) advertising the Property for sale in appropriate publications; (iii) listing the Property with appropriate real estate listing services; (iv) maintaining the Property in a condition suitable for showing to prospective buyers; and (v) providing access to the Property, at reasonable times, to real estate brokers, dealers or agents and prospective buyers. As between EPA and the Settling Parties, the Settling Parties shall be responsible for all fees associated with the marketing and sale of the Property. Settling Parties shall submit to the EPA contact listed in Paragraph 12.b of this Agreement reports regarding Settling Parties' efforts to market the property. Included with such report shall be a signed statement by Settling Parties verifying that the taxes and insurance (if insurance is available) on the Property are valid and current. The first such report shall be due six months after commencement of efforts to sell the Property, and successive reports shall be due semi-annually thereafter. The first report shall include the name and contact information of the listing real estate broker selected by Settling Parties.

g. Upon receipt of a proposed sales contract, Settling Parties shall provide to the EPA contact listed in Paragraph 12.b of this Agreement a copy of the proposed Property sales contract, and must obtain EPA's written approval before executing the contract. Settling Parties shall provide to EPA via the contact listed in Paragraph 12.b of this Agreement a copy of any offer to purchase the Property within 48 hours after receipt of such offer in order to give EPA an opportunity to review and object to the offer. If EPA does not object to the offer within thirty business days after receipt of a copy of the offer, then Settling Party may execute the contract for sale of the Property. Settling Parties shall provide to EPA via the contact listed in Paragraph 12.b of this Agreement a copy of the executed contract within five days after signing the contract.

h. Settling Parties shall submit to EPA via the contact listed in Paragraph 12.b of this Agreement, at least ten days prior to the date of the sale of the Property, a notice of the sale, Settling Parties' calculation of the net sales proceeds, and all documentation regarding the values used in the calculation, including: (i) copies of all documents to be executed regarding the sale; (ii) documentation of the amounts of closing costs to be paid; (iii) documentation of any broker's fees regarding the sale; and (iv) documentation of the amounts of state and/or municipal transfer taxes to be paid regarding the sale of the Property. Settling Parties may request that EPA approve the calculation of net sales proceeds prior to the sale. In that event, EPA's approval shall be binding in any subsequent dispute between the United States and Settling Parties regarding whether Settling Parties have complied with Paragraph 12.h.

If within three years after commencement of efforts to market the Property, Settling Parties have not executed a contract for the sale of the Property, upon receipt of notice from EPA, Settling Parties shall commence best efforts to sell the Property to the highest bidder at a public auction. For purposes of this Paragraph, "best efforts" shall mean engaging the services of a professional auctioneer who will advertise the auction in at least two local newspapers for at least 30 days prior to the auction and who will conduct other marketing activities, as appropriate. The agreement with the professional auctioneer shall be provided to the EPA contact listed in Paragraph 12.b of this Agreement for review and approval. Settling Parties shall be responsible for all fees associated with auctioning the Property.

i. At the time of the sale, Settling Parties shall pay to the United States 100% of the net sales proceeds of the sale of the Property or \$914,619.72, whichever is less. "Net sales proceeds" shall mean, for purposes of this Paragraph, all consideration received by Settling Parties from the sale of the Property, not including: (i) any reasonable closing costs paid regarding the sale; (ii) any reasonable broker's fees regarding the sale; and (iii) any state and/or municipal transfer taxes regarding the sale. The payment shall be made by official bank check made payable to the "EPA Hazardous Substances Superfund."

j. Settling Parties shall not be required to comply with this Paragraph with respect to the Property or a portion of the Property, in the event the Property or such portion thereof is transferred involuntarily by operation of law, including foreclosure or its equivalent hereto, or is transferred by deed or other assignment in lieu of foreclosure due to a default on indebtedness secured by the Property or such portion thereof.

k. In the event of a sale or other transfer of the Property or any portion thereof, Settling Parties shall continue to be subject to all terms, conditions and benefits of this Settlement Agreement, except for Section XIII (Access) to the extent it requires Settling Parties to provide access to the Property or a portion thereof that was sold or transferred.

13. Payment by Settling Federal Agency.

a. As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agency, shall pay to the EPA \$399,375.00. The total amount to be paid on behalf of the Settling Federal Agency pursuant to this Paragraph shall be deposited by EPA in the EPA Hazardous Substance Superfund.

b. Interest. In the event that any payment required by Paragraph 13.a is not made within 120 days after the Effective Date, the United States, on behalf of Settling Federal Agency, shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with such Interest commencing on the 121st day after the Effective Date and accruing through the date of the payment.

14. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of Settling Federal Agency under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

15. Interest on Payments. If Settling Parties fail to make the payment required by Paragraph 12 (Payment of Net Proceeds of Sale of Property) by the required due date under said Paragraph, Interest shall continue to accrue on the unpaid balance from the date payment was due through the date of payment.

16. Stipulated Penalty – Settling Parties.

a. If any amounts due to EPA under Paragraph 12 (Payment of Net Proceeds of Sale of Property) are not paid by the required date, Settling Parties 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 12, \$500 per violation per day that such payment is late.

b. If Settling Parties fail to use best efforts to sell the Property in accordance with Paragraph 12 (Payment of Net Proceeds of Sale of Property), Settling Parties shall be in violation of this Settlement Agreement and shall pay, as a stipulated penalty, \$500 per day for each day of failure to use best efforts to sell the Property.

c. All penalties accruing under this Section shall be due and payable to EPA within 30 days after Settling Parties' receipt from EPA of a demand for payment of the penalties. Settling Parties shall make all payments required by this Section to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

and shall reference stipulated penalties, Site ID Number A4PM, and the EPA docket number for this action.

d. At the time of payment, Settling Party shall also send notice that such payment has been made to:

Paula V. Painter
US EPA – Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Such notice shall reference the Site ID Number A4PM and EPA docket number for this action.

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling 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, or the day a violation occurs, 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 in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. 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 Settling Parties' failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, they shall be subject to enforcement actions 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, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. 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 Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from payment as required by Paragraph 12 (Payment of Net Proceeds of Sale of Property) or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANTS BY EPA

19. Covenants for Settling Parties by EPA. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement including receipt by EPA of all amounts required under Paragraph 12 (Payment of Net Proceeds of Sale of Property) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement), including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any Interest or stipulated penalties due thereon under Section VII (Failure to Comply with Settlement Agreement). These covenants are also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties and the financial, insurance, and indemnity certification made by Settling Parties in Paragraph 377. If the Financial Information provided by Settling Parties, or the financial, insurance, or indemnity certification made by Settling Parties in Paragraph 377 is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Parties shall forfeit all payments made pursuant to this Settlement Agreement and these covenants and the contribution protection 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 Settling Parties' false or materially inaccurate information. These covenants extend only to Settling Parties and do not extend to any other person.

20. Covenant for Settling Federal Agency by EPA. In consideration of the payment that will be made by the United States on behalf of Settling Federal Agency under this Settlement Agreement, and except as specifically provided in Section IX (Reservation of Rights by EPA), EPA covenants not to take administrative action against Settling Federal Agency pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), to recover Past Response Costs. This covenant shall take effect upon receipt by EPA of the payment required by Paragraph 12.a with any Interest due thereon under Paragraph 12.b. This covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Settlement Agreement. This covenant extends only to Settling Federal Agency and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

21. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties and Settling Federal Agency with respect to all matters not expressly included within the Covenants for Settling Parties by EPA in Paragraph 19 and the Covenant for

Settling Federal Agency by EPA in Paragraph 20. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties and Settling Federal Agency with respect to:

- a. liability for failure of Settling Parties or Settling Federal Agency 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 on the ownership or operation of the Site by Settling Parties when such ownership or operation commences after signature of this Settlement Agreement by Settling Parties;
- e. liability based on Settling Parties' transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties; 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.

22. 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 Settling Parties, or the financial, insurance, or indemnity certification made by Settling Parties in Paragraph 377, is false or, in any material respect, inaccurate.

23. 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.

X. COVENANTS BY SETTLING PARTIES AND SETTLING FEDERAL AGENCY

24. Covenants by Settling Parties. Settling Parties covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site and 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 Georgia Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law, relating to the Site.

Except as provided in Paragraph 26 (claims against other Potentially Responsible Parties (PRPs)) and Paragraph 31 (*res judicata* and other defenses), these covenants shall not apply in the event EPA brings a cause of action or issues an order pursuant to any of the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraph 21.a (liability for failure to meet a requirement of the Settlement Agreement) or 21.b (criminal liability), but only to the extent that Settling Parties' claims arise from the same response action or response costs that EPA is seeking pursuant to the applicable reservation.

25. 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).

26. Settling Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that they may have for response costs relating to the Site against any other person who is a PRP under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Parties may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Parties.

27. Covenant by Settling Federal Agency. Settling Federal Agency agrees not to assert any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to Past Response Costs and this Settlement Agreement.

28. 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).

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

29. Except as provided in Paragraph 26 (claims against other PRPs), 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. Except as provided in Section X (Covenants by Settling Parties and Settling Federal Agency), each of the Parties reserves any and all rights (including, but not limited to, under Section 113 of CERCLA, 42 U.S.C. § 9613), 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 a Party hereto. 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 pursuant to which each Settling Party and Settling Federal Agency has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Settling Parties and Settling Federal Agency 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), or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken as identified in the August 27, 2007 Final Removal Action Report related to the Site and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, except for the State; provided, however, that if EPA exercises rights under the reservations in Section IX (Reservations of Rights by EPA), other than in Paragraphs 21.a (liability for failure to meet a requirement of the Settlement Agreement) or 21.b (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that Settling Parties’ waiver of claims becomes inapplicable in accordance with Paragraph 26, the Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Settling Parties have, as of the Effective Date, resolved liability to the United States for the “matters addressed.”

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, 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 Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant by EPA set forth in Section VIII.

32. Effective upon signature of this Settlement Agreement by Settling Parties, Settling Parties agree that the time period commencing on the date of their signatures and ending on the date EPA receives from such Settling Parties the payment(s) required by Section VI (Payment of Net Proceeds of Sale of Property) and, if any, Section VII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 30, and that, in any action brought by the United States related to the “matters addressed,” Settling Parties will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Settling Parties that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

33. Each Settling Party shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Party also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Party shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XII. NOTICE TO SUCCESSORS-IN-TITLE AND TRANSFERS OF REAL PROPERTY

34. Settling Parties shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (a) to the transferee regarding the Settlement Agreement; and (b) to EPA regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Settlement Agreement.

35. In the event of any Transfer of real property located at the Site, unless the United States otherwise consents in writing, Settling Parties shall continue to comply with their obligations under the Settlement Agreement, including, but not limited to, their obligation to provide and/or secure access.

XIII. ACCESS

36. If the Site, or any other real property where access or land or resource use restrictions are needed, is owned or controlled by Settling Parties:

a. Commencing on the Effective Date, Settling Parties shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal performed at the Site.

b. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIV. RETENTION OF RECORDS AND CERTIFICATION

37. Settling Parties certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information (other than identical copies) relating to their potential liability regarding the Site since the earlier of notification of potential liability by the United States or the state or the filing of a suit against them regarding the Site and that they have fully complied with any and all EPA requests for information regarding the Site and Settling Parties' financial

circumstances, including but not limited to insurance and indemnity information, pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

b. submitted to EPA financial information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the financial information was submitted to EPA and the time Settling Parties execute this Settlement Agreement; and

c. fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and submitted to EPA upon request such insurance policies, indemnity agreements, and information.

38. The United States acknowledges that Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. NOTICES AND SUBMISSIONS

39. 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 Party in writing. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Lisa Ellis
Attorney-Advisor
US EPA – Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

As to Settling Parties:

The Estate of Charles E. Carter
c/o Scott Hitch, Esq.
Nelson Mullins Riley & Scarborough, LLP
Suite 1700
201 17th Street, N.W.
Atlanta, GA 30363

As to Settling Federal Agency:

Chief, Environmental Defense Section
Environment & Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
RE: DJ #90-11-6-18395

XVI. INTEGRATION/APPENDICES

40. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among 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 the map of the Site; "Appendix B" is a list of the financial documents submitted to EPA by Settling Parties.

XVII. PUBLIC COMMENT

41. 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 that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVIII. ATTORNEY GENERAL APPROVAL

42. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1).

XIX. EFFECTIVE DATE

43. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 41 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:

US. ENVIRONMENTAL PROTECTION AGENCY

5/23/16
Date

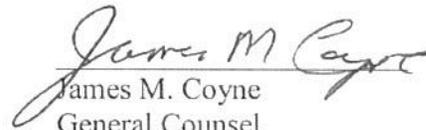


Anita L. Davis, Chief
Superfund Enforcement and Community
Engagement Branch

Signature Page for Settlement Agreement Regarding Cannon Drive Drum Superfund Site

SETTLING FEDERAL AGENCY

May 17, 2016
Date


James M. Coyne
General Counsel
Defense Logistics Agency

Signature Page for Settlement Agreement Regarding Cannon Drive Drum Superfund Site

SETTLING PARTIES

1-4-16
Date

Margaret Carter
Margaret Carter, Estate Representative
for Charles E. Carter
3940 Washington Rd.
Augusta, GA 30907

1-4-16
Date

Margaret Carter
Margaret Carter, Estate Representative
for Charles E. Carter
President,
Carter Jackson, Inc.
3940 Washington Rd.
Augusta, GA 30907

