

STATE OF ALABAMA)

TUSCALOOSA COUNTY )

**TIMBER CONTRACT**

This Agreement, made and entered into the 15<sup>th</sup> day of May, 2001, by and between the Board of Trustees of the University of Alabama, Tuscaloosa, Alabama, hereinafter called "University," and H. C. Moore & Son, Inc. of Marion, Al, hereinafter called "Purchaser."

**W I T N E S S E T H**

1. University agrees to sell to Purchaser and Purchaser agrees to buy from University all timber conveyed in this contract.

2. Timber conveyed herein shall consist of all merchantable timber located in:

TRACT 521-2 - That part of Section 18, Township 21 South, Range 4 West, Shelby County, Alabama, bounded on the west by an unnumbered gravel road that runs in a southerly direction from its intersection with the north boundary line of said Section 18 to a woods road that continues to run in a southerly direction to its intersection with the gas line that forms the southern boundary of the timber tract and on the south by a gas line that runs generally in a west southwest-east northeast direction from its intersection with a woods road on the west to its intersection with the east boundary line of said Section 18, as depicted on the map of the tract attached hereto as Exhibit B. Approximately 214 acres. (See Exhibit B, Map of tract)

3. The term of this contract shall be for twelve (12) months starting on the 15<sup>th</sup> day of May, 2001 and terminating at 12:00 o'clock noon on the 15<sup>th</sup> day of May, 2002.

4. Purchaser agrees to pay University the sum of \$400,259.00 for the timber conveyed herein. Payment shall be made upon execution of the contract of sale.

5. Purchaser shall furnish University a performance bond or other surety acceptable to University in amount of \$20,012.95 to guarantee performance of this contract. Said bond or surety shall be returned to Purchaser upon satisfactory completion of the terms of this contract, less any monies owed University by Purchaser.

6. Notices hereunder shall be deemed sufficient by mailing by registered mail, return receipt requested, any notice herein required for the Purchaser at the following address:

**Inst # 2001-18521**

**05/09/2001-18521  
10:45 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
015 CJ1 453.50**

and for the University at the following address:

Land Management Office  
The University of Alabama  
P.O. Box 870176  
Tuscaloosa, AL 35487-0176

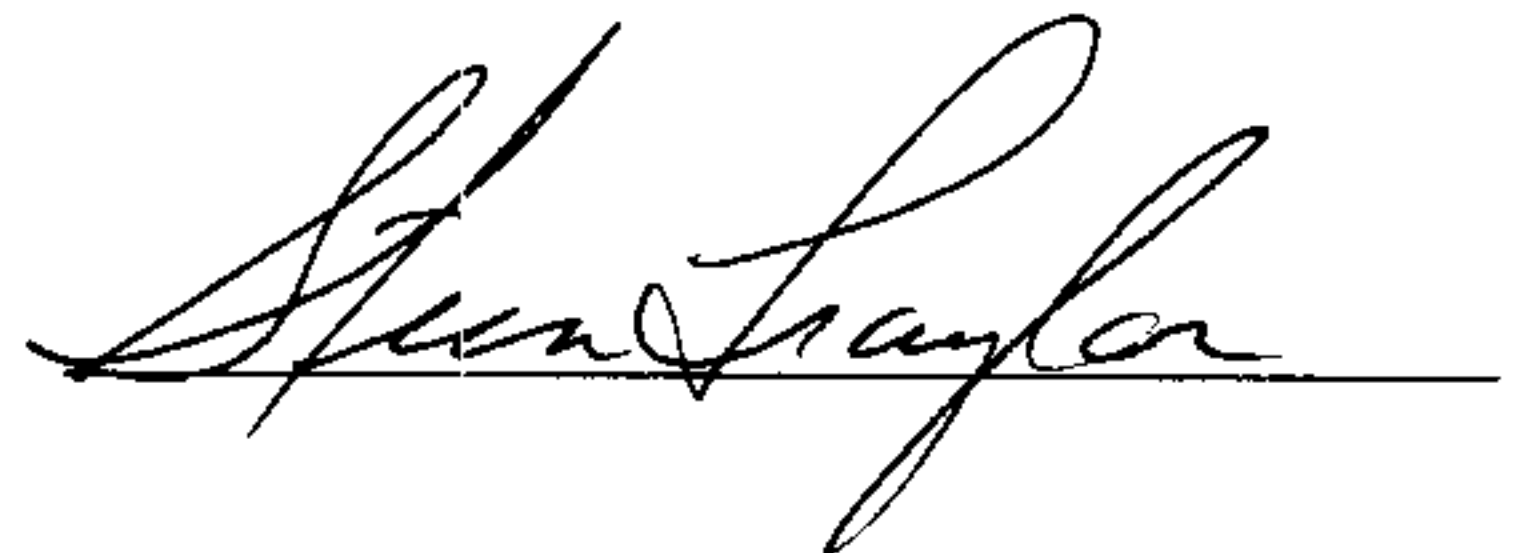
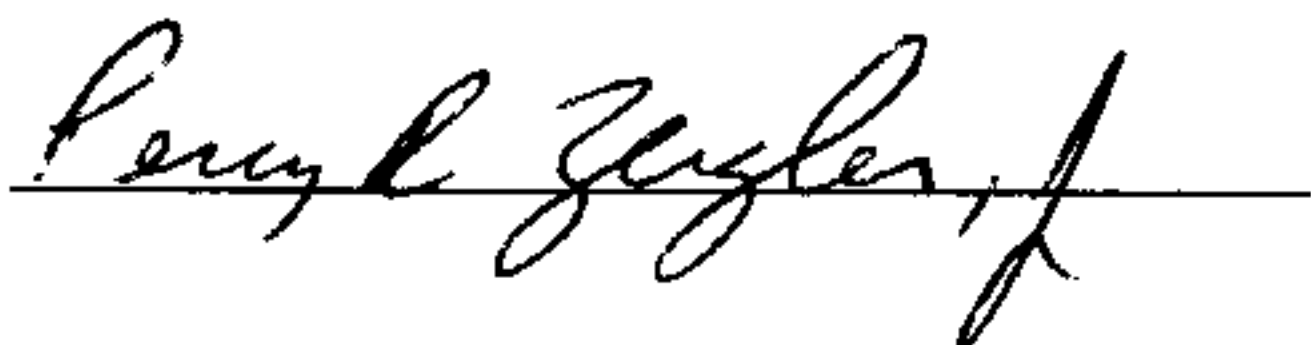
7. Purchaser agrees to carry workman's compensation and comprehensive general public liability and property damage insurance, including vehicular coverage in amounts of not less than \$1,000,000 bodily injury and \$1,000,000 property damage. **University must be named as an additional insured on such policies for the duration of the contract.** Purchaser agrees to furnish to University certificates of said insurance policies, upon request to furnish copies of said policies, and to notify University of cancellation of any of said policies upon Purchaser's receipt of such notice.

8. Attached hereto is Exhibit "A" which contains additional terms, covenants and conditions which are material to this contract and which are wholly incorporated into this contract by reference thereto.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed on the day and year first written above.


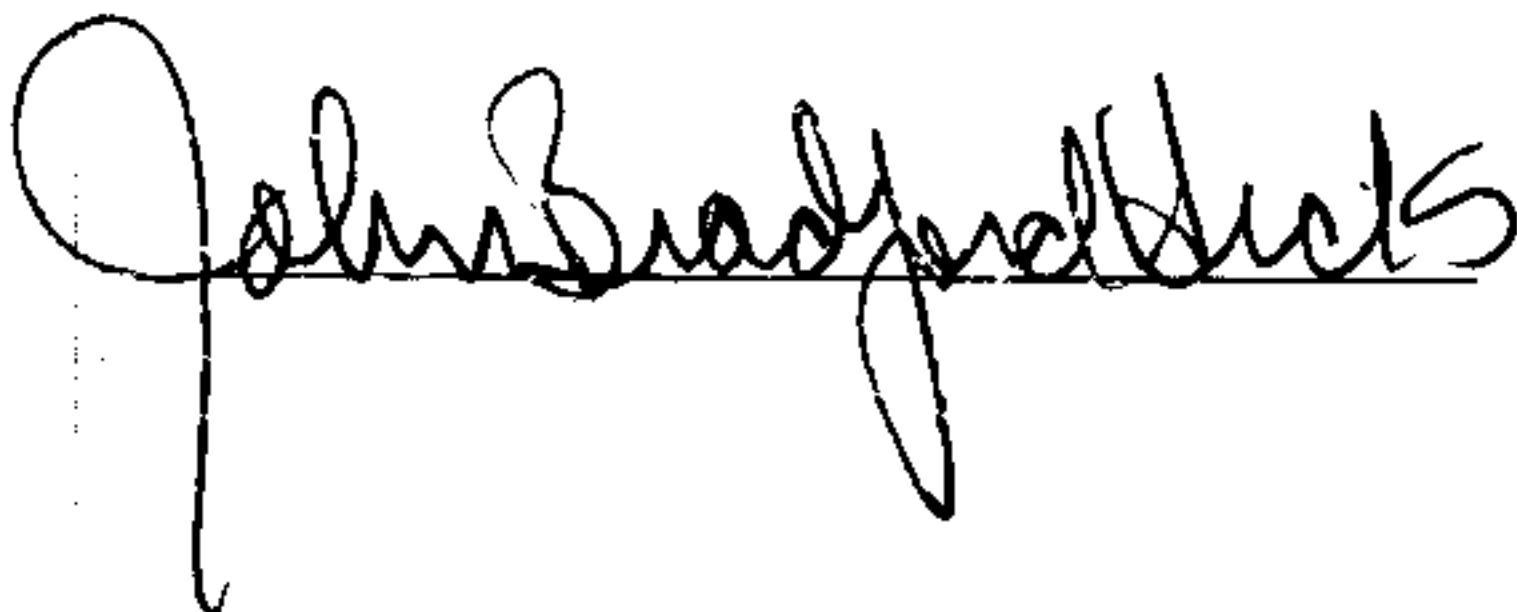
ATTEST:

H. C. Moore & Son, Inc.



ATTEST:

THE BOARD OF TRUSTEES OF  
THE UNIVERSITY OF ALABAMA,  
a corporation



Robert A. Wright  
Vice President for  
Financial Affairs and Treasurer  
The University of Alabama  
Tuscaloosa, Alabama

This instrument was prepared by:

George B. Gordon  
Office of Counsel  
The University of Alabama  
P.O. Box 870106  
Tuscaloosa, AL 35487

## TIMBER

### EXHIBIT A

A. The Purchaser shall not have the right to grant rights-of-way of any kind, including without limitation, rights-of-way for railroads, for roads of any type, public or private, or for telegraph, telephone, or transmission lines, or to grant easements of any kind or nature on or across the described property without the written consent of University. The Purchaser shall, without expense to University, acquire and maintain possession of any necessary haulage way rights or other rights not owned by University. In exercising its rights hereunder the Purchaser shall not materially interfere with the reasonable use by University of the Premises or with other third party's use of the Premises under rights heretofore granted by University.

B. This contract is made SUBJECT to all easements or other rights now existing for railroads, public roads, private roads, transmission lines, telephone lines, pipe lines, mining leases, or other purposes affecting the Premises.

C. The Purchaser hereby agrees to indemnify, protect and hold harmless the University from and against any and all claims by or on behalf of any person, firm, corporation, or governmental authority, arising out of, attributable to, or in connection with the cutting, removing, loading, or marketing of said timber; Purchaser's occupation, use, conduct, or management of the premises or for any other reason or reasons whatsoever, including, but not limited, to the following:

(1) Any and all claims for injury or death to persons or damage to property.

(2) Any and all claims for any failure by Purchaser to comply with the ordinances, laws or statutes and any regulations or rules promulgated pursuant thereto of any municipality, county, the State of Alabama, or the federal government, in connection with the exercise of Purchaser's rights hereunder.

(3) Any and all claims, losses, costs or expenses, including reasonable attorney's fees and court costs, which may arise in connection

with or on account of any one or more of the claims encompassed in this paragraph.

(4) It is recognized by University and Purchaser that there are or may be in the vicinity of, or in, under or upon, some or all of the Premises, water wells or abandoned mine workings. Nothing contained herein, nor any other information, oral, in writing or by diagram, drawing or map, furnished by University shall be construed as a warranty or representation of any kind of the location or condition of any such abandoned workings. University expressly states that it does not know definitely the location or condition of any such abandoned workings. Purchaser expressly assumes all risks of every kind whatsoever with respect to its operations at or near any such wells or abandoned workings and, in addition to any other similar provisions contained herein, Purchaser agrees to and does hereby indemnify and hold University harmless from any and all claims of every kind whatsoever arising out of or resulting from the presence of any such abandoned workings or wells in the vicinity of, or in, under or upon any or all of the lands described herein, or out of the physical condition of any such workings or wells.

D. The University's officers, agents, employees, engineers and independent contractors shall have the right at any time and from time to time to visit, inspect, survey and measure all or any part of the Premises for the purposes of determining whether or not Purchaser has complied and is complying with its obligations. Purchaser agrees that it and its agents, officers and employees will cooperate with and assist University's officers, agents, employees, engineers and independent contractors with such visits, inspections, surveys and measurements.

E. All payments required by this contract shall be accompanied by verified statements, executed by Purchaser, or a qualified officer on behalf of Purchaser, indicating the location of the timber for which payment is tendered. The location description should include the part or parts of a specific Section, the Township and the Range.

F. Purchaser is an independent contractor, and University shall have no control or right to exercise any control whatsoever over Purchaser, Purchaser's employees or agents in the exercise of their rights of operations under this contract. The right of inspection under this contract, and other rights herein reserved by the University shall not give, or be deemed to give University the right to exercise control over the Purchaser or Purchaser's employees in its timber operations hereunder but rather to permit University to evaluate Purchaser's compliance with the provisions and obligations of this contract.

G. In regard to the actual harvesting of said timber, Purchaser agrees to the following covenants:

(1) In exercising its rights hereunder the Purchaser shall not materially interfere with the reasonable use by the University of the Premises or with the reasonable use by other grantees, contractors, or agents of the University of any portion of the Premises under rights heretofore or hereafter granted by the University. Purchaser also agrees that as to timber not conveyed to Purchaser but reserved to the University that University reserves and has the right to sell and convey said timber to other parties, together with the privilege of cutting and removing the same on any or all parcels of the above described lands.

(2) Should the Purchaser fail or refuse to cut said timber in compliance with the terms of this contract, or should the Purchaser at any time fail to carry out and perform any provision or provisions of this Agreement and such failure or refusal continues for more than five (5) days after written notice thereof, University, at its option, shall have the right, without prejudice to its other legal rights and remedies to cancel this contract, and upon such cancellation, all of the rights of the Purchaser hereunder shall cease and terminate. In such event the University; at its option, may draw upon or negotiate all or a portion of the performance bond required by Paragraph 5 hereof to the extent necessary or required to cure Purchaser's failure with the balance, if any, being returned to the Purchaser.



Notwithstanding the foregoing, upon the expiration of this contract, Purchaser shall have no duty to cut or remove timber from the Premises.

(3) Purchaser shall follow good forestry practices in all harvesting operations which shall include, but not be limited to, the following:

- (a) All harvested trees must be limbed and topped where felled prior to skidding, except that trees felled across boundaries or roads will be moved back onto the property or out of the road prior to limbing and topping.
- (b) No cut trees will be left leaning against or lodged in standing trees. No tops or limbs will be left hanging in residual trees.
- (c) All logging debris will be removed from roads, streams, and other improved areas.
- (d) All trees designated to be cut shall be utilized within the stump height and top diameter standards consistent with accepted forestry practices.
- (e) All trees not designated for cutting shall be protected against unnecessary injury by felling, skidding, and hauling operations; and any tree or trees destroyed or excessively damaged shall be paid for by Purchaser at a rate of three times the stumpage price paid for the conveyed timber, and at three times the replacement cost for all non-merchantable trees.
- (f) Any timber (merchantable or non-merchantable) not sold to Purchaser that must be cut or unavoidably damaged to facilitate Purchaser's removal of the sold timber must be approved in advance in writing by the University Forester. Based upon a volume estimate done by the University Forester, this unsold timber shall be paid for by the Purchaser at the same rate paid for the timber sold under this contract.

Non-merchantable timber shall be paid for using replacement cost.

(g) All skid trails shall be located, insofar as is possible, practical, and safe, to avoid damage to residual trees, soil and streams.

(h) All landings and deck areas shall be located in areas mutually agreed upon by the University Forester and the Purchaser or his representative. All existing roads and any new roads on the Premises or on other property of the University used for ingress or egress to the timber sale area shall be kept in passable condition during operations and restored to substantially their former condition upon completion of the harvest operation.

(I) The Purchaser agrees to suspend or adjust logging and/or hauling operations at the University Forester's request, when, due to adverse weather, ground conditions are such that damage to the road systems and/or forest resources will be excessive. In the event of a suspension, at University's request, time will be added to the contract term equal to the length of suspended operations.

(j) All harvest operations will be carried out so as to be in accordance with Alabama's Best Management Practices for Forestry, 1993 or subsequent editions published by the Alabama Forestry Commission.

(k) Purchaser agrees not to dump, discard, or dispose on the Premises any refuse, debris and trash including, but not limited to: lubricating oils, hydraulic fluids, gasoline, diesel fuel, filters and gaskets, oil, fluid and gasoline containers, soft drink containers, sandwich wrappers, cans, bottles or any other types of refuse, garbage, debris or trash. Purchaser, at

its cost, shall establish and implement a program for trash management which shall include provisions for trash receptacles, trash removal, and measures to prevent accidental fuel spills.

(l) Purchaser agrees to comply with and to conduct all harvest operations in accordance with the requirements of the OSHA logging standards (29 CFR parts 1910 and 1928) and as the same may from time to time be amended.

(m) Prior to the commencement of any activities in the timber sale area, a pre-harvest conference will be conducted between the Purchaser or his representative and the University Forester to discuss all aspects of the harvest operations, safety measures and programs to be established or implemented by Purchaser, road and landing locations, and environmental concerns. In no case shall the University or its employees or agents, including its Forester, have either direct or indirect responsibility for matters related to safety programs or measures applicable, required, or desirable in the harvest activities conducted hereunder by Purchaser, and nothing herein shall be deemed or construed to relieve or release Purchaser from its obligations of safety duties to its employees or other persons on the Premises.

(n) Purchaser agrees to comply with all federal and State of Alabama environmental and hazardous waste laws and regulations in the conduct of its operations hereunder. Purchaser agrees not to release, dispose of, discharge, dump, deposit, or spill any hazardous or solid waste [as those terms are defined in Alabama Code Section 22-30-3 (1975)] on University lands or lands adjacent to University lands which may contaminate or pollute the



soil, surface or ground waters, or air on the University's lands.

- (o) Purchaser shall be responsible for determining if permits under the Endangered Species Act, the National Flood Insurance Act, the Clean Water Act, or any other federal environmental law or other governmental environmental regulations are required in order for Purchaser to harvest the timber located on the property described herein. To the extent any threatened or endangered species are found on the Premises, or if Purchaser is otherwise prevented from harvesting any of the timber and/or trees herein conveyed as a result of any such act, law, or governmental regulation, the Purchaser, at its election, shall have the option to: (a) cancel this Agreement without liability, and the University shall reimburse Purchaser for the full purchase price less the value of any timber and/or trees already cut; or (b) cancel the Agreement only as to the affected acreage and timber and/or trees located thereon, in which event the University shall reimburse Purchaser for the prorated portion of the purchase price related to the volume of timber that Purchaser is unable to harvest as a result of any such governmental environmental act, law, or regulation as set out above. The volume of timber on the affected acreage shall be determined by a joint timber cruise performed by the Purchaser and the University's Forester. Purchaser also agrees to furnish to the University's Forester the unit prices for each class

of forest products that Purchaser used to calculate its original purchase price accompanied by sufficient documentation in support and justification of those unit prices. The amount of the purchase price reimbursement shall be calculated by multiplying the timber volumes for each class of forest product that were determined by the joint timber cruise by the unit price for each class of forest product that was used by Purchaser in developing its original purchase price. If reimbursement amount resulting from the foregoing calculation is acceptable to the University and Purchaser, then the University shall pay the agreed upon reimbursement amount to Purchaser within ten (10) business days. If the University and Purchaser are unable to agree upon the amount of the reimbursement, then either party upon written notice to the other may elect to have the reimbursement amount determined by an independent Alabama licensed forester who is familiar with logging practices and the timber markets in Alabama. The parties shall mutually select this forester and they shall share equally the costs of the forester's services. The selected forester shall review all of the timber cruise volumes and unit price information and shall calculate the reimbursement amount. The forester's decision shall be binding upon the parties.

H. The Purchaser agrees:

(1) To comply with the laws and regulations of the State of Alabama, the United States of America, and all applicable local, municipal or zoning laws or ordinances in the exercise of the rights herein granted.

(2) To pay all contributions, levies, taxes, or other sums, by whatever name called, for which the University might otherwise be or become liable with reference to all wages or other sums paid to Purchaser's employees whose labor enters into the production, shipment, harvesting or sale of any timber, goods, wares, merchandise, or materials of any kind whatsoever produced under this contract. In all cases where such contributions, levies, taxes, or other sums are or shall be required to be paid under any Federal or State Unemployment or Social Security Act, by whatever name called, Purchaser agrees to hold University harmless against any Federal or State claims whatsoever fixed or levied with reference to the wages or other sums paid to Purchaser's employees.

(3) To indemnify, protect and hold University harmless from and against any and all claims, suits, demands, judgments, and decrees instituted or obtained by any third party, including claims for damages paid under the Workmen's Compensation Act, because of any act or acts of the Purchaser, it being agreed that the University shall not be liable for any claims for damages which may arise from the exercise by the Purchaser of the rights herein granted or for damages of or compensation paid to the employees of the Purchaser under the Workman's Compensation Act.

I. In accordance with the law, University shall assess the interest which it owns in the land described in this contract. In accordance with the law, the Purchaser shall assess and pay ad valorem taxes on all machinery, equipment, and other property now or hereafter located or placed by the Purchaser upon the Premises. The Purchaser shall also pay all so-called severance, license, or privilege taxes, if applicable, on timber which the Purchaser may cut or have the right to cut or have the right to cut hereunder.

J. This contract shall inure to and be binding upon the respective successors and assigns of the parties hereto, as well as the parties themselves; but if the Purchaser should assign or transfer, mortgage or pledge the rights herein granted without first procuring in writing the consent of the University, which shall

not be unreasonably withheld, or if the interests of the Purchaser hereunder should be sold under execution or other legal process without consent as aforesaid of University, or if the Purchaser should at any time during the life of this contract become insolvent, or if any proceedings in bankruptcy should be instituted by or against said Purchaser, including but not limited to, a reorganization under Chapter 11 of the Bankruptcy Act, or if a receiver or trustee should be appointed of or for the property of the Purchaser (any reference to "bankruptcy" or term of bankruptcy include present laws or subsequent laws amending or revising or rewriting the present Federal bankruptcy laws) or if the rights herein granted should be operation of law devolve or pass to others than Purchaser, then, in any of said cases, University shall have the right to terminate this contract after five (5) days written notice upon the occurrence of any of the foregoing events by giving the Purchaser notice of its termination; additionally, University shall be entitled to proceed under the terms hereof to protect its rights or claims for unpaid monies, royalties, damages or any other claims protected hereunder. Purchaser is required to give University written notice of any of the foregoing occurrences not later than fifteen (15) days from the notice of said occurrence to Purchaser. Notwithstanding the foregoing, Purchaser shall have the right (without the consent of University) to transfer this Agreement to a wholly owned subsidiary of Purchaser, provided Purchaser gives the University prior written notice of such subsidiary's name and address.

K. If Purchaser shall make any default in payment of any monies due to University under this contract, and such default or failure continues for more than five (5) days after written notice thereof, or shall fail to comply with any condition of this contract, all rights of Purchaser hereunder shall thereupon terminate and all operations on the Premises shall cease immediately upon notice of termination given as set forth in Paragraph 6 of the Timber Contract or personally delivered by an officer or agent of University.

L. Purchaser agrees not to cut any trees which are marked to identify the property boundaries or property corners. Trees which identify property lines and corners will be either blazed, painted, or flagged with ribbons.

The Purchaser, at his expense, shall re-establish any land corners removed or damaged by his operations and provide a map or plat of the relocated corners, with reference marks, as established and prepared by an Alabama registered land surveyor. It is further agreed that the Purchaser shall be solely responsible for determining the location of all land lines and that the Purchaser shall protect and indemnify University, including providing the defense of any law suit against University, in the event the Purchaser gets on or upon the lands not owned by the University. In fulfilling the terms of this contract, Purchaser agrees to assume full responsibility for harvesting only within the boundaries described in Paragraph 2 of the Timber Contract, and shall be solely responsible for any damages for timber which he, his contractors or employees may cut from or for any property damage they may do to lands owned by persons or entities other than the University or which are not described in Paragraph 2 of the Timber Contract.

M. All utility lines and fences located on the land described in Paragraph 2 of the Timber Contract shall be protected from damage from all logging operations. Purchaser shall promptly report any damage to utility lines or other public works to proper authorities. Fences, utility lines, and any other property damaged in this cutting operation shall be repaired and replaced by the Purchaser. Purchaser shall not obstruct public roads or cause road surfaces to be in an unsafe condition.

N. No failure or failures to exercise any right of University or Purchaser, respectively, under this contract shall be deemed to be a waiver or bar to the subsequent exercise or enforcement by University or Purchaser, respectively, of any provision of this contract or any right of University hereunder.

O. This contract cannot be amended orally or unilaterally by either party. University specifically states that any representation or amendment contrary to the terms of this contract made by any person on behalf of University shall not be binding on University unless said representation or amendment is in writing and executed by an official of University having authority to bind University.



P. Time is of the essence of every term and condition of this contract unless otherwise provided for herein.







Q. The Purchaser agrees to use all reasonable precautions against fire on the Premise. In the event fires occur on the Premises or on any adjacent or neighboring lands, the Purchaser shall immediately notify the University and Alabama Forestry Commission of the location of the fire, and shall use reasonable means to extinguish said fire and to prevent damage to the timber, trees, and timber growth on land the subject of this contract. Purchaser shall be responsible for actual loss to timber resulting from fire started by Purchaser, his employees or agents and Purchaser hereby agrees to indemnify and make whole University for any such loss.

# University of Alabama

Office of  
Land Management  
Township 21S Range 4W  
Section 18  
Timber Sale  
Site Map

## Exhibit B

### Legend

-  Timber For Sale
-  Major Roads
-  Streams
-  Section Lines
-  Minor Roads
-  Gas Line



0.2 0 0.2 0.4 Miles

