

STATE OF ALABAMA)
CALHOUN COUNTY)

THE MCCLELLAN DEVELOPMENT AUTHORITY
ENVIRONMENTAL COVENANT
NUMBER FY-17-02.00

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-17-02.00, 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 MDA is the owner of that certain real property known as "MRS-10 and MRS-11" (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 MDA 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 Covenant Boundary is more particularly described as follows:

COVENANT BOUNDARY FOR FY-17-02.00

Dig Prohibition Area of Iron Mountain Road within MRS 11

A parcel of land situated in the Northeast Quarter of Section 34, lying in Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama, and being more particularly described as follows:

The dig prohibition area of Iron Mountain Road includes all of the pavement plus three feet beyond both the edges of the pavement for 1,271 feet and the center of the roadway for the dig prohibition section is generally described as **COMMENCING** at the Southwest corner of Section 22, Township 15 South, Range 8 East, Huntsville Meridian, Calhoun County, Alabama; runs thence South 00 degrees 48 minutes West, 7,491.3 feet; North 89 degrees 12 minutes West, 3,749.1 feet to the **POINT OF BEGINNING**, being the intersection of the MRS 11 boundary and the center of Iron Mountain Road, and having Alabama State Plane, East Zone, Coordinates of North: 1,157,254 and East: 671,425; the centerline of the affected area runs thence North 41 degrees 16 minutes East, for a distance of 1,271 feet.

Said area is indicated by "Inset A" on the attached Exhibit A.

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 Munitions Response Site – 10 (MRS-10) comprises an area totaling approximately 13 acres located in the central part of the Bravo Munitions Response Area (MRA) and is enclosed by MRS-11. It consists of the Bravo Engineering Evaluation/Cost Analysis (EE/CA) Sector M3-1L Suspect Area 2 – Passive Recreation (PR);

WHEREAS, distal portions of former range fans and training areas potentially containing munitions cover MRS-10, and one (1) explosive ordnance item was recovered during site characterization activities. To implement the munitions remediation in MRS-10, the site was cleared to the depth of detection.

WHEREAS, Parcel Munitions Response Site – 11 (MRS-11) comprises an area totaling approximately 1021 acres located in the central part of the Bravo Munitions Response Area (MRA), bordered by MRS-3, MRS-6, and the Eastern Bypass Area to the west; MRS-7, MRS-8, and MRS-9 to the north; MRS-2 and MRS-5 to the east; and the southern boundary is defined by the boundary of the Bravo MRA. It consists of the Bravo Engineering Evaluation/Cost Analysis (EE/CA) Sector M3 Remainder Area -PR;

WHEREAS, distal portions of former range fans and training areas potentially containing munitions cover MRS-11, and a total of six (6) explosive ordnance items were recovered during site characterization activities. To implement the munitions remediation in MRS-11, the site was divided into four tracts, 11-A through 11-D based on geography and required remedial actions. The remediation for Tracts 11-A and 11-B was cleared to a depth of one foot, Tract 11-C was cleared to the depth of detection, and Tract 11-D was surface cleared. An exception area located within 3 feet of either side and underneath the Industrial Access Road in Tract 11-B was not cleared and comprises the Covenant Boundary.

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 remedial action was performed in accordance with the ADEM-approved work plan and Action Memorandum and DDESB-approved explosives safety submission;

WHEREAS, detection and removal methods are not 100 percent effective, so that

(munitions and explosives of concern) MEC may remain in those areas that were subjected to the remediation;

WHEREAS, the Department of Defense Manual Number 6055.09-M, Volume 7, February 29, 2008 (Administratively Reissued August 4, 2010) in V7.E3.4.2.2.1.2 states that "Areas on which a previous response has been completed, pursuant to a DDESB-approved explosives safety submission (ESS), for the stipulated reuse also qualify for "low" determinations." ; and, in V7.E4.4.3.2.1 the level of construction support for areas of low probability shall be "On-call";

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 potential MEC or hazardous metals and other contaminants is controlled by restricting the use of the Property and the activities 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 MEC or hazardous metals and other contaminants;

WHEREAS, the potential for MEC remains in the confines of the Covenant Boundary;

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**

Owners. "Owners" 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) Prohibition on intrusive activities within the Covenant Boundary area without EOD (explosive ordnance personnel) or UXO-qualified personnel being contacted to

ensure their availability, advised about the project, and placed “on-call” to assist if suspected UXO are encountered during construction within the confines of the Covenant Boundary as described herein.

- (ii) 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 Holder, 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 any Grantor is a party, by which such 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:
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| <p><u>ADEM</u>
 Chief, Land Division
 A.D.E.M.
 1400 Coliseum Boulevard
 Montgomery, AL 36110</p> | <p><u>GRANTOR</u>
 The McClellan Development
 Authority
 4975 Bains Gap Road
 Anniston, AL 36205</p> |
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- 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 23RD day
of JUNE, 2017.

Phil Webb

MDA Grantor
By: Phil Webb
Its: Chairman

STATE OF ALABAMA)
CALHOUN COUNTY)

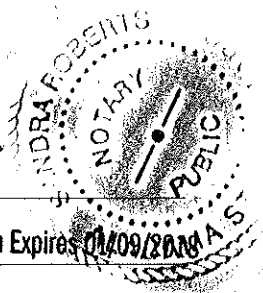
I, the undersigned Notary Public in and for said County and State, hereby certify that Phil Webb whose name as Chairman of the Grantor is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed 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 23rd day of June, 2017.

Sandra Roberts

Notary Public

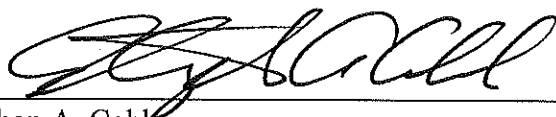
My Commission Expires: 04/09/2020



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

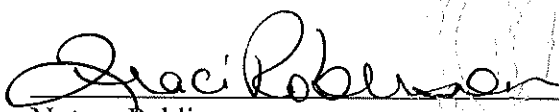
Dated August 25, 2017

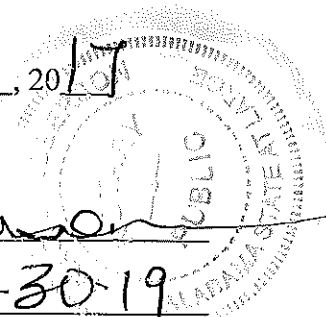
By: 
 Stephen A. Cobb
 Chief, Land Division
 Alabama Department of Environmental
 Management

STATE OF ALABAMA)
 MONTGOMERY COUNTY)

I, the undersigned Notary Public in and for said County and State, hereby certify that Stephen A. Cobb, 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 25 day of August, 2017


 Notary Public
 My Commission Expires: 1-30-19



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 3222, Page 222.

Dated Aug 31, 20 17

By: Refuda Heard
Clerk, Office of Probate Judge

