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EJH



20121205000464450 1/11 \$42.50
Shelby Cnty Judge of Probate, AL
12/05/2012 09:20:09 AM FILED/CERT

THIS INSTRUMENT PREPARED BY:

Trent Jernigan, Esq.
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
One West Fourth Street
Winston-Salem, NC 27101

When recorded return to:

First American Title Insurance Company
5607 Glenridge Drive, NE, Suite 275
Atlanta, GA 30342
Attn: Kevin Wood

GRANT OF EASEMENT

STATE OF ALABAMA §
 §
COUNTY OF SHELBY §

KNOW ALL MEN BY THESE PRESENTS:

That, **JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.)**, a Michigan corporation, successor by merger to John Hancock Life Insurance Company, the address of which is c/o Hancock Natural Resource Group, Inc., 13950 Ballantyne Corporate Place, Suite 150, Charlotte, NC ("Grantor"), for and in consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other good and valuable consideration to it in hand paid by **HAWAII ERS TIMBERLAND LLC**, a Hawaii limited liability company ("Grantee"), has GRANTED AND CONVEYED, and by these presents does GRANT and CONVEY unto GRANTEE, certain non-exclusive easements (collectively the "Easement"), subject to the terms and conditions herein described, and along the existing road as indicated on the drawing attached as Exhibit "A" and incorporated by reference herein (the "Easement Property"), over, along, and across that certain tract of Land of Grantor in St. Clair County, Alabama, known as CL-1086 (the "Grantor's Land") as more particularly described on Exhibit "B" attached hereto and incorporated herein by reference.

It is expressly understood and agreed that the Easement is granted and accepted subject to the following conditions, limitations and stipulations, to which Grantee agrees to be bound:

1. The Easement is for ingress, egress and public utilities to adjacent lands owned by Grantee in Shelby County, Alabama, known as GD-1091, GD-1096 and GD-1229 (the "Grantee's Land") as more particularly described on Exhibit "C" attached hereto and incorporated herein by reference, and for no other purposes, and shall be an easement appurtenant to Grantee's Land.

2. The Easement is non-exclusive and Grantor reserves to itself, its successors and assigns, the right to utilize the Easement and Easement Property for any purpose which does not unreasonably interfere with the use of the Easement Property by Grantee for the purposes set forth herein. Each party shall use the rights granted and reserved by the Easement with due regard for the express rights of the other party as set forth below to use and enjoy the Easement Property.

3. This Easement may be used by Grantee for, ingress and egress to Grantee's Property for and only for the purposes of providing vehicular and pedestrian access to the Grantee's Land by Grantee and its directors, officers, employees, contractors, agents, licensees and other parties involved with and responsible for the following uses (i) growing and harvesting timber on Grantee's Land, including moving specialized logging equipment, logging trucks or other equipment used for growing, harvesting, or management of timber, or (ii) hunting, fishing or other recreational uses on Grantee's Land. This Easement specifically prohibits, and may not be used by Grantee to provide, (i) general public access or use of the Easement or Easement Property and (ii) a right of access in conjunction with any commercial or residential development constructed after the date of this Easement.

4. Grantee is hereby granted the right to construct, improve, maintain, and repair roadways within the Easement Property ("Road Work"), provided that Grantee shall provide Grantor written notice in advance of any Road Work that will damage or destroy any existing trees or other forest products within Grantor's Land. Grantee shall not, without Grantor's express, prior written consent widen the roadways within the Easement Property. Grantor shall have the option to harvest for its account all or so much of the trees or other forest products on Grantor's Land impacted by the Road Work, provided that Grantor must notify Grantee within thirty (30) days of its decision to harvest and must then complete the harvest operations as soon as possible within three (3) months. If Grantor declines to harvest or fails to respond within said 30-day period, then Grantee may proceed with the Road Work and harvest within the Easement Property in accordance with state Best Management Practices and in a manner to prevent hazards from fire and insect infestation to trees or other forest products on Grantor's Land. Should Grantee fail to provide the advance notice of Road Work and due to the difficulty in assessing the damages to Grantor, Grantor and Grantee agree that liquidated damages in the amount of 150% of the fair market value of any trees damaged or removed in connection with the Road Work, or portion thereof, per acre of the Easement Property will be paid by Grantee,. Grantor and Grantee agree that this amount is a reasonable estimate of the damages suffered by Grantor for the failure to provide such advance notice.

5. Grantee shall not, without the express, prior written consent of Grantor, block, impede or obstruct on a permanent basis the use of the Easement Area, and Grantee shall not construct any gate, building, structure or like improvement on the Easement Area.

6. Grantee acknowledges and agrees that the Easement Area and the surrounding property may be used for timber harvesting, timber management and silvicultural uses, including, but not limited to, aerial spraying to control insects. Grantee acknowledges and agrees that Grantor may, upon no less than five (5) days advance written notice to Grantee, temporarily block the Easement Area from time to time for such timber harvesting, timber management, silvicultural uses and/or such improvements, maintenance or repair as Grantor may deem reasonably necessary or desirable.

7. Grantor shall have the right to relocate the Easement or any particular portion of the Easement, provided that: the location of the new easement must be reasonably approved in writing by the Grantee; and such approval shall not be withheld if (i) such relocated easement and roadway provides similar or better quality access to the Grantee's Land, (ii) such relocation will be at the sole cost and expense of the Grantor; (iii) the newly relocated easement and roadway will be of the same like condition and quality of the existing easement and road at the time of the relocation; and (iv) it will be the responsibility of Grantor to provide the appropriate legal document for execution by both parties to effect any approved relocation and to terminate the existing road easement.

8. The Easement shall run with the title to Grantee's Land and shall be binding upon and inure to the benefit of Grantee and Grantor, together with their legal representatives, invitees, guests, employees, agents, licensees, lessees, successors and assigns.

9. Grantor, its successors and assigns are in no way bound to construct, maintain, improve or to keep repaired the Easement Property or any part thereof, except for damage caused to the roads located within such Easement Property by Grantor's use. Grantor, its successors and assigns do not assume any liability or responsibility to Grantee, its successors and assigns or to any other persons using the Easement Property by any express or implied invitation or any business reasons being conducted in connection with Grantee, its successors and assigns.

10. Grantee, its successors and assigns, covenants with Grantor and Grantor's successors and assigns to at all times maintain and make necessary repairs at their own expense should the Easement Property require same for its proper upkeep and maintenance as a result of Grantee's use thereof.

11. Grantee, for itself and or its successors and assigns, acknowledges that any existing roads contained within the Easement were not built to county standards or constructed with reference to traffic engineering safety standards, such construction being for forest management purposes only, and any use of the Easement Property shall be at the user's risk.

12. Grantee agrees to defend, indemnify and save harmless Grantor, its successors and assigns, from and against all causes of action, litigation, cost, loss, liability, damage and expense

(including reasonable attorneys' fees) for injury or death to persons, whomsoever, and damage to or loss of property to whomsoever belonging, including the respective contractors, agents, employees and representatives of Grantor, arising out of or in any way connected with Grantee's use of the Easement Property or of its exercise of rights assumed in connection therewith, except as caused by the sole negligence or willful misconduct of Grantor, its contractors, agents, employees, representatives or invitees.

13. Any notice required or permitted to be given hereunder shall be in writing and deemed properly given on a date personally delivered by messenger service, overnight courier service, or three (3) days after same is deposited with the United States Postal Service by registered or certified mail, postage prepaid, return receipt requested, to the parties at the following address or telecopy/facsimile numbers:

If to Grantor:

John Hancock Life Insurance Company (U.S.A.),
successor by merger to John Hancock Life Insurance
Company
c/o Hancock Natural Resource Group
13950 Ballantyne Corporate Place, Suite 150
Charlotte, North Carolina
Attn: David Kimbrough

If to Grantee:

Hawaii ERS Timberland LLC
c/o Hancock Natural Resource Group
13950 Ballantyne Corporate Place, Suite 150
Charlotte, North Carolina
Attn: David Kimbrough

14. Grantor warrants and represents unto Grantee that Grantor possesses fee simple title to the Easement Property and that it is authorized to execute and deliver this Grant of Easement. Grantor also warrants and represents unto Grantee that the Easement Property is not encumbered by a Lien. For the purposes of this Agreement, "Lien" shall be defined as follows: any mortgage, deed to secure debt, deed of trust, lien, pledge, charge, security interest, security title, preferential arrangement which has the practical effect of constituting a security interest or encumbrance, servitude or encumbrance of any kind to secure or assure payment of a debt or a guaranty, whether by consensual agreement or by operation of statute or other law, or by any agreement, contingent or otherwise, to provide any of the foregoing. This grant and all rights hereunder are subject to any and all easements, servitudes, and rights-of-way affecting the Easement Property.

15. All matters related to the construction, validity and enforcement of the Easement shall be governed by and construed in accordance with the laws of the State of Alabama in all respects.

16. Prior to any use of the Easement Area for logging operations, Grantee shall cause its logging contractors to obtain and maintain, throughout the period of such logging, commercial general liability insurance and comprehensive automobile liability insurance with

coverages and in amounts customary in the commercial timber industry in the region in which the Easement Area is located, all by an insurance company licensed in the State of Alabama. All liability coverages must be on an "occurrence" basis as opposed to "claims made." If requested by Grantor, Grantee shall furnish to Grantor a certificate of insurance dated and signed by a stated, authorized agent for the insuring company or companies, in a form reasonably acceptable to Grantor and containing a representation that coverage of the types listed herein is provided. Said certificate(s) of insurance shall be issued to Grantor at the address provided for herein.

TO HAVE AND TO HOLD the aforesaid rights, privileges, and easement unto Grantee, its successors and assigns, forever, subject to the conditions, limitations and restrictions contained herein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, Grantor and Grantee have signed and sealed this Grant of Easement to be effective as of the 16th day of November, 2012.

GRANTOR:

ATTEST:

By: Ann Hardin
(Assistant Secretary)

Name: Ann Hardin

JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation, successor by merger to John Hancock Life Insurance Company

By: Hancock Natural Resource Group, Inc.
Its Advisor

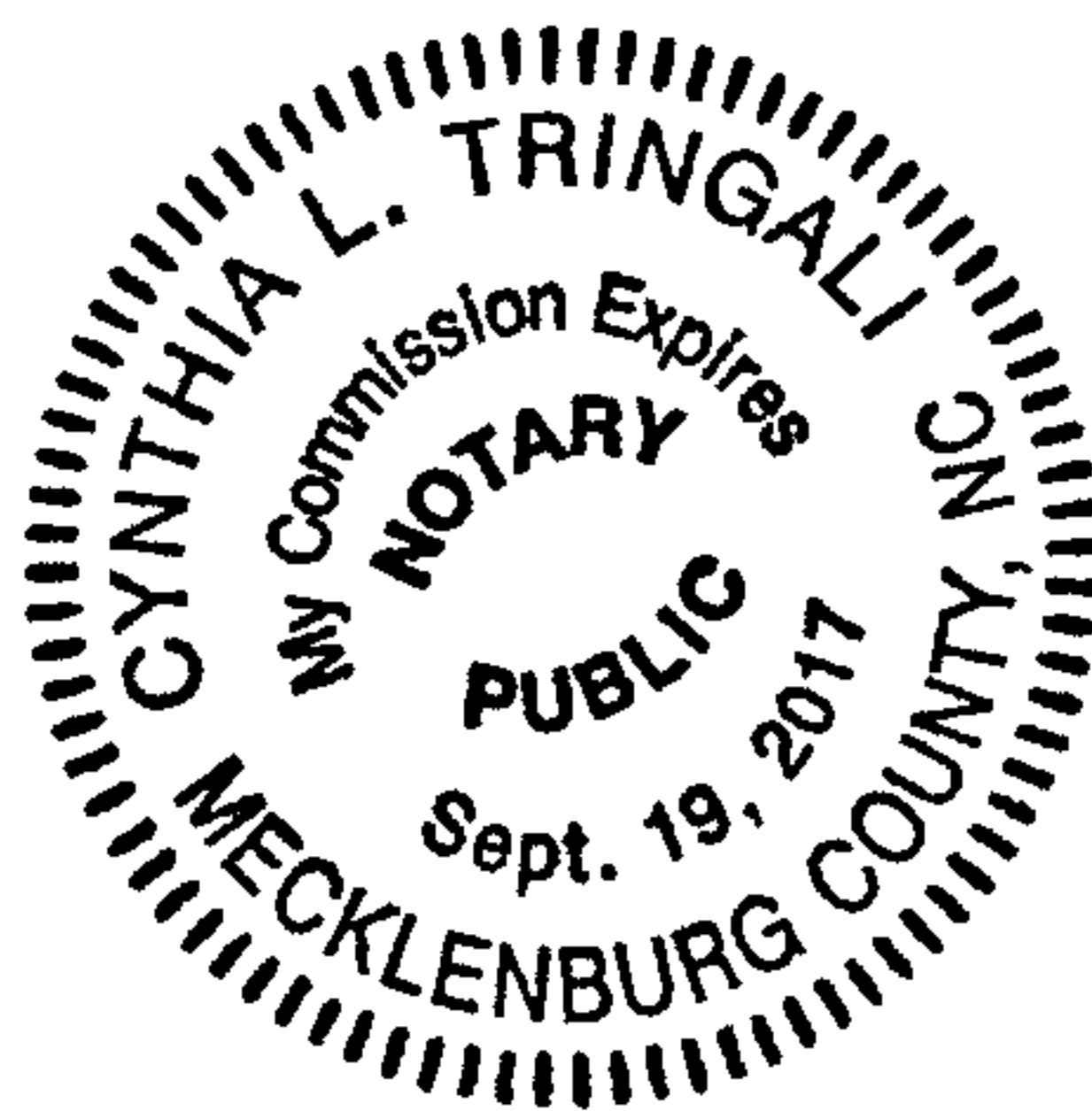
By: [Signature]
Name: David Kimbrough
Title: Vice President

STATE OF NORTH CAROLINA)
) SS.
COUNTY OF MECKLENBURG)

I, Cynthia L. Tringali, a Notary Public in and for the State and County aforesaid, hereby certify that David Kimbrough, whose name as Vice President of Hancock Natural Resource Group, Inc., a Delaware corporation, the Advisor of John Hancock Life Insurance Company (U.S.A.), a Michigan corporation, as successor by merger to John Hancock Life Insurance Company, is signed to the foregoing Instrument and who is known to me or has produced sufficient identification to me, acknowledged before me on this day that being informed of the contents of the foregoing Instrument, he, as such Officer and with full authority, did execute the same voluntarily for and as the act of said corporation.

Given under my hand and official seal on the 16th day of November, 2012.

[SEAL]



Cynthia L. Tringali
Notary Public

Print Name: Cynthia L. Tringali

My commission expires: 9-19-2017

the 11th day of November, 2012.

GRANTEE:

ATTEST:

HAWAII ERS TIMBERLAND LLC, a Hawaii
limited liability company

By: Ann Hardin
(Assistant Secretary)

By: Hancock Natural Resource Group, Inc.
Its Manager

Name: Ann Hardin

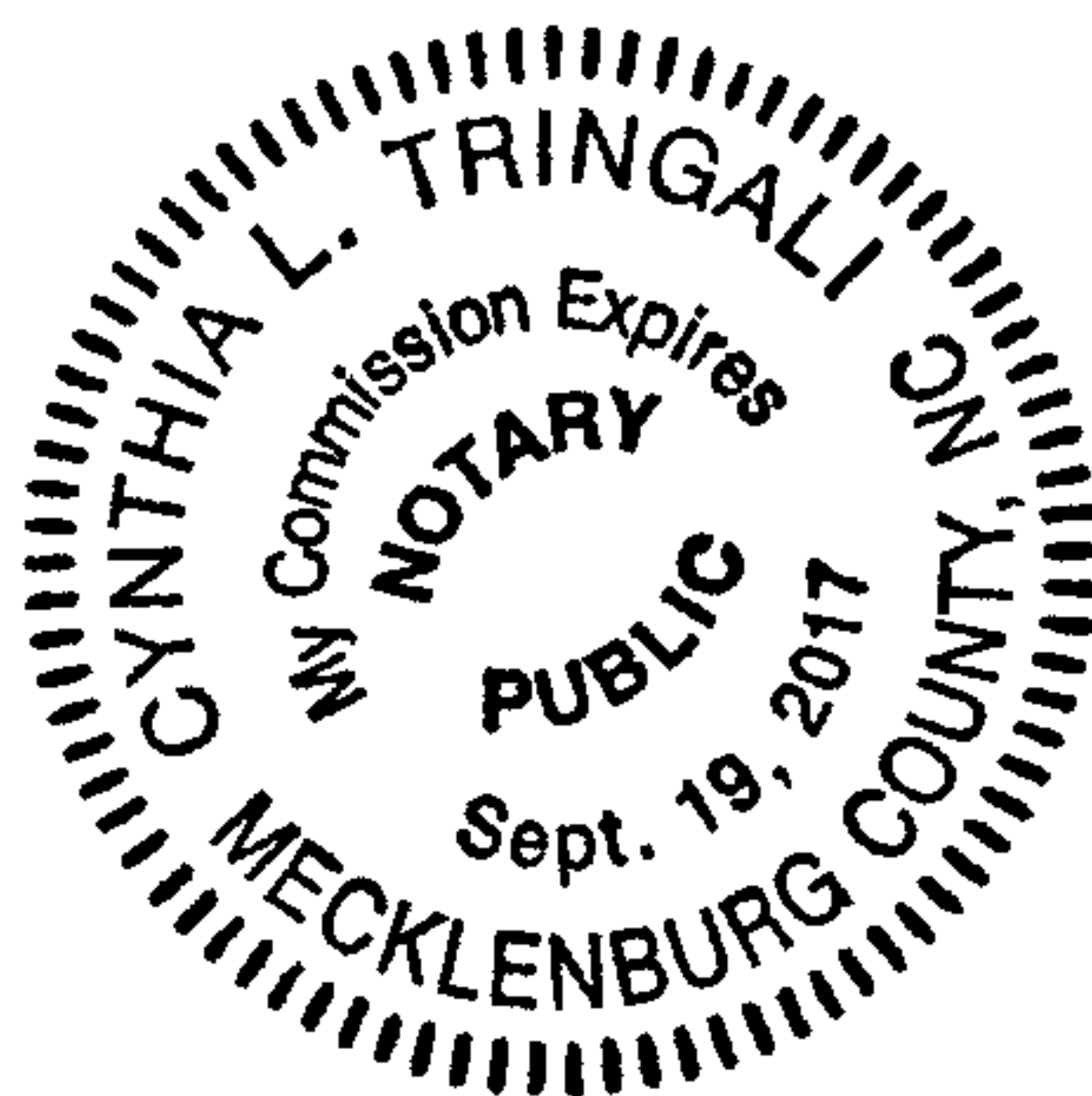
By: 
Name: David Kimbrough
Title: Vice President

[illegible]

I, Cynthia L. Tringali, a Notary Public in and for the State and County aforesaid, hereby certify that David Kimbrough, whose name as Vice President of Hancock Natural Resource Group, Inc., a Delaware corporation, the Manager of Hawaii ERS Timberland LLC, a Hawaii limited liability company, is signed to the foregoing Instrument and who is known to me or has produced sufficient identification to me, acknowledged before me on this day that being informed of the contents of the foregoing Instrument, he, as such Officer and with full authority, did execute the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal on the 16th day of November, 2012.

[SEAL]



Cynthia L. Duzali
Notary Public

Print Name: **Cynthia L. Tringali**

My commission expires: 9-19-2017

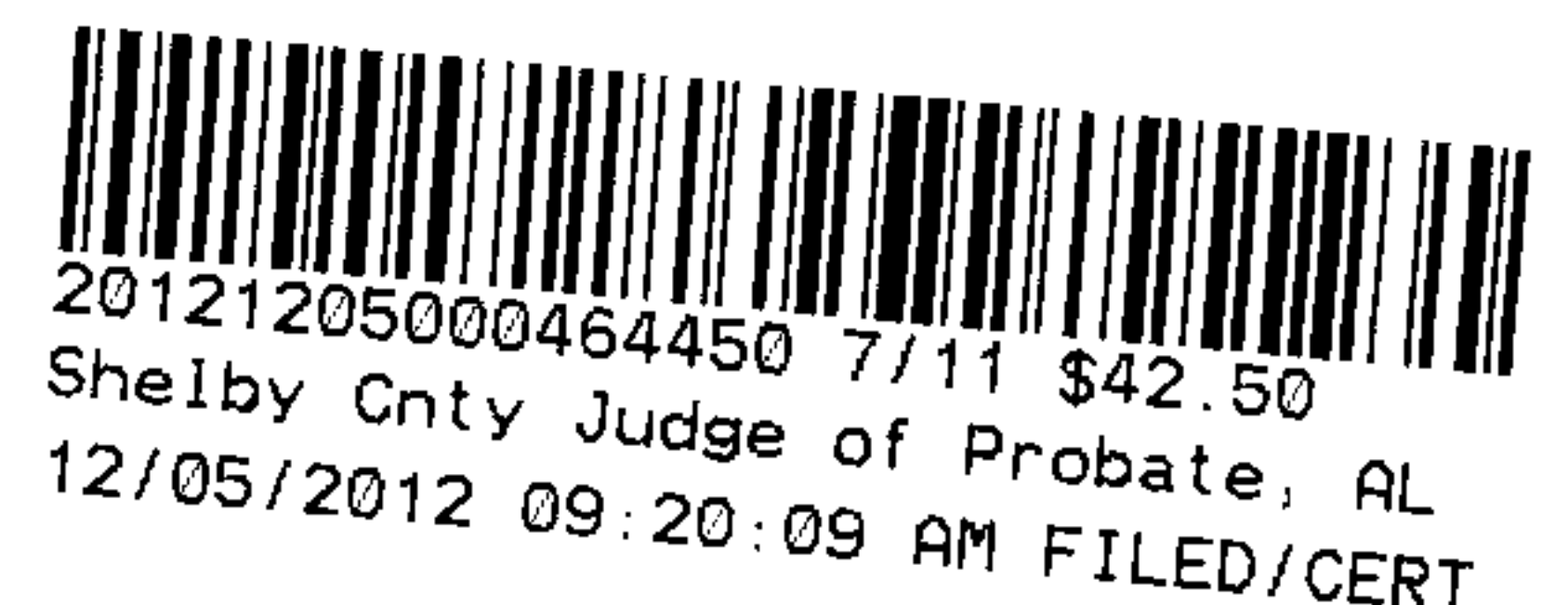
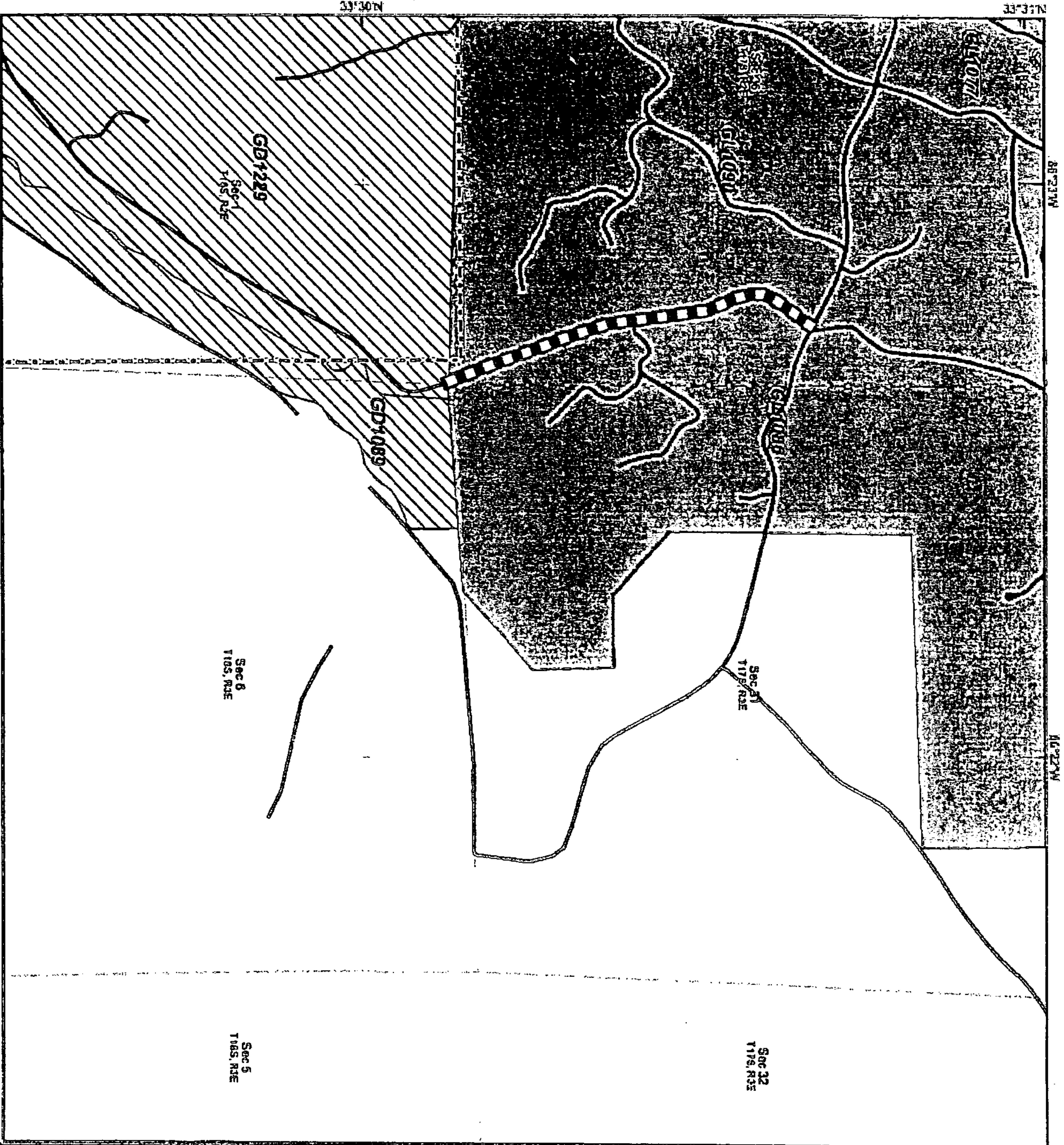


Exhibit "A"
[See attached Drawing]



TRACT CL1086
 Property: Columbiana
 County: St. Clair
 State: Alabama



- ☐ John Hancock SA97
- ☒ Hawaii ERS Timberland LLC
- ☒ Easement 30 feet
- ☐ Roads

Exhibit "A"



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1 inch equals 1,320 feet

Exhibit "B"
[Grantor's Land]

NW ¼ of the NE ¼,
N ½ of the NW ¼,
SW ¼ of the NW ¼,
3 acres in the SW corner of the
NE ¼ of the SW ¼ in the shape of a V.

31 17 South 3 East

The W ½ of the SW ¼,
SE ¼ of the SW ¼ except 4 acres in the
SE corner the top of the mountain
being the line

31 17 South 3 East

BEING a portion of the property conveyed unto John Hancock Life Insurance Company by Statutory Warranty Deed of U.S. Alliance Coosa Pines Corporation recorded on February 16, 2000 in Book N 2000, Page 265, St. Clair County Records.

Exhibit "C"
[Grantee's Land]

Southwest 1/4 of the Northeast 1/4	1	18 South	2 East
Fifty eight and 1/10 acres described as follows: Beginning at the northwest corner of the Southeast 1/4 of the Northeast 1/4 and run 20 chains (1,320 feet) east; thence south 10.26 chains (677.16 feet) to top of mountain; thence and meandering along top of mountain as follows: South 29 deg. West 9.22 chains (608.52 feet); South 23 deg. West 4 chains (264 feet); South 26 deg. West 7.77 chains (512.82 feet); South 30 deg. West 4.14 chains (273.24 feet); South 37 deg. West 4.39 chains (289.74 feet); South 26 deg. West 3.7 chains (244.2 feet); South 32 deg. West 5.6 chains (369.6 feet) to the west line of the Southeast 1/4 of Southeast 1/4; thence north 42.8 chains (2,824.8 feet) to the point of beginning, all being in Section 1, Less and except herefrom any of said land lying in the Southeast 1/4 of the Southeast 1/4 of said Section 1.	1	18 South	2 East
North 1/2 of the Northeast 1/4	1	18 South	2 East
Northwest 1/4	1	18 South	2 East
Southwest 1/4	1	18 South	2 East
Northwest 1/4 of the Southeast 1/4	1	18 South	2 East
That part of the Southwest 1/4 of the Southeast 1/4 on top of mountain known as the Bentley Crane Place	1	18 South	2 East
All of Section	2	18 South	2 East

And being a portion of the property conveyed unto Hawaii ERS Timberland LLC by Statutory Warranty Deed of U.S. Alliance Coosa Pines Corporation recorded on February 14, 2000 in Instrument Number 2000, Page 4449, Shelby County Records.