

STATE OF ALABAMA     )  
CALHOUN COUNTY        )

DEED       3151       718  
Recorded In Above Book and Page  
10/17/2012 02:27:29 PM  
Alice K. Martin  
Judge of Probate  
Calhoun County, Alabama

**THE MCCLELLAN DEVELOPMENT AUTHORITY**  
**ENVIRONMENTAL COVENANT**  
**NUMBER FY-12-05.00**

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-12-05.00, 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. 79(6)" also known as "Landfill #2" (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 79(6)***

A parcel of land situated in the Southeast ¼ of Section 10 and the Northeast ¼ of Section 15, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, and being more particularly described as follows:

**COMMENCING** at a brass disk found at the Northwest corner of Section 10, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence as follows:

South 01 degree 05 minutes East, 5,036.5 Feet;

North 88 degrees 55 minutes East, 4,826.2 Feet feet to the **POINT OF BEGINNING**, being an unmarked point having Alabama State Plane, East Zone, Coordinates of North:

1,175,785 and East: 672,747; runs thence as follows:

North 83 degrees 48 minutes East, 64.4 Feet;

South 26 degrees 12 minutes East, 153.8 Feet;

South 50 degrees 38 minutes East, 93.1 Feet;

North 65 degrees 55 minutes East, 73.4 Feet;  
North 23 degrees 29 minutes East, 148.3 Feet;  
South 87 degrees 55 minutes East, 7.4 Feet;  
South 59 degrees 40 minutes East, 87.8 Feet;  
South 32 degrees 30 minutes East, 18.3 Feet;  
South 05 degrees 49 minutes East, 117.6 Feet;  
South 01 degree 05 minutes West, 110.0 Feet;  
South 01 degree 38 minutes West, 107.0 Feet;  
South 04 degrees 01 minute West, 86.2 Feet;  
South 31 degrees 53 minutes West, 77.7 Feet;  
South 65 degrees 18 minutes West, 98.0 Feet;  
South 85 degrees 21 minutes West, 110.4 Feet;  
North 70 degrees 33 minutes West, 147.4 Feet;  
North 39 degrees 40 minutes West, 130.0 Feet;  
North 13 degrees 20 minutes West, 82.2 Feet;  
North 02 degrees 29 minutes East, 234.2 Feet;  
North 11 degrees 03 minutes East, 78.4 Feet;

North 21 degrees 50 minutes East, 86.2 Feet to the point of beginning, having an area of 5.42 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 79(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 79(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 2, 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 27<sup>th</sup>  
 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 27<sup>th</sup> 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: Phillip D. Davis

Chief, Land Division

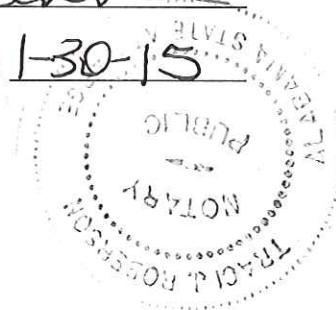
Alabama Department of Environmental  
Management

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

Traci Robertson  
Notary Public  
My Commission Expires: 1-30-15



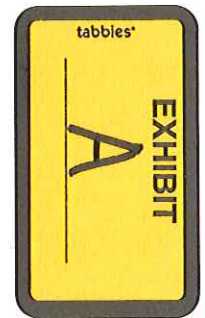


STATE OF ALABAMA     )  
CALHOUN COUNTY        )

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

Dated October 17, 2012

By: S. Robinson  
Clerk, Office of Probate Judge



# EXHIBIT DRAWING FOR:

McCLELLAN DEVELOPMENT AUTHORITY &  
ALABAMA DEPT. OF ENVIRONMENTAL MANAGEMENT

CLEANUP AGREEMENT NO. AL4 210 020 562  
CERFA PARCEL # 79(6)  
McCLELLAN LANDFILL #2

SITUATED IN THE SOUTHEAST 1/4 OF SECTION 10  
& THE NORTHEAST 1/4 OF SECTION 11,  
LYING IN TOWNSHIP 15 SOUTH, RANGE 8 EAST,  
HUNTSVILLE MERIDIAN, CALHOUN COUNTY, ALABAMA  
REFERENCES: A PORTION OF DEED BOOK 3039, PAGE 291  
(PROPERTY DESCRIPTION)  
DEED BOOK 3125, PAGE 275 (TRANSFER TO THE MDA)

## NOTES:

THE LAND USE RESTRICTIONS FOR THE CERFA PARCELS DEPICTED ON THIS EXHIBIT ARE SPECIFICALLY DESCRIBED IN MDA ENVIRONMENTAL COVENANT #12-05 AS FILED 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 PARCEL(S) DEPICTED HEREON. THIS DRAWING IS NOT A PLAT OF A SURVEY AND SHOULD NOT BE USED TO CONVEY PROPERTY. THERE IS NO CERTIFICATION OF THE ACCURACY OF THE MEASUREMENTS SHOWN HEREON.  
THE CERFA PARCEL'S LOCATION & GEOMETRY ARE BASED ON ESRI GIS SHAPFILES PROVIDED BY THE McCLELLAN DEVELOPMENT AUTHORITY AND A SURVEY BY CONGALES-STRENGTH & ASSOCIATES, INC. TITLED TOPOGRAPHIC SURVEY #1, McCLELLAN LANDFILL #2, DATED 10/03/2008. ALSO PROVIDED BY THE McCLELLAN DEVELOPMENT AUTHORITY. LIMITED FIELDWORK WAS PERFORMED TO VERIFY THE LOCATION OF THE CERFA PARCELS. NO ADDITIONAL MONUMENTS WERE FOUND.

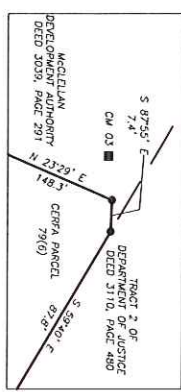
## CONCRETE MONUMENTS

MON ID	NORTHING	EASTING
CM 01	1175.781	672.745
CM 02	1175.597	672.943
CM 03	1175.760	673.047
CM 04	1175.570	673.187
CM 05	1175.370	672.928
CM 06	1175.166	672.707
CM 07	1175.315	672.707
CM 08	1175.524	672.681

## LEGEND

- CERFA PARCEL BOUNDARY
- APPROXIMATE PROPERTY BOUNDARIES
- UNMARKED POINT
- CONCRETE MONUMENT

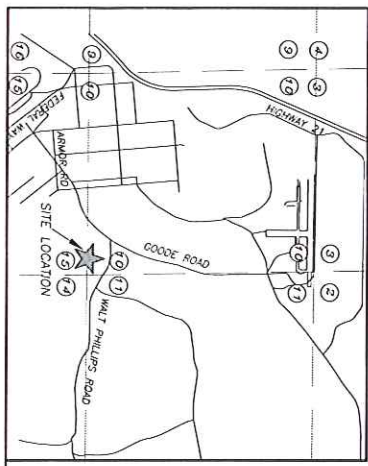
DETAIL A - NOT TO SCALE



ALABAMA STATE PLANE COORDINATE  
SYSTEM, EAST ZONE - MAG 83



VENUE MAP - NOT TO SCALE  
TOWNSHIP 15 SOUTH, RANGE 8 EAST, HUNTSVILLE  
MERIDIAN, CALHOUN COUNTY, ALABAMA



L. I. SMITH & ASSOCIATES, INC.  
SURVEYORS - ENGINEERS

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www.lisai.com  
DRAWN BY: RMB CHECKED BY: LIS  
PROJECT # 400221.7279 DATE: 08/07/2012