

STATE OF ALABAMA)
CALHOUN COUNTY)

THE MCCLELLAN DEVELOPMENT AUTHORITY
ENVIRONMENTAL COVENANT
NUMBER FY-12-02.00

KNOW ALL MEN BY THESE PRESENTS: That pursuant to the Alabama Uniform Environmental Covenants Act, §§ 35-19-1 through 35-19-14, Code of Alabama 1975, as amended, (the "Act") and the ADEM Administrative Code of Regulations promulgated thereunder,

THE MCCLELLAN DEVELOPMENT AUTHORITY

(hereinafter "MDA" or "Grantor") grants this Environmental Covenant, Numbered FY-12-02.00, which constitutes a servitude arising under an environmental response project that imposes activity and/or use limitations, to the following statutory Holder:

THE MCCLELLAN DEVELOPMENT AUTHORITY

("MDA"), (hereinafter "Grantee" or "Holder"), to-wit:

WHEREAS, the Grantor is the owner of certain real property known as "CERFA Parcel No. 78(6)" also known as "Landfill #1" (see Exhibit "A", attached hereto) which is located on the grounds of the former Fort McClellan, in the City of Anniston, Calhoun County, Alabama (the "Property"), which was conveyed to Grantor by deed dated April 1, 2010, and recorded in the Office of the Judge of Probate for said County, Alabama, in Deed Book 3125 at Page 275; and,

WHEREAS, the Property is more particularly described as follows:

CERFA PARCEL 78(6)

A parcel of land situated in the South ½ of Section 16 and the North ½ of Section 21, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, being that property which was conveyed to Anniston-Calhoun County Fort McClellan Development Joint Powers Authority as Parcel 5, by deed of record in Deed Book 3039, Page 291, and subsequently conveyed by the JPA to the McClellan Development Authority by Statutory Warranty Deed recorded at Deed Book 3125, Page 275 in the records of the Probate Court of Calhoun County, Alabama, and being more particularly described as follows:

COMMENCING at a brass disk found at the Southwest corner of Section 22, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:
North 00 degrees 08 minutes 40 seconds East, 5,442.73 Feet;

North 88 degrees 32 minutes 31 seconds West, 2,288.18 Feet feet to the **POINT OF BEGINNING**, being an unmarked point having Alabama State Plane, East Zone, Coordinates of North: 1,170,298 and East: 665,606; runs thence as follows:

South 34 degrees 30 minutes 04 seconds West, 883.07 Feet;

North 85 degrees 32 minutes 16 seconds West, 168.70 Feet;

North 59 degrees 00 minutes 03 seconds West, 121.11 Feet;

North 38 degrees 03 minutes 12 seconds West, 193.67 Feet;

North 33 degrees 09 minutes 00 seconds West, 202.30 Feet;

North 12 degrees 51 minutes 20 seconds West, 196.14 Feet;

North 08 degrees 10 minutes 47 seconds East, 161.98 Feet;

South 81 degrees 22 minutes 58 seconds East, 265.67 Feet;

Along a curve to the left 201.91 feet, said curve having a radius of 445.85 feet, and is subtended by a chord bearing and distance of North 85 degrees 38 minutes 37 seconds East, 200.19 feet;

Along a curve to the left 179.70 feet, said curve having a radius of 616.96 feet, and is subtended by a chord bearing and distance of North 64 degrees 19 minutes 32 seconds East, 179.07 feet;

North 45 degrees 00 minutes 55 seconds East, 39.49 Feet;

North 70 degrees 39 minutes 19 seconds East, 113.73 Feet;

South 62 degrees 05 minutes 38 seconds East, 298.60 Feet to the point of beginning, having an area of 12.24 Acres, more or less.

WHEREAS, this instrument is an Environmental Covenant developed and executed pursuant to The Alabama Uniform Environmental Covenants Act and the regulations promulgated thereunder;

WHEREAS, Parcel 78(6) was used for the disposal of solid waste, which will remain in place and will require maintenance of final cover systems;

WHEREAS, the selected remedial action for the property includes soil caps, which have been implemented;

WHEREAS, Parcel 78(6) has land use controls preventing residential site use and excavations within the landfill area, monuments and signs to outline the parcel boundaries and maintenance and repair of the engineered cap;

WHEREAS, the selected "remedial action" for the Property, which has now been implemented, providing in part, for the following actions,

DESCRIPTION OF REMEDIAL ACTION:

WHEREAS, pursuant to the Alabama Hazardous Wastes Management and Minimization Act of 1978, (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24, as amended, the GRANTOR and assignees agreed to perform operation and maintenance activities at the Property, pursuant to an ADEM Cleanup Agreement Number AL4-210-020-562 to address the effects of the

release/disposal, which includes controlling exposure to the hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants;

WHEREAS, the said Cleanup Agreement requires institutional controls to be implemented to address the effects of the release/disposal and to protect the remedy so that exposure to the hazardous waste, hazardous constituents, hazardous substances, pollutants, or contaminants is controlled by restricting the use of the Property and the activities on the Property;

WHEREAS, hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants remain on the Property;

WHEREAS, implementation of the approved Cleanup Agreement has achieved risk-based cleanup levels deemed protective of public health and the environment based upon certain use restrictions imposed on the property to limit exposure to potential hazardous waste (HTRW); and,

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property in accordance with the approved Cleanup Agreement; and

WHEREAS, further information concerning the HTRW and remediation activities, including the Administrative Record, may be obtained by contacting:

Chief, Land Division
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110
(334) 271-7700

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the named Holder, and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, hypothecated, encumbered, and/or conveyed subject to the requirements set forth below:

1. **DEFINITIONS**

Owner. "Owner" means the GRANTOR, its successors and assigns in interest.

2. **USE RESTRICTIONS**

Activities that violate the following restrictions shall not take place on the Property without obtaining prior written approval from ADEM:

- (i) The facility shall inspect and maintain the engineered landfill cap on Landfill 1, at the location shown in Exhibit A, as described and required in the *Final Corrective Measures Implementation Plan* and the *Final, Revision 2 Corrective Measures Implementation Report* for Landfill 1, Parcel 78(6); Landfill 2, Parcel 79(6); Former Post Garbage Dump, Parcel 126(7); Fill Area East of Reilly Airfield, Parcel 227(7); and Fill Area North of Landfill 2, Parcel 230(7) dated January 2008 and September 2012, respectively;

- (ii) Residential use of the property is prohibited. Residential uses include, but are not limited to, housing, daycare facilities, playgrounds and schools (excluding education and training programs for persons over 18 years of age), and assisted living facilities;
- (iii) Use of the property is restricted to surface use only. Digging or excavation is prohibited;
- (iv) The installation of any well for extraction of groundwater for purposes of consumptive or other uses (unless said wells are intended to be utilized by the Holder or ADEM for groundwater monitoring) is prohibited; and
- (v) Grantor reserves an access easement to the Property in any case in which a response action or corrective action is found to be necessary after the date of the establishment of this covenant upon such Property, or in any case such access is necessary to carry out a response action or corrective action on adjoining property.

3. **GENERAL PROVISIONS**

- A. Restrictions to Run with the Land. This Environmental Covenant runs with the land pursuant to §35-19-5, Code of Alabama 1975, as amended; is perpetual unless modified or terminated pursuant to the terms of this Covenant or §35-19-9 Code of Alabama 1975, as amended; is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof; inures to the benefit of and passes with each and every portion of the Property; and binds the Owner, the Holders, all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to this Environmental Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of this Environmental Covenant.
- B. Notices Required. In accordance with §35-19-4(b), Code of Alabama 1975, as amended, the Owner shall send written notification pursuant to Section I, below, upon any of the following events affecting the property subject to this covenant: Transfer of any interest, any proposed changes in the use of the property, any applications for building permits, or any proposals for site work that could affect the subsurface areas or contamination on the Property. The Owner shall send this notification within fifteen (15) days of each event listed in this Section.
- C. Registry/Recordation of Environmental Covenant; Amendment; or Termination. Pursuant to §35-19-12(b), Code of Alabama 1975, as amended, this Environmental Covenant and any amendment or termination thereof, shall be contained in the ADEM Registry of Environmental Covenants. After an environmental covenant, amendment, or termination is filed in the registry, a notice of the covenant, amendment, or termination may be recorded in the land records in lieu of recording the entire covenant in compliance with §35-19-12(b). Grantor shall be responsible for filing the Environmental Covenant within thirty (30) days of the final required signature.
- D. Compliance Certification. In accordance with Ala. Code §35-19-4(b), as amended, the Owner shall submit a report on the effectiveness of the land use controls to the Chief of the ADEM Land Division, on an annual basis. The Land Use Control Effectiveness Report (LUCER) shall be submitted in accordance with §IV.B.9. of the Cleanup

Agreement each March and shall detail the Owner's compliance, and any lack of compliance with the terms of the Covenant during the preceding calendar year.

- E. Right of Access. Subject to the requirements of the above-referenced Cleanup Agreement, the Owner hereby grants to ADEM, ADEM's agents, contractors and employees; the Owner's agents, contractors and employees; and any other named Holder, its agents, contractors and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant.
- F. ADEM Reservations. Notwithstanding any other provision of this Environmental Covenant, ADEM retains all of its access authorities and rights, as well as all of its rights to require additional land/water use restrictions, including enforcement authorities related thereto.
- G. Representations and Warranties. Grantor hereby represents and warrants as follows:
 - i) That the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;
 - ii) That the Grantor is the sole owner of the Property and holds fee simple title which is free, clear and unencumbered;
 - iii) That the Grantor has identified all other parties that hold any interest or encumbrance affecting the Property and has notified such parties of the Grantor's intention to enter into this Environmental Covenant.
 - iv) That this Environmental Covenant will not materially violate, contravene, or constitute a material default under, any other agreement, document, or instrument to which Grantor is a party, by which Grantor may be bound or affected;
 - v) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property;
 - vi) That this Environmental Covenant does not authorize a use of the Property which is otherwise prohibited by a recorded instrument that has priority over the Environmental Covenant.
- H. Compliance Enforcement. In accordance with §35-19-11(b), Code of Alabama 1975, as amended, the terms of the Environmental Covenant may be enforced by the parties to this Environmental Covenant; any person to whom this Covenant expressly grants power to enforce; any person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the Covenant; or a municipality or other unit of local government in which the real property subject to the Covenant is located, in accordance with applicable law. Failure to timely enforce compliance with this Environmental Covenant or the use or activity limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall limit the regulatory authority of ADEM under any applicable law with respect to the environmental response project.
- I. Modifications/Termination. Any modifications or terminations to this Environmental Covenant must be made in accordance with §§ 35-19-9 and 35-19-10, Code of Alabama 1975, as amended.

- J. Notices. Any document or communication required to be sent pursuant to the terms of this Environmental Covenant shall be sent to the following persons:

ADEM

Chief, Land Division
A.D.E.M.
1400 Coliseum Boulevard
Montgomery, AL 36110

GRANTOR

The McClellan Development
Authority
4975 Bains Gap Road
Anniston, AL 36205

- K. No Property Interest Created in ADEM. Pursuant to §35-19-3(b), Code of Alabama 1975, as amended, the rights of ADEM under the Act or under this Environmental Covenant, other than a right as a holder, is not an interest in the real property subject to the covenant, nor does the approval by ADEM of this Environmental Covenant create any interest in the real property.
- L. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- M. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Alabama.
- N. Recordation. In accordance with §35-19-8(a), Code of Alabama 1975, as amended, Grantor shall have this Environmental Covenant, and any amendment or termination thereof, recorded in every county in which any portion of the real property subject to this Environmental Covenant is located. Grantor shall have this Environmental Covenant recorded within fifteen (15) days after the date of the final required signature.
- O. Effective Date. The effective date of this Environmental Covenant shall be the date the fully executed Environmental Covenant is recorded in accordance with paragraph "N" above.
- P. Distribution of Environmental Covenant. In accordance with §35-19-7, Code of Alabama 1975, the Grantor shall, within fifteen (15) days of filing this Environmental Covenant, have a recorded and date stamped copy of same distributed to each of the following: (1) Each person who signed the covenant; (2) Each person holding a recorded interest in the property; (3) Each person in possession of the property; (4) Each municipality or other unit of local government in which the property is located; and (5) Any other person required by ADEM to receive a copy of the covenant. However, the validity of this Environmental Covenant will not be affected by the failure to provide a copy of the Covenant as herein provided.
- Q. Party References. All references to ADEM, the Grantor, or other applicable parties, shall include successor agencies, departments, divisions, heirs, executors and/or administrators.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 27th
day of August, 2012.

William R. Smith

Grantor

By: William R. Smith

Its: Chairman

STATE OF ALABAMA)
CALHOUN COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that William R. Smith whose name as Chairman of the Grantor is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date and with full authority to do so.

Given under my hand and official seal this 27th day of August, 2012

Sandra Roberts

Notary Public

My Commission Expires: _____

SANDRA ROBERTS
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
January 12, 2014



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

This Environmental Covenant is hereby approved by the State of Alabama, Department of Environmental Management.

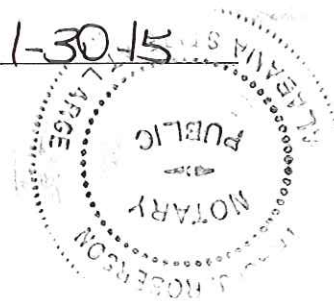
Dated 5-Oct, 2012 By: [Signature]
 Chief, Land Division
 Alabama Department of Environmental
 Management

STATE OF ALABAMA)
 MONTGOMERY COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that Phillip D. Davis, whose name as Chief, Land Division, Alabama Department of Environmental Management is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he approved the same voluntarily on the day the same bears date and with full authority to do so.

Given under my hand and official seal this 5 day of October, 2012

[Signature]
 Notary Public
 My Commission Expires: 1-30-15



STATE OF ALABAMA)
CALHOUN COUNTY)

I, hereby certify that the foregoing Environmental Covenant has been recorded in the property records of Calhoun County, Alabama, at Deed Book 3151, Page 708
_____.

Dated October 17, 2012

By: S Robinson
Clerk, Office of Probate Judge

N/C

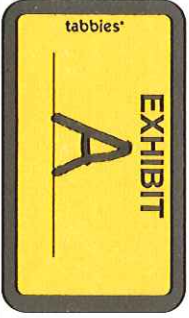


EXHIBIT DRAWING FOR:

MCLELLAN DEVELOPMENT AUTHORITY &
ALABAMA DEPT. OF ENVIRONMENTAL MANAGEMENT
CLEANUP AGREEMENT NO. AL4 210 020 562
CERFA PARCEL # 78 (6)

SITUATED IN THE SOUTH 1/2 OF SECTION 16
AND THE NORTH 1/2 OF SECTION 2 EAST
LYING IN TOWNSHIP 15 SOUTH RANGE 8 EAST
HUNTSVILLE MERIDIAN, CALHOUN COUNTY, ALABAMA
PROPERTY DEED REFERENCES:
PARCEL 5 OF DEED BOOK 303, PAGE 291 (PROPERTY DESCRIPTION)
DEED BOOK 3123, PAGE 275 (TRANSFER TO THE MDA)

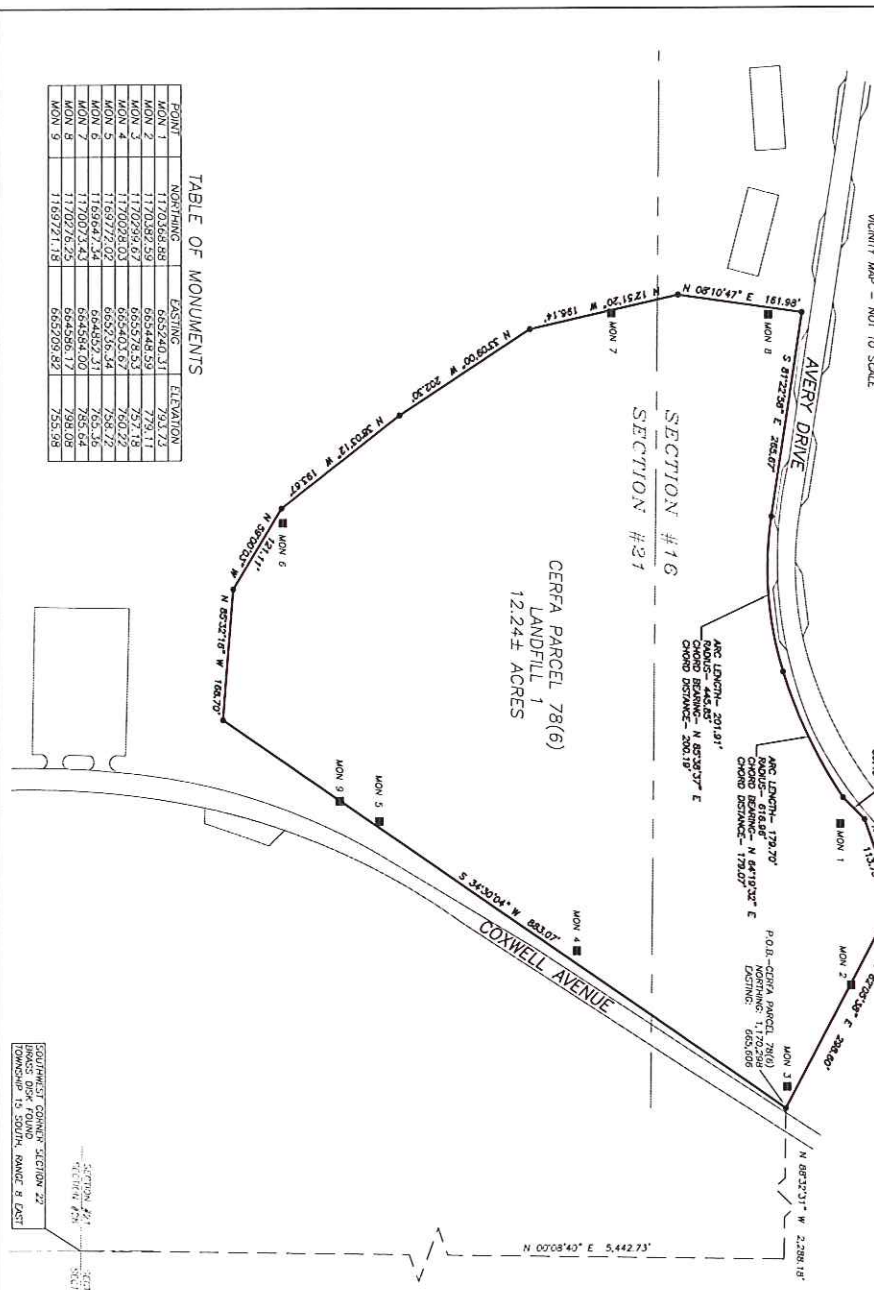
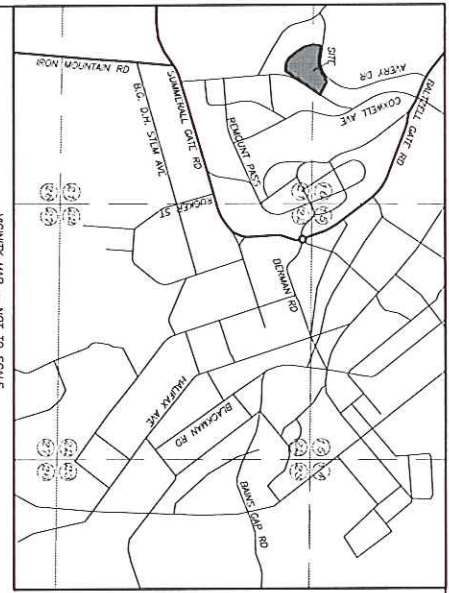
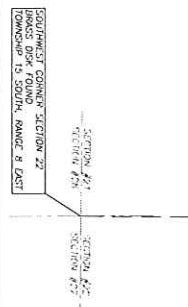
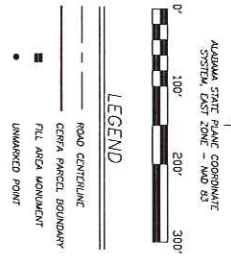


TABLE OF MONUMENTS

POINT	ASBESTOS	EXISTING	ELEVATION
MON 1	1170354.58	665240.31	783.73
MON 2	1170387.59	665448.59	783.11
MON 3	1170399.67	665378.53	787.18
MON 4	1170029.03	665401.67	760.77
MON 5	1169772.07	665338.34	758.72
MON 6	1169772.07	665338.34	758.72
MON 7	1170073.43	664584.00	765.64
MON 8	1170073.43	664584.00	765.64
MON 9	1169771.18	665708.82	755.98



NOTES:
THE LAND USE RESTRICTIONS FOR THE CERFA PARCELS
DEPICTED ON THIS EXHIBIT ARE SPECIFICALLY DESCRIBED IN
THE CLEANUP AGREEMENT NO. AL4 210 020 562 WITH
THE CALHOUN COUNTY PROBATE OFFICE AND ADEM.
THIS IS AN EXHIBIT DRAWING ONLY AND SHOULD ONLY BE
USED AS A REFERENCE FOR THE LOCATION OF THE CERFA
PARCELS. DEPICTED HEREON THIS DRAWING IS NOT A
PROPERTY DEED. ANY AND ALL MEASUREMENTS SHOULD BE
BASED ON THE PROPERTY DEEDS. THERE IS NO CERTIFICATION OF THE ACCURACY
OF THE MEASUREMENTS SHOWN HEREON.
THE CERFA PARCEL'S LOCATION & GEOMETRY IS BASED ON
A SURVEY BY SAN ASSOCIATES, INC., DATED 10/24/06,
WHICH WAS CONDUCTED BY FIELDWORK AND PHOTOGRAPHY
AND OPENED FOR PUBLIC REVIEW. THE FIELDWORK WAS
CONDUCTED BY SAN ASSOCIATES, INC. TO VERIFY ANY OF THE INFORMATION PRESENTED HEREON.



L. I. SMITH & ASSOCIATES, INC.
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1100 Leaning Tree, Suite 100
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DRAWN BY: RWB CHECKED BY: LIS SCALE: 1"=100'
PROJECT # 4002.21.7237 DATE: 06/14/2012