

STATE OF ALABAMA)
MONTGOMERY COUNTY)

ENVIRONMENTAL COVENANT

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,

(hereinafter “Grantor”) grants this Environmental Covenant, which constitutes a servitude arising under an environmental response project that imposes activity and/or use limitations, to the following:

(hereinafter “Grantee” or “Holder”), to-wit:

WHEREAS, the Grantor is the owner of certain real property known as City of Montgomery, located at _____, in the City of Montgomery, Montgomery County, Alabama (the “Property”), which was conveyed to Grantor by deed dated _____ and recorded in the Office of the Judge of Probate for said County, Alabama, in Deed Book _____ at Page _____; and,

WHEREAS, the Property is more particularly described as follows:

WHEREAS, the Grantor is aware that the soil vapor and/or groundwater beneath the Property is now or may in the future be included in or near the Capital City Plume Site area, an area in the City of Montgomery that has indicated contamination by tetrachloroethene (“PCE”) in groundwater/soil vapor and/or trichloroethene (“TCE”) in soil vapor only; and

WHEREAS, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property; and

WHEREAS, Grantor knows and understands that it does not own the groundwater beneath the Property, but has the right to a reasonable use thereof; and

WHEREAS, further information concerning the Capital Plume Site 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 Environment 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**

“Grantor” means owner of the Property, its successors and assigns in interest.

2. **USE RESTRICTIONS**

The use of, access of, interference with, and/or consumption of the groundwater beneath the Property is hereby forever in perpetuity prohibited without the prior written approval from ADEM.

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 Grantor shall send written notification pursuant to Section “H” 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. Said notification shall be sent within fifteen (15) days of the listed event.

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. Right of Access. The Owner hereby grants to ADEM 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.

E. 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; *or* 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.

(iii) 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;

(iv) That this Environmental Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property;

(v) 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.

F. 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.

G. 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.

H. 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

I. 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.

J. 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.

K. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Alabama.

L. 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 Montgomery County, Alabama within fifteen (15) days after the date of the final required signature.

M. Effective Date. The effective date of this Environmental Covenant shall be the date the fully executed Environmental Covenant is recorded in accordance with Paragraph “L” above.

N. 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.

O. 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 _____ day of _____, 20 .

Grantor

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, THE UNDERSIGNED Notary Public in and for said County and State, hereby certify that _____, whose name as 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.

Given under my hand and official seal this _____ day of _____, 20 .

Notary Public

My Commission Expires: _____

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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

Dated _____, 20

By: _____
Chief, Land Division
Alabama Department of Environmental
Management

