

This instrument prepared by:
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ENVIRONMENTAL COVENANT


North Shelby Office Park, LLC (hereinafter "Grantor") grants an Environmental Covenant (hereinafter "Covenant") this 8th day of April, 2011, to itself (**North Shelby Office Park, LLC**) as Holder pursuant to The Alabama Uniform Environmental Covenants Act, ALA. CODE §§ 35-19-1 to 35-19-14 (2010 Cum. Supp.) (hereinafter "the Act" or "Act"), and the regulations promulgated thereunder.

WHEREAS, Grantor is the owner of certain real property located in Shelby County, Alabama, at 3700 Cahaba Beach Road, and more particularly described as follows (hereinafter "the Property")

Lot 1, which was conveyed to Grantor by deed dated March 13, 2008, and recorded in the Office of the Judge of Probate for Shelby County, Alabama, Instrument Number 20080314000106670:

A parcel of land situated in the Southwest one-quarter of the Southwest one-quarter of Section 30, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter Section; thence run South 89 degrees 20 minutes 34 seconds East along the South line for a distance of 253.60 feet; thence leaving said South line, run North 07 degrees 43 minutes 19 seconds East for a distance of 461.80 feet to the POINT OF BEGINNING; thence North 00 degrees 00 minutes 00 seconds West for a distance of 476.56 feet; thence run North 90 degrees 00 minutes 00 seconds East for a distance of 241 .21 feet; thence run South 00 degrees 00 minutes 00 seconds East for a distance of 112.66 feet; thence run North 89 degrees 38 minutes 14 seconds East for a distance of 143.98 feet; thence run North 34 degrees 06 minutes 04 seconds East for a distance of 63.33 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 125.25 feet, a central angle of 45 degrees 18 minutes 06 seconds, a chord bearing of North 56 degrees 04 minutes 18 seconds East for a chord distance of 96.47 feet; thence run along arc of said curve for a distance of 99.03 feet to a point on the Westernmost right of way line of Cahaba Beach Road and a point on a non-tangent curve to the right, said curve having a radius of 992.10 feet, a central angle of 00 degrees 10 minutes 38 seconds, a chord bearing of South 43 degrees 52 minutes 34 seconds East for a chord distance of 3.07 feet; thence run along arc of said curve and along said right of way for a distance of 3.07 feet; thence run South 43 degrees 48 minutes 29 seconds East along said right of way for a distance of 39.82 feet to the point of commencement of a curve to the right, said curve having a radius of 263.50


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feet, a central angle of 46 degrees 55 minutes 39 seconds, a chord bearing of South 20 degrees 20 minutes 39 seconds East for a chord distance of 209.83 feet; thence run along arc of said curve and along said right of way for a distance of 215.82 feet; thence run South 03 degrees 07 minutes 10 seconds West along said right of way for a distance of 109.89 feet; thence run South 02 degrees 23 minutes 55 seconds East along said right of way for a distance of 105.49 feet; thence run South 07 degrees 54 minutes 59 seconds East along said right of way for a distance of 28.30 feet; thence leaving said right of way, run South 89 degrees 58 minutes 38 seconds West for a distance of 605.71 feet to the POINT OF BEGINNING. Said parcel contains 258,219 square feet or 5.93 acres more or less.

Lot 2, which was conveyed to Grantor by deed dated March 13, 2008, and recorded in the Office of the Judge of Probate for Shelby County, Alabama, Instrument Number 20080314000106770:

A parcel of land situated in the Southwest one-quarter of the Southwest one-quarter of Section 30, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of said quarter-quarter Section; thence run North 00 degrees 31 minutes 45 seconds West along the West line of said Section for a distance of 1175.79 feet; thence leaving said West line, run South 86 degrees 19 minutes 16 seconds East for a distance of 398.74 feet to the point of commencement of a curve to the right, said curve having a radius of 547.00 feet, a central angle of 12 degrees 18 minutes 50 seconds, a chord bearing of South 80 degrees 09 minutes 50 seconds East for a chord distance of 117.33 feet; thence run along arc of said curve for a distance of 117.56 feet to a point on the Southernmost right of way line of Cahaba Beach Road (60' right of way) and the point of commencement of a non-tangent curve to the right, said curve having a radius of 233.55 feet, a central angle of 22 degrees 14 minutes 27 seconds, a chord bearing of South 71 degrees 48 minutes 43 seconds East for a chord distance of 90.09 feet; thence run along arc of said curve and along said right of way for a distance of 90.66 feet to the point of commencement of a non-tangent curve to the right, said curve having a radius of 992.10 feet, a central angle of 16 degrees 42 minutes 17 seconds, a chord bearing of South 52 degrees 19 minutes 01 seconds East for a chord distance of 288.22 feet; thence run along arc of said curve and along said right of way for a distance of 289.25 feet to the point of commencement of a non-tangent curve to the left, thence leaving said right of way, said curve having a radius of 125.25 feet, a central angle of 45 degrees 18 minutes 04 seconds, a chord bearing of South 56 degrees 04 minutes 17 seconds West for a chord distance of 96.47 feet; thence leaving said right of way, run along arc of said curve for a distance of 99.03 feet; thence run South 34 degrees 06 minutes 04 seconds West for a distance of 63.33 feet; thence run South 89 degrees 38 minutes 14 seconds West for a distance of 143.98 feet; thence run North

00 degrees 00 minutes 00 seconds West for a distance of 112.66 feet; thence run North 90 degrees 00 minutes 00 seconds West for a distance of 241.21 feet; thence run South 00 degrees 00 minutes 00 seconds East for a distance of 476.56 feet; thence run South 07 degrees 43 minutes 19 seconds West for a distance of 461.80 feet; thence run North 89 degrees 20 minutes 34 seconds West for a distance of 253.60 feet to the POINT OF BEGINNING. Said parcel contains 458,712 square feet or 10.53 acres more or less. Less and except any portion lying within Cahaba Beach Road right of way.

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

WHEREAS, a release/disposal of hazardous substances, which may have included, but is not limited to, acetone; sec-butylbenzene; tert-butylbenzene; carbon disulfide; 2-chlorotoluene; 4-chlorotoluene; 1, 2-dibromoethane; 1,1-dichloroethene; trans-1,2-dichloroethene; ethylbenzene; isopropylbenzene; methylene chloride; methyl ethyl ketone; n-propylbenzene; styrene; vinyl chloride; cis-1,2-dichloroethene; m,p-xylene; o-xylene; xylenes; p-isopropyltoluene; 1,3,5-trimethylbenzene; 1,2,3-trimethylbenzene; 1,2,4-trimethylbenzene; tetrachloroethene; hexachlorobutadiene; naphthalene; toluene; and trichloroethene occurred on the Property;

WHEREAS, the selected "remedial action" for the Property, which has now been implemented, provided in part for the following actions: removal of the AST and underground piping, excavation of impacted soils, removal of piping underneath the former building onsite, followed by remediation by natural attenuation following a period of groundwater monitoring;

WHEREAS, pursuant to the Brownfield Redevelopment and Voluntary Cleanup Plan (VCP), Grantor and its assignees agreed to perform operation and maintenance activities at the Property, pursuant to an ADEM-approved Voluntary Cleanup Plan, 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 VCP 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, the purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property to reduce the risk to human health to below the target risk levels for those hazardous wastes, hazardous constituents, hazardous substances, pollutants, or contaminants that remain on the Property;

WHEREAS, due to sec-butylbenzene; tert-butylbenzene; carbon disulfide; 2-chlorotoluene; 1,2-dibromoethane; 1,1-dichloroethene; cis-1,2-dichloroethene; hexachlorobutadiene; isopropylbenzene; methyl ethyl ketone; methylene chloride; naphthalene; tetrachloroethene; trichloroethene; 1,2,4-trimethylbenzene; 1,3,5-trimethylbenzene and vinyl chloride contamination in the groundwater above ADEM's preliminary screening values, the exposure pathway of concern is ingestion of groundwater;

WHEREAS, further information concerning the release/disposal and the activities to correct the effects of the release/disposal may be obtained by contacting Chief, Land Division, Alabama Department of Environmental Management ("ADEM"), or his or her designated representative, at 1400 Coliseum Boulevard, Montgomery, Alabama, 36110; and

WHEREAS, the Administrative Record concerning the Property is located at:

North Shelby Office Park, LLC
2316 First Avenue South
Birmingham, Alabama 35233

and

Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110

NOW, THEREFORE, Grantor hereby grants this Environmental Covenant to the 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 following requirements set forth in paragraphs 1 through 3 below:

1. **OWNER.** The term "Owner" means the GRANTOR, its successors and assigns in interest.

2. **USE RESTRICTIONS.** The following shall not take place on the Property without obtaining prior written approval from ADEM:

- a. Use of groundwater underlying the Property for potable purposes.
- b. Use of the Property for residential purposes.
- c. The siting of any school or day care facility on the Property.
- d. The excavation of any soil from the Property without the implementation of appropriate soil management procedures.

3. **GENERAL PROVISIONS**

A. **Restrictions to Run with the Land.** This Environmental Covenant runs with the land pursuant to ALA. CODE § 35-19-5(a) (2010 Cum. Supp.); is perpetual, unless modified or terminated pursuant to the terms of this Covenant pursuant to ALA. CODE § 35-19-

9 (Cum. Supp. 2010); 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 ALA. CODE § 35-19-4(b) (2010 Cum. Supp.), the Owner shall provide written notification, pursuant to Section J, below, following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the Property. Said notification shall be provided within fifteen (15) days of each event listed in this Section B.
- C. Registry/Recordation of Environmental Covenant; Amendment; or Termination. Pursuant to ALA. CODE § 35-19-12(a) (2010 Cum. Supp.), this Environmental Covenant and any amendment or termination thereof, shall be contained in ADEM's registry for 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 ALA. CODE § 35-19-12(b) (2010 Cum. Supp.). Grantor shall be responsible for filing the Environmental Covenant or notice thereof within thirty (30) days of the final required signature upon this Environmental Covenant.
- D. Compliance Certification. In accordance with ALA. CODE § 35-19-4(b)(2) (2010 Cum. Supp.), the Owner shall submit an annual report to the Chief of the ADEM Land Division on or before the anniversary of the date this Covenant was signed by the Grantor. Said report shall detail the Owner's compliance, and any lack of compliance with the terms of the Covenant.
- E. Right of Access. Owner hereby grants ADEM; ADEM's agents, contractors and employees; the Owner's agents, contractors and employees; and any Holders 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 to the other signatories hereto:

- 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, except for the following:
 - a. a mortgage in favor of Protective Life Insurance Company;
 - b. a mortgage in favor of Superior Bank;
 - c. rights-of-way granted to Alabama Power Company; and
 - d. public road dedications.
- iii) that the Grantor has identified all other parties that hold any interest (e.g., encumbrance) in the Property and 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; and
- 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 ALA. CODE § 35-19-11 (2010 Cum. Supp.), 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. The parties hereto expressly agree that ADEM has the power to enforce this Environmental Covenant. 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 restrict ADEM or the GRANTOR from exercising any authority under applicable law.

I. Modifications/Termination. Any modifications or terminations of this Environmental Covenant must be made in accordance with ALA. CODE §§ 35-19-9 and 35-19-10 (2010 Cum. Supp.).

- 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
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110

GRANTOR

North Shelby Office Park, LLC
Attn: Matthew T. Lemak
2316 First Avenue South
Birmingham, Alabama 35233

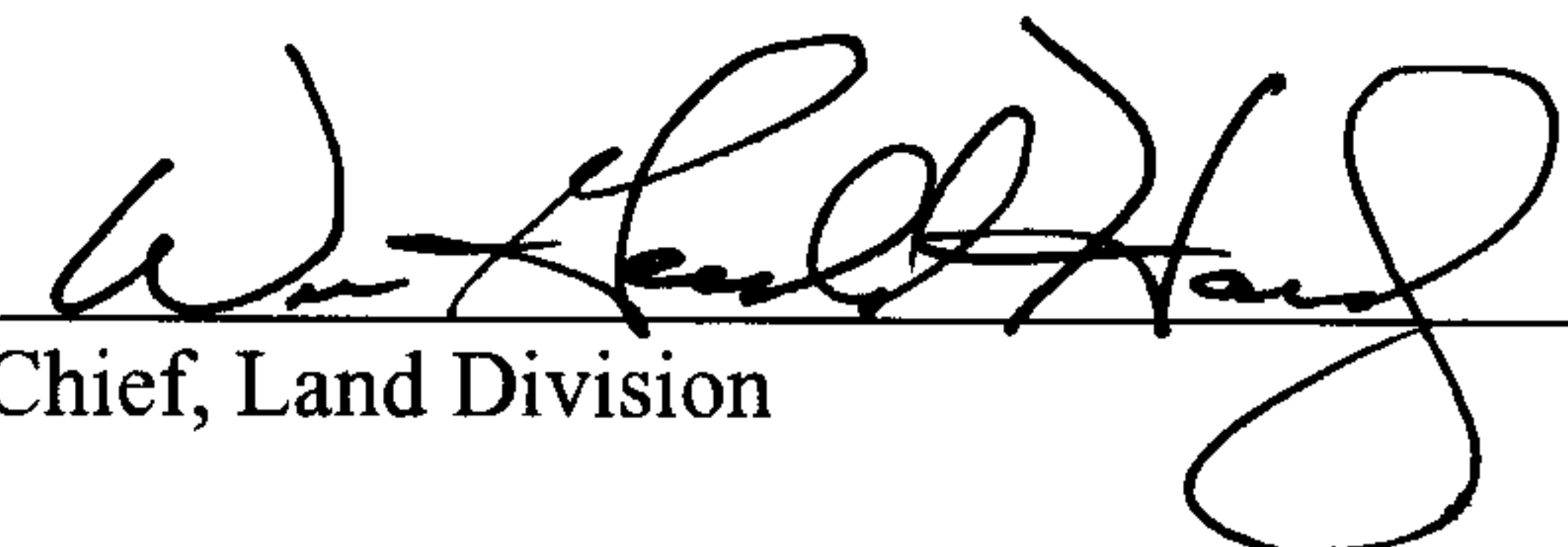
- K. No Property Interest Created in ADEM. This Environmental Covenant does not in any way vest in ADEM any interest in the Property that is subject to the Environmental Covenant. Furthermore, the act of approving this Environmental Covenant does not in any way vest in ADEM any interest in the Property in accordance with ALA. CODE § 35-19-3(b) (2010 Cum. Supp.).
- 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 ALA. CODE § 35-19-8(a) (2010 Cum. Supp.), Grantor shall record this Environmental Covenant and any amendment or termination of the Environmental Covenant in every county in which any portion of the real property subject to this Environmental Covenant is located. Grantor agrees to record this Environmental Covenant within thirty (30) days after the date of the final required signature upon this Environmental Covenant.
- O. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as provided in Paragraph 3(N) above.
- P. Distribution of Environmental Covenant. Within fifteen (15) days of recording this Environmental Covenant, the Grantor shall distribute a recorded and date stamped copy of the recorded Environmental Covenant in accordance with ALA. CODE § 35-19-7(a) (2010 Cum. Supp.). However, pursuant to ALA. CODE § 35-19-7(b) (2010 Cum. Supp.), the validity of this Environmental Covenant will not be affected by the failure to provide a copy of the Covenant as provided herein.

- Q. ADEM References. All references to ADEM shall include successor agencies, departments, divisions, or other successor entities.
- R. Grantor References. All references to the Grantor shall include agents, heirs, successors and assigns.
- S. Other Applicable Party(ies). All references to Other Applicable Party(ies) shall include successor agencies, departments, divisions, other successor entities, agents, heirs, successors and assigns.

IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals.

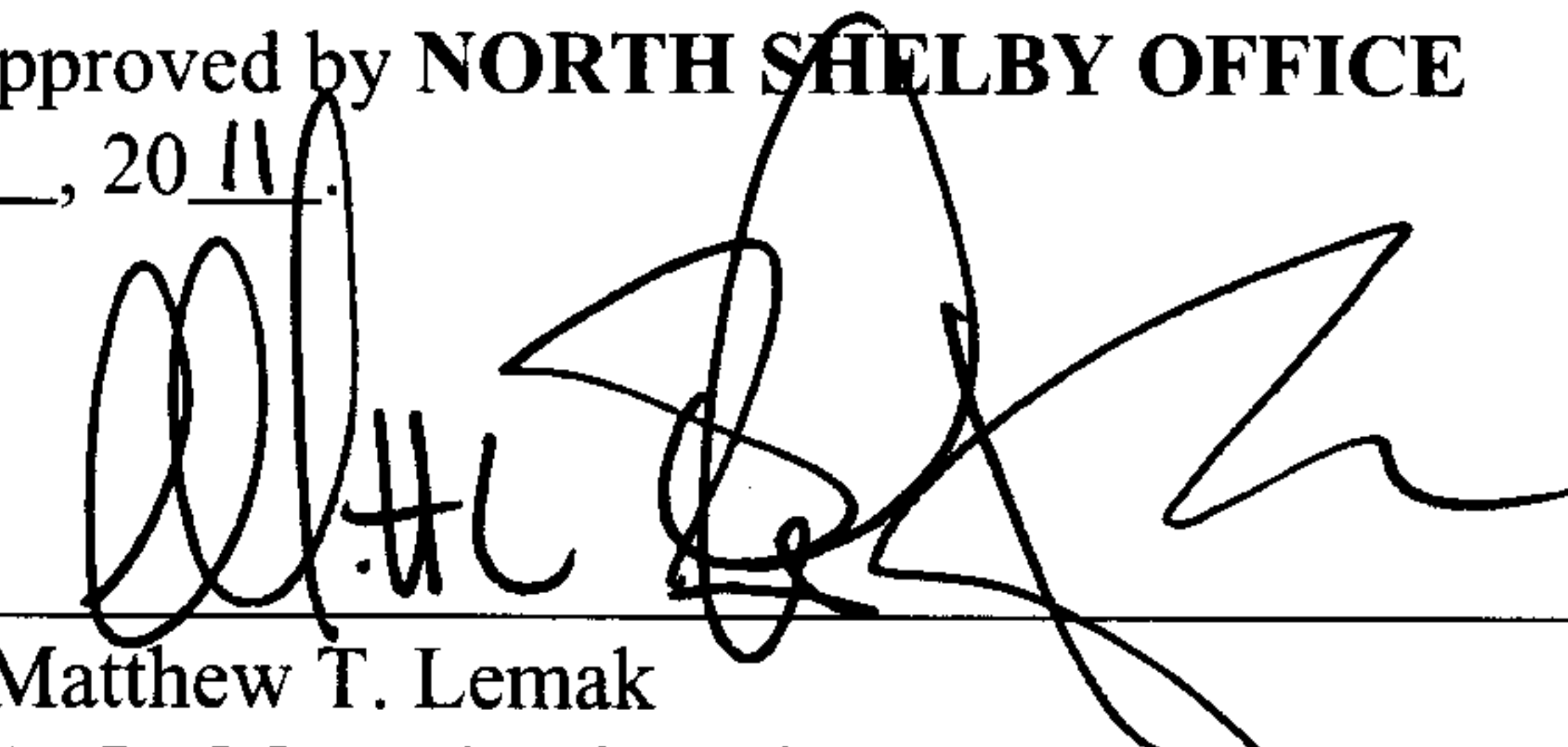
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT


This Environmental Covenant is hereby approved by the **STATE OF ALABAMA** this 4th day of May, 2011.

By: 
Chief, Land Division

NORTH SHELBY OFFICE PARK, LLC

This Environmental Covenant is hereby approved by **NORTH SHELBY OFFICE PARK, LLC** this 8th day of April, 2011.

By: 
Matthew T. Lemak
As Its Managing Member


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STATE OF ALABAMA)
)
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county and state, hereby certify that Matthew T. Lemak, whose name as Managing Member of **NORTH SHELBY OFFICE PARK, LLC**, an Alabama limited liability company, is signed to the foregoing Environmental Covenant and who is known to me, acknowledged that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this 8th day of April, 2011.

April C. Mulkey
Notary Public
My Commission Expires: 9/25/12


(SEAL)

CERTIFICATION OF FILING WITH PROBATE COURT

STATE OF ALABAMA)
)
SHELBY COUNTY)

I, Jessica Holland, Clerk of the Shelby County Probate Court, do certify that the foregoing Environmental Covenant was lodged in my office for record, and that I have recorded it, and the certificate thereon, this 31st day of May, 2011.

Jessica Holland
Clerk, Shelby County Probate Court


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