

50045344

NO. DACA01-2-97-443

**DEPARTMENT OF THE ARMY**  
**EASEMENT FOR ELECTRIC POWER FACILITY**  
**LOCATED ON**  
**ALABAMA ARMY AMMUNITION PLANT**  
**CHILDERSBURG, ALABAMA**

Inst # 1997-26300

**THE SECRETARY OF THE ARMY**, under and by virtue of the authority vested in the Secretary by Title 43, United States Code, Section 961, having found that the granting of this easement is not incompatible with the public interest, hereby grants to **ALABAMA POWER COMPANY**, hereinafter referred to as the grantee, an easement for the construction, operation, and maintenance of electrical distribution facilities, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as described on Exhibit A and shown on Exhibit B, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of fifty (50) years, beginning June 1, 1997, and ending May 31, 2047.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of Two thousand three hundred seventy dollars (\$2,370.00) in full for the term hereof to the order of the Finance and Accounting Officer, Mobile District, and delivered to District Engineer, U. S. Army Engineer District, Mobile, ATTN: CESAM-RE-MD, P.O. Box 2288, Mobile, Alabama 36628-0001

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by

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the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### **3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to Alabama Power Company, Corporate Real Estate, 600 North 18th Street, Post Office Box 2641, Birmingham, Alabama 35291-2641 and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Alabama 36628-0001, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

### **4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

## **5. SUPERVISION BY THE INSTALLATION COMMANDER**

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Installation Commander, hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

## **6. APPLICABLE LAWS AND REGULATIONS**

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

## **7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

## **8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

## **9. PROTECTION OF GOVERNMENT PROPERTY**

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.



## **10. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

## **11. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said Installation Commander, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

## **12. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

## **13. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

## **14. REQUIRED SERVICES**

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

## **15. RELOCATION OF FACILITIES**

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

## **16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

## **17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted.

Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

## **18. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

## **19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit C. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on RESTORATION.

## **20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer (Commander's Representative, Volunteer Army Ammunition Plant, P. O. Box 22607, Chattanooga, Tennessee 37422-2607, (423) 855-7109) and protect the site and material from further disturbance until said officer gives clearance to proceed.

## **21. NON-DISCRIMINATION**

The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

## **22. RESTORATION**

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and



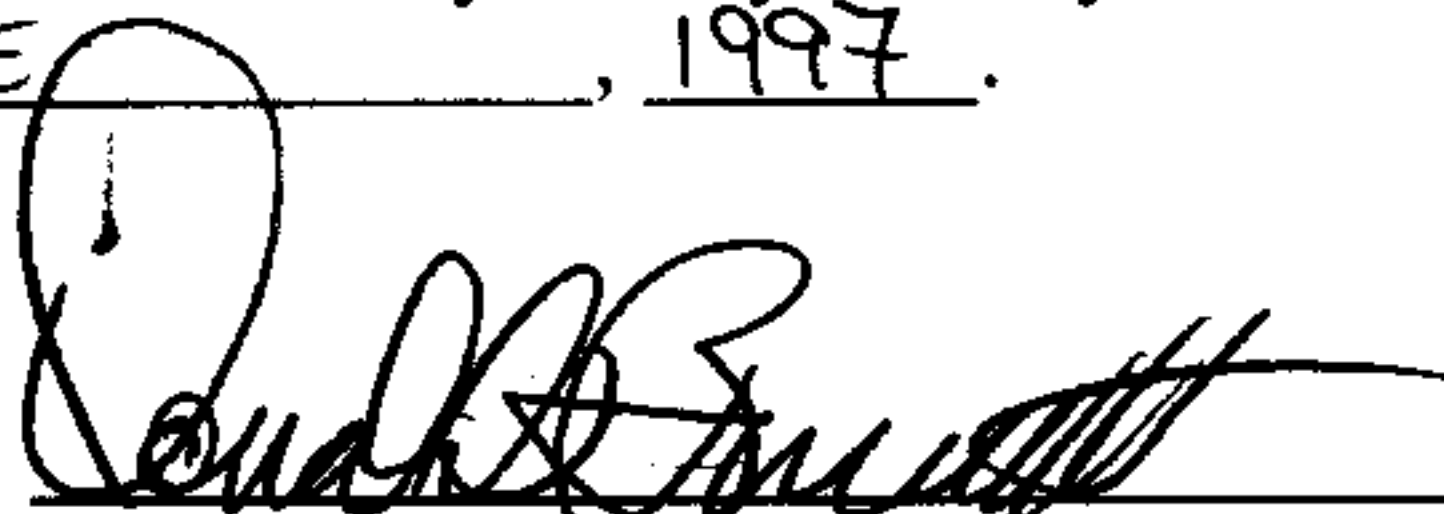
perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

### 23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 16<sup>TH</sup> day of JUNE, 1997.

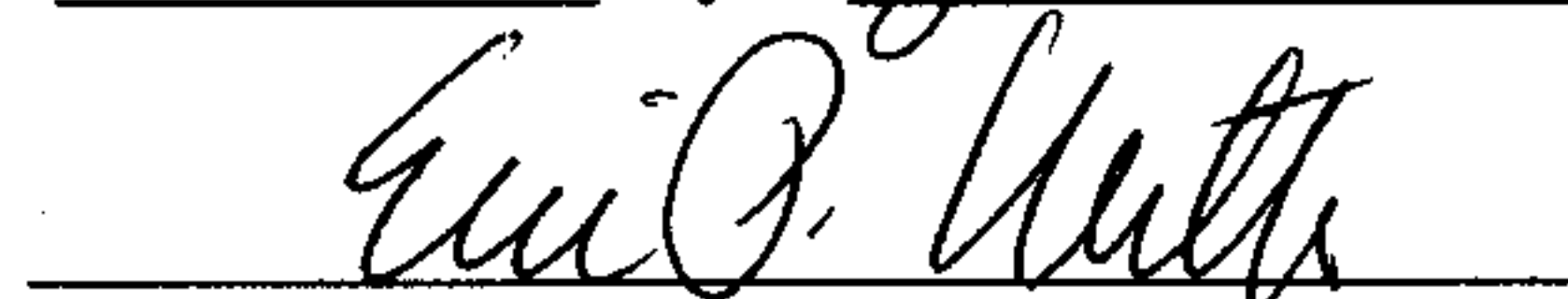
  
DONALD L. BURCHETT  
Chief, Real Estate Division

STATE OF ALABAMA

COUNTY OF MOBILE

I the undersigned, a Notary Public in and for said County and State, hereby certify that Donald L. Burchett, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 16<sup>th</sup> day of June,  
1997.

  
NOTARY PUBLIC  
My Commission Expires 8/25/98

(SEAL)

THIS EASEMENT is also executed by the grantee this 10<sup>th</sup> day of June, 1997.

Susan N. Story  
Vice President Alabama Power Co.

STATE OF ALABAMA )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Susan N. Story, whose name as Vice President of Alabama Power Co., whose name as foregoing instrument and who is known to me, acknowledged before me on this day, that being informed of the contents of the instruments, he, in his official capacity, executed the same voluntarily and with full authority on the same bears date.

Given under my hand and seal this 10<sup>th</sup> day of June, 1997.

John M. Gray  
NOTARY PUBLIC

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Mar. 13, 2001.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

(SEAL)

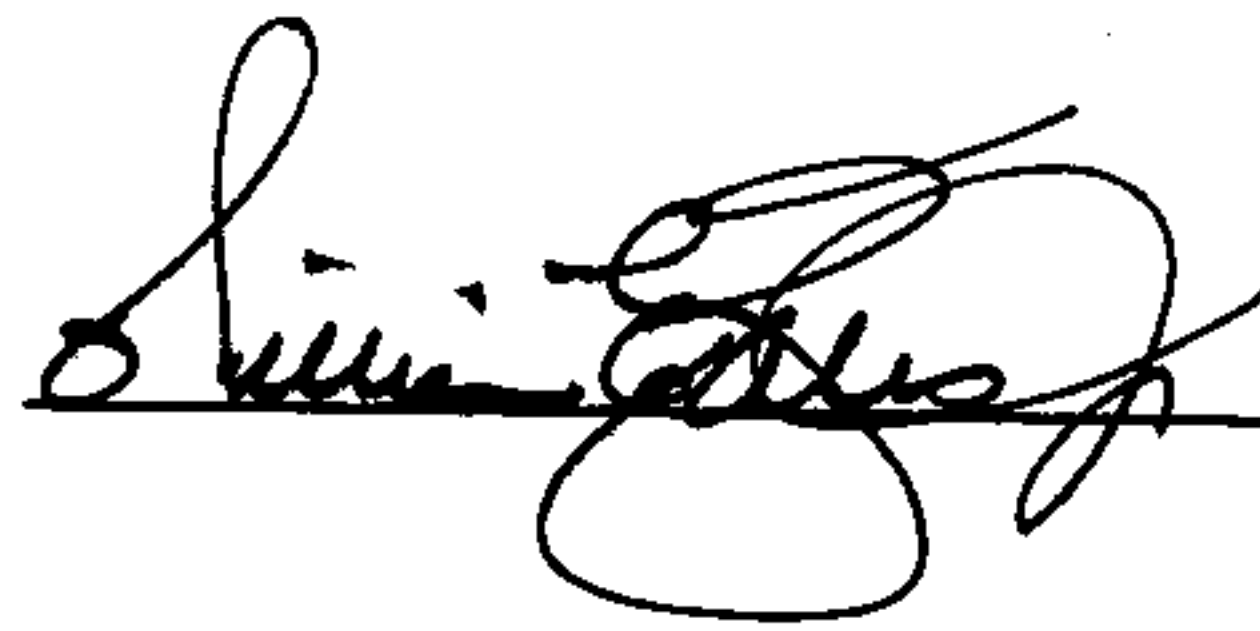
My Commission Expires: \_\_\_\_\_



CORPORATE CERTIFICATE

I, William E. Zales, Jr. certify that I am the  
Assistant Secretary of the corporation named as grantee herein;  
that Susan N. Story who signed this easement on  
behalf of the grantee was then Vice President of said corpora-  
tion; that said easement was duly signed for and in behalf of said  
corporation by authority of its governing body, and is within the scope  
of its corporate powers.

(CORPORATE SEAL)

A handwritten signature in dark ink, appearing to read "William E. Zales, Jr.", is written over a horizontal line. The signature is stylized with large loops and a prominent initial "W".

ALABAMA ARMY AMMUNITION PLANT  
POWERLINE EASEMENT TO  
ALABAMA POWER COMPANY

PARCEL 1

All that tract or parcel of land lying and being in Sections 31 and 32, Township 19 South, Range 3 East, Huntsville Meridian, Talledega County Alabama, more particularly described as follows:

Commencing at a railroad spike which is at the southwest corner of said Section 32;

Thence N 02° 20' 43" E 4,213.7 feet to a point which is on the north boundary of a tract of land conveyed to Alabama Power Company from the United States of America by Quitclaim Deed dated 23 March 1959 and recorded in Deed Book 234, page 55 of the records in the Office of the Judge of Probate of Talledega County, Alabama, said point being the POINT OF BEGINNING;

Thence West along the north boundary of said Alabama Power Company tract a distance of 2,285 feet, more or less, to a point which is on the east bank of the Coosa River;

Thence Northeast, upstream, along the meanders of the east bank of said river a distance of 147 feet, more or less, to a point 146.5 feet North of and measured perpendicular to the north boundary of said Alabama Power Company tract;

Thence East along a line 146.5 feet North of and parallel with the north boundary of said Alabama Power Company tract a distance of 2,372 feet, more or less, to a point on the western right-of-way line of an existing powerline easement conveyed to Alabama Power Company from the United States of America by Quitclaim Deed dated 20 August 1975 and recorded in Deed Book 400, pages 387 through 389 of the records in the Office of the Judge of Probate of Talledega County, Alabama;

Thence S 02° 19' 56" W along the western right-of-way line of said existing powerline easement a distance of 146.6 feet, more or less, to a point on the north boundary of said Alabama Power Company tract;

Thence West along the boundary of said Alabama Power Company tract a distance of 108 feet, more or less, to the point of beginning.

Containing 7.97 acres, more or less, and being a part of Tract 31 of the Alabama Army Ammunition Plant, Alabama.

## PARCEL 2

All that tract or parcel of land lying and being in Section 32, Township 19 South, Range 3 East, Huntsville Meridian, Talledega County, Alabama, more particularly described as follows:

Commencing at a railroad spike which is at the southwest corner of said Section 32;

Thence N 02° 20' 43" E 4,213.7 feet to a point which is on the north boundary of a tract of land conveyed to Alabama Power Company from the United States of America by Quitclaim Deed dated 23 March 1959 and recorded in Deed Book 234, page 55, of the records in the Office of the Judge of Probate of Talledega County, Alabama;

Thence South 50 feet to a point on the north boundary of a tract of land conveyed to Coosa River Newsprint Company from the United States of America by Quitclaim Deed dated 16 January 1948;

Thence East along the north boundary of said Coosa River Newsprint Company tract and subsequently along the north boundary of a tract of land owned by Alabama Power Company a distance of 285 feet more or less, to a point which is on the western right-of-way line of Alabama State highway No. 235 ("A" Street) and the POINT OF BEGINNING;

Thence Due West along the boundary of said Alabama Power Company tract a distance of 77.4 feet, more or less, to a point on the eastern right-of-way line of an existing powerline easement conveyed to Alabama Power Company from the United States of America by Quitclaim Deed dated 20 August 1975 and recorded in Deed Book 400, pages 387 through 389 of the records in the Office of the Judge of Probate of Talledega County, Alabama.

Thence N 02° 19' 56" E along the eastern right-of-way line of said existing powerline easement a distance of 196.7 feet;

Thence Due East 66.1 feet, more or less, to a point on the western right-of-way line of said highway;

Thence S 00° 58' 00" E along the western right-of-way line of said highway a distance of 196.5 feet, more or less, to the point of beginning.

Containing 0.32 of an acre, more or less, and being a part of Tract 31 of the Alabama Army Ammunition Plant, Alabama.

Parcels 1 and 2 containing in the aggregate 8.29 acres, more or less.



The bearings and distances in the above descriptions were taken from Alabama Power Company drawing No. C-384284 dated December 12, 1996.\*

100 FT. POWER LINE R/W EASEMENT  
GRANTED TO ALABAMA POWER CO. BY  
Q.C.D. DATED 8-20-75 & 8-28-75 FOR  
INDEFINITE PERIOD.

LEASE NO. DA-01-076-ENG-1783 FOR  
INDUSTRIAL PURPOSES TO BEAUNT FIBERS  
DIVISION OF BEAUNT CORP. FROM 3-29-48  
TO 3-28-88 (S/A NO. 1 THROUGH 10)  
TERMINATED 3-28-73.  
20 YR. LEASE NO. DA-01-076-ENG-6379  
FOR IND. FACILITIES TO TENN. CORP.  
FROM 1-6-65  
TERMINATED 1-5-75.

NO. 33-13  
ROAD R/W. EASEMENT  
COUNTY OF TALLADEGA  
DATED 3-25-54 FOR 10

EASE NO. W09-026 ENG-15001 TO ATLANTIC  
OAST LINE, CENTRAL OF GEORGIA RAILWAY &  
SOUTHERN RAILWAY & S/A'S NO. 1 THRU 6 FOR  
A PERIOD OF 48 YRS. FROM 8-16-48.

20 YR. LEASE NO. DA-01-076-ENG-1783  
FOR INDUSTRIAL PURPOSES TO BEAUNT FIBERS  
DIVISION OF BEAUNT CORP. FROM 3-29-48  
TO 3-28-88 (S/A NO. 1 THROUGH 10)  
TERMINATED 3-28-73.

# A PORTION OF ALABAMA ARMY AMMUNITION PLANT

Sections 31 & 32, Township 19 South, Range 3 East,  
Huntsville Meridian, Talledega County, Alabama

SCALE: 1" = 2000'

EASEMENT AREA

EXHIBIT "B"

## **PRELIMINARY ASSESSMENT SCREENING (PAS)**

The Environmental Baseline Study/Preliminary Assessment Screening (EBS/PAS): An EBS/PAS has been conducted and no Hazardous, Toxic, Radioactive Waste (HTRW) substances were identified as released, stored, or disposed of on the property in the threshold quantities. The Community Environmental Response Facilitation Act (CERFA) Report for Alabama Army Ammunition Plant dated April 1994 serves as the EBS/PAS and is maintained on file at Volunteer Army Ammunition Plant and the Army Environmental Center.

Exhibit C

Inst. # 1997-26300

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SHELBY COUNTY JUDGE OF PROBATE  
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