

STATE OF ALABAMA)
 :
SHELBY COUNTY)
 This Instrument Prepared By:
 Guy V. Martin, Jr., Esquire
 Martin, Rawson & Woosley, P.C.
 #2 Metroplex Drive, Suite 102
 Birmingham, Alabama 35209

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made and entered into by and between JOHN C. FAY JR., as Trustee of THE JOHN CHARLES FAY, JR. TRUST AMENDED AND RESTATED (A Revocable Living Trust), dated the 31st day of October, 2008 (herein collectively referred to as "Mortgagor" or as "Borrower"), and ALAMERICA BANK (hereinafter referred to as the "Bank" or as the "Lender" or as the "Mortgagee").

W I T N E S S E T H:

WHEREAS, Borrower has requested Lender to issue one or more irrevocable letters of credit now and in the future (all such letters of credit, whether now or hereafter issued are referred to collectively as the "Letter of Credit") in favor of third party beneficiaries, for the account of BERT WESLEY CALVERT and MLC MINERALS, LLC, an Alabama limited liability company (collectively, the "Account Parties") (Borrower and the Account Parties are sometimes referred to as "Obligors");

WHEREAS, Obligors are obligated to Lender under the terms of a Reimbursement Agreement (referred to, together with this mortgage, and all guarantees, assignments, security agreements, and other documents executed to secure the obligation of Obligors under the Reimbursement Agreement, together with all extensions, renewals or modifications of any of the same, as the "Loan Documents"); and

WHEREAS, this instrument is entered into to induce the Lender to issue the Letter of Credit, and as additional security for the payment and performance by Obligors of all the obligations of Obligors under the Loan Documents (the "Obligations").

This instrument secures:

- (1) Payment and performance of the Obligations under all the Loan Documents, including all extensions, renewals and modifications of the Loan Documents.
- (2) The payment and performance of the Mortgagor's obligations under this Mortgage.

(3) The payment of all sums advanced or paid out by the Mortgagee under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

The principal amount of indebtedness secured by this mortgage shall be Two Hundred Fifty Thousand And No/100 (\$250,000.00) Dollars, being the indebtedness outstanding from time to time secured by the Loan Documents (the "Secured Indebtedness"). This mortgage shall secure the last remaining unpaid portion of the Secured Indebtedness and therefore (i) the security of this mortgage shall not be diminished by any prepayment or repayment of the Secured Indebtedness and (ii) this mortgage shall remain in full lawful claims of all persons whomsoever. The Property does not constitute the homestead of Borrower or of any person.

NOW THEREFORE, in consideration of the premises and to secure the true and faithful payment and performance by the Obligors of all the Obligations under the Loan Documents and compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, the following-described property (all of which as described in (A) through (C) below, is referred to herein as the "Property," or the "premises"):

(A) The real estate described in Exhibit A attached hereto and incorporated herein by reference as fully as though set forth herein.

(B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the property, whether now or hereafter acquired by Mortgagor, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the Property, including without limitation all swimming pools, tennis courts, and related facilities, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the Property, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the Property (the "Improvements").

(C) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of being used or useful in connection with the Improvements located or to be located on the property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the property or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all



building materials and equipment of every kind and character used or useful in connection with said Improvements.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto the Mortgagee, its successors and assigns forever. And the Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of said premises and has a good right to sell and convey the same as aforesaid; that the said premises are free of all encumbrances except for the prior liens described in Exhibits A-1 attached hereto (collectively and severally referred to, together with any one or more promissory notes secured thereby, as the "Prior Lien"), and Mortgagor will warrant and forever defend the title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

Mortgagor warrants and covenants that all payments, conditions and provisions made and provided for in any Prior Lien shall be performed promptly when due, but if Mortgagor suffers or permits default under any Prior Lien, then such shall constitute a default hereunder and Lender may, at its option and without notice, commence proceedings for the sale of the Property in accordance with the provisions herein made. If default is suffered or permitted under any Prior Lien, then, in addition to Lender's other options as aforesaid, Lender may (but shall not be obligated to) cure such default by making such payments, or performing otherwise as the holder of the Prior Lien may permit, or Lender may purchase or pay in full such Prior Lien, and all sums so expended by Lender, shall be secured hereunder or, at the option of Lender, under such Prior Lien instruments; provided however, such payment, performance and/or purchase of the Prior Lien by Lender shall not for the purpose of this instrument be construed as satisfying the defaults of Mortgagor under said Prior Lien.

In the event any Prior Lien is foreclosed and such foreclosure proceedings bring an amount sufficient to pay in full said Prior Lien and there remains an excess sum payable to Mortgagor, then Mortgagor does hereby irrevocably assign the interest of Mortgagor in and to said fund to Lender and the holder of said excess funds is hereby authorized and directed to pay same directly over to Lender without including the name of Mortgagor in said payment and a receipt by Lender shall be as binding on Mortgagor as if Mortgagor had signed same and Mortgagor further relieves the party paying said sum to Lender, of the necessity of seeing to the application of said payment.

And for the purpose of further securing performance of the Loan Documents the Mortgagor hereby agrees to pay all taxes, assessments, or other liens taking priority over this Mortgage, when imposed legally upon said Property, and should default be made in the payment of same, or any part thereof, said Mortgagee, at its option, may pay the same; and to further secure said Obligations and every portion thereof, the Mortgagor agrees to keep said Property continuously insured in such manner and in such companies as may be satisfactory to the Mortgagee, for at least the insurable value of the improvements located upon the Property, against loss by fire and against all losses now or hereafter covered by Extended Coverage Insurance or any policy or similar type, and against such other hazards as Mortgagee may reasonably require, with loss, if any, payable to said Mortgagee, as its interest may appear, and if Mortgagor fails to keep said Property insured as above specified, then the Mortgagee may, at its option, insure said Property for its insurable value against such losses, for its own benefit, the proceeds from such insurance, if collected, to be credited on the indebtedness secured by this

Mortgage, less cost of collecting same, or, at the election of the Mortgagee, may be used in repairing or reconstructing the premises; all amounts so expended by said Mortgagee for insurance, or for the payment of taxes, assessments, or any other Prior Lien, shall become a debt due and at once payable, without demand upon or notice to any person, to said Mortgagee, additional to the indebtedness hereby specially secured, and shall be secured by the lien of this Mortgage, and shall bear interest from date of payment by said Mortgagee, and at the election of the Mortgagee, and without notice to any person, the Mortgagee may declare the entire indebtedness secured by the Loan Documents due and payable, and this Mortgage subject to foreclosure, and same may be foreclosed, as hereinafter provided.

Mortgagor agrees to take good care of the premises above described, and not to commit or permit any waste thereon, and to keep the same repaired, and at all times to maintain the same in as good condition as they now are, reasonable wear and tear alone excepted.

In addition to the property hereinabove mortgaged and conveyed to secure the indebtedness herein referred to, Mortgagor does hereby sell, transfer, assign, set over, pledge and hypothecate unto Mortgagee as further security for the obligation secured hereby, each and every policy of hazard insurance now and hereafter delivered to Mortgagee in accordance with the provisions of this Mortgage, together with all of the right, title and interest of Mortgagors in and to each and every such policy, and without limitation, all of Mortgagors' right, title and interest in and to any premiums paid on such hazard insurance including all rights to return premiums, all subject to the rights, if any, of the holder of any Prior Lien to said policies and premiums.

Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the maturity of any obligation secured by this Mortgage, shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this Mortgage can be waived, altered or changed except as evidenced in writing, signed by the Mortgagor, and by the Mortgagee, by an officer thereof.

After any default on the part of the Mortgagor the Mortgagee shall, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to any party, a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises, and with such other powers as may be deemed necessary.

All of the existing and future rents, royalties, income and profits of the Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Mortgagee. Upon any default by the Borrower, Mortgagee may in its discretion at any time without notice to the Borrower collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Mortgagee to collect any rents, royalties, income or profits will make the Mortgagee a "mortgagee-in-possession" of the Property. Possession by a court-appointed receiver will not be considered possession by the Mortgagee. All rents, royalties, income and profits collected by the Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Property, and then to the payment of the indebtedness and obligations secured by this

Mortgage in whatever order the Mortgagee directs in its absolute discretion and without regard to the adequacy of its security.

Mortgagor will not execute any leases, management or leasing agreements, or occupancy agreements affecting any of the Property without first having received the prior written approval from Mortgagee of the form and content of the same and/or of the managing agent. Without limiting the foregoing, any managing, leasing, or similar fee shall be subordinated to the lien of this instrument.

Without the prior written consent of the Mortgagee, the Mortgagor shall not accept prepayments of rent exceeding one month under any leases or occupancy agreement affecting any of the Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair the Mortgagor's interest in the rents, royalties, income and profits of the Property. The Mortgagor will perform all covenants of the lessor under any such leases or occupancy agreement.

If required by the Mortgagee, each lease or occupancy agreement affecting any of the Property must provide, in a manner approved by the Mortgagee, that the lease or occupancy agreement is junior and subordinate to the lien of this mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Mortgagor upon any foreclosure of this Mortgage.

Nothing herein shall render Mortgagee liable under any existing or future lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Mortgagor under such leases.

UPON CONDITION, HOWEVER, that if the Mortgagor shall truly and faithfully comply with the terms and conditions of the Loan Documents, and all extensions, modifications, novations, substitutions, or restatements of such Loan Documents, heretofore or hereafter, and make all payments therein agreed to be made by them, shall well and truly pay or cause to be paid to the Mortgagee any and all sums of money which it shall or may be required to pay to any person, firm or corporation by reason of the Loan Documents, and shall pay all other indebtedness secured by this Mortgage, and reimburse said Mortgagee for any amount it may have expended in payment of taxes and insurance or other liens, and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; BUT SHOULD default be made by Mortgagor under any provision of this Mortgage or in payment of any sum expended by the Mortgagee under the authority of any of the provisions of this Mortgage, or should the Mortgagor fail or refuse truly and faithfully to comply with the terms and conditions of the Loan Documents, or fail or refuse to make any payment therein agreed to be made by them or to perform any obligation of the Mortgagor described therein, or should any default occur in the performance and payment of all Obligations under any Loan Document by Mortgagor, or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any Prior Lien or encumbrance thereon, so as to endanger the debt hereby secured, or should any law, either Federal or State, be passed imposing or authorizing the imposition of any specific tax upon this Mortgage, or the debt hereby secured, or should at any time any of the stipulations contained in this Mortgage be declared invalid or inoperative by any court of competent jurisdiction, then, in any one of said events, at the option

of said Mortgagee, this Mortgage will be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages; and the Mortgagee shall be authorized to take possession of the premises hereby conveyed, and (1) whether or not possession is taken, after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the County wherein said property is located, to sell the same in front of the Courthouse door of the County wherein said property is located, at public outcry, to the highest bidder for cash; and (2) whether or not possession is taken, to bring a court action to foreclose this Mortgage or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise. In case of a sale of the Property under either of the above, the proceeds of said sale(s) shall be applied: First, to the expense of advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the satisfaction of all unpaid obligations and liabilities of the Mortgagor, under and in accordance with the terms of the Loan Documents, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the Mortgagor. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner, or it may be offered for sale and sold in any other manner that Mortgagee may elect in its sole discretion. Mortgagee may bid at any foreclosure sale and purchase all or any part of the Property.

This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Mortgagee is granted a security interest thereunder, and Mortgagee shall have all of the rights and remedies of a secured party under the ALABAMA UNIFORM COMMERCIAL CODE as well as all other rights and remedies available at law or in equity. Mortgagor hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Mortgagor, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Mortgagee shall have the right to cause any of the Property which is personal property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Mortgagor and Mortgagee shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Mortgagor and shall include Mortgagee's attorneys' fees and legal expenses. Mortgagor, upon demand of Lender, shall assemble such personal property and make it available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to Mortgagee and Mortgagor. Mortgagee shall give Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is

sent to Mortgagor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Mortgagor.

The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of the Mortgagor and the Mortgagee. If the Mortgagor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of the Mortgagor.

Notwithstanding any contrary provisions herein, this mortgage shall stand as security for all of the indebtednesses and obligations evidenced and secured by the Loan Documents, including without limitation the reimbursement obligations of Borrower relating to all letters of credit issued at any time by Lender, now and hereafter (all such indebtednesses and obligations are referred to as the "Secured Obligations"). Notwithstanding any other provision of the Loan Documents to the contrary, this mortgage and all other Loan Documents and all representations and covenants of each obligor contained therein and the lien of each shall survive the termination and release of any letter of credit and repayment in full of all amounts due under the Loan Documents; and the Loan Documents and the lien of each shall continue in full force and effect as to the full face amount of all letter(s) of credit now or hereafter issued are released and until all Loan Documents are released by Lender and until all Secured Obligations have been paid and performed in full.

Purpose of Loan. Borrower hereby warrants and certifies to Lender that all of the proceeds of the loan secured by this Mortgage are being used strictly for business and commercial purposes, and no part of said proceeds are being used, directly or indirectly, for purposes other than business and commercial purposes.

Certification. John Charles Fay, Jr. hereby certifies that (a) The John Charles Fay, Jr. Trust Amended and Restated (A Revocable Living Trust), dated the 31st day of October, 2008, is the successor to the trust dated September 15, 2005, as amended by First Amendment to John Charles Fay, Jr. Trust Amended and Restated (A Revocable Living Trust), dated May 20, 2009; and (b) that Borrower has received full, due, and adequate consideration for this mortgage.

Notwithstanding any provision herein to the contrary, this mortgage is subject to release upon fulfillment of the conditions of the Security Agreement between Borrower (and others) and Lender.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal on this 31 day of March, 2010.

"MORTGAGOR:"

THE JOHN CHARLES FAY, JR TRUST
AMENDED AND RESTATED

By: John C. Fay, Jr. [SEAL]
John C. Fay, Jr., Trustee

EXHIBIT A


PARCEL II:

Begin at the Southeast corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 21, Township 19 South, Range 1 West, Shelby County, Alabama and run in a westerly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 703.39 feet to a point; thence turn an interior angle of 87 degrees 42 minutes 20 seconds and run to the right in a northerly direction a distance of 318.58 feet to a point; thence turn an interior angle of 153 degrees 07 minutes 15 seconds and run to the right in a northeasterly direction a distance of 299.19 feet to a point; thence turn an interior angle of 119 degrees 10 minutes 25 seconds and run to the right in an easterly direction a distance of 548.72 feet to a point on the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence turn an interior angle of 89 degrees 36 minutes 40 seconds and run to the right in a southerly direction and along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 579.57 feet to the point of beginning.



EXHIBIT A-1

None


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Shelby Cnty Judge of Probate, AL
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