

LUMP SUM TIMBER CUTTING AGREEMENT - ALABAMA

RELATE NO: 292204

SELLER: SWF Birmingham, LLC, a Delaware
Limited Liability Company
acting through its authorized agent and property manager
The Molpus Woodlands Group, LLC
Attn: Ken Sewell
178 Bonhomie Road
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BUYER: Total Forestry Services, Inc.
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Shelby County, AL 02/03/2016
State of Alabama
Deed Tax: \$140.50

☐ Proprietorship ☐ Partnership ☒ Corporation ☐ Limited Liability Company

Federal ID # 27-1652680

THIS TIMBER CUTTING AGREEMENT ("Agreement") is made and entered into between SWF Birmingham, LLC, acting through its authorized agent and property manager The Molpus Woodlands Group, LLC, hereinafter referred to as "Seller", and Total Forestry Services, Inc., hereinafter referred to as "Buyer". This Agreement consists of the terms, covenants and provisions set forth herein, subject to the following definitions:

DEFINITIONS

A. **Buyer.** For the purpose of this Agreement, "Buyer" shall include all agents, servants, employees, subcontractors, successors and assigns of Buyer listed above.

B. **Seller.** For the purpose of this Agreement, "Seller" shall mean SWF Birmingham, LLC. Only for the purposes of the "Insurance" and "Indemnity" sections herein, the term "Seller" shall also include The Molpus Woodlands Group, LLC ("MWG").

C. **Contract Area.** For the purpose of this Agreement, "Contract Area" shall mean only that portion of the area described in Exhibit "A" that is depicted as the shaded portions of Exhibit "B-1", comprising approximately 95.6 acres in Shelby County, Alabama. The Covered Products sold pursuant to this Agreement are likewise located only within the shaded areas of

Exhibit "B-1." The legal description in Exhibit "A" is provided solely for reference purposes only. No Covered Products are sold as to any property described on Exhibit "A" that is not identified within the shaded areas of Exhibit "B-1."

D. **Covered Products.** For the purpose of this Agreement, and except as otherwise limited herein, "Covered Products" shall mean all standing and down timber located on the Contract Area.

E. **Timber.** For the purpose of this Agreement, and except as otherwise limited herein, "Timber" shall mean all wood, trees and forest products located on the Contract Area.

F. **Effective Date.** The "Effective Date" of this Agreement will be the date that is the later of the date upon which Seller and Buyer have executed this Agreement.

G. **MBF.** For the purpose of this Agreement, "MBF" shall mean thousand board feet (the Doyle scale).

H. **Ton.** For the purpose of this Agreement, "Ton" shall mean a net weight of two thousand pounds avoirdupois. The metric ton is a unit of weight equal to one thousand kilograms or 2204.62 pounds avoirdupois.

RECITALS

A. Buyer and Seller desire to enter into an Agreement for the cutting and removal of Covered Products from the Contract Area on the terms and conditions hereinafter set forth.

B. Buyer is an independent contractor engaged in the forest products business and has visited the Contract Area. Buyer warrants that it is familiar with the Contract Area, the specifications set forth herein, work conditions, and the general surrounding area, and that its bid price for the Covered Products under this Agreement was established with full consideration of such conditions. Buyer has represented to Seller that it is experienced, qualified, and properly equipped, organized and financed to perform the obligations of a buyer and contractor under this Agreement; and, that Buyer is familiar with this Agreement and Buyer's obligations hereunder.

C. This Agreement, including the signature pages and the attached Exhibits, is the entire agreement between Seller and Buyer, and can only be amended by written agreement, signed by an authorized representative of each party.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, covenants and undertakings hereinafter set forth, the parties agree as follows:

1. Sale of Cutting Rights; Timber To Be Cut and Removed.

1.1 Seller does hereby agree to sell to Buyer for purposes of cutting and removal, and Buyer does hereby agree to cut, remove and purchase from Seller, at the price and upon the terms, covenants and conditions contained herein, all Covered Products located upon the Contract Area.

1.2 Buyer's purchase of the Covered Products shall be, "AS IS" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, INCLUDING WITHOUT ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. Buyer acknowledges that Buyer has, prior to entering into this Agreement, been given appropriate access to the Contract Area for inspection of the same and the Covered Products. Buyer is not relying upon any statement or representation, express or implied, of Seller or Seller's agents concerning included acreage, timber or any other matter. This Agreement is made subject to any rights outstanding under any existing oil, gas or any other mineral leases or contracts covering all or any part of the Contract Area, whether the same be recorded or otherwise, and to any rights outstanding under any other contracts, leases, easements, rights-of-way or roads as may be evidenced by possession, use, survey or which are of record. Seller's liability shall be limited to the return of the Sale Price and Security Deposit, or the proportionate part thereof in case of partial failure of title, without interest or penalty.

1.3 Buyer shall have until the "Termination Date", as set forth in Section 9 below, to complete all harvest and removal of Covered Products from the Contract Area.

2. Risk of Loss.

All risk of loss on account of fire, storm, disease, insects or other damage, shall vest in Buyer on the Effective Date hereof. In the event of loss to the Covered Products that occurs after the Effective Date of this Agreement but before it is cut or removed by Buyer, Seller shall have no obligation to contract with Buyer for cutting rights to other timber in lieu of those Covered Products so lost or, to refund to Buyer any portion of the Sale Price (defined in Section 3.1 below), unless Seller damages any Covered Products, in which case, Seller shall provide Buyer with equivalent substitute volume for those Covered Products so damaged.

3. Purchase Price and Payment.

3.1 Buyer shall pay to Seller the sum of **One Hundred Forty Thousand, One Hundred Fifty-Six Dollars and Zero Cents (\$140,156.00)** at the time of the execution of this Agreement for the right to cut and remove Covered Products from the Contract Area during the term of this Agreement ("Sale Price").

3.2 Nothing in this Agreement shall be interpreted as allowing Buyer to pay less than the full Sale Price should Buyer fail to harvest and remove the Covered Products.

3.3 At the time of the execution of this Agreement, Buyer will deliver to Seller an acceptable Cash Security Deposit ("Security Deposit") in the amount of **Two Thousand, Five Hundred Dollars and Zero Cents (\$2,500.00)**. Seller shall have the right to commingle the Security Deposit with other funds of Seller. Any interest earned on the Security Deposit shall be to the credit of Seller.

3.4 If Buyer defaults in the performance of any obligation or covenant contained herein, including without limitation payment under this Section, Seller may apply the Security Deposit, or any portion thereof, to the extent necessary to fully reimburse Seller for any loss or deficiency. Buyer shall be and remain liable for any deficiency hereunder and for all amounts

that may be due Seller by reason of the terms and provisions of this Agreement or any Event of Default hereunder by Buyer.

3.5 If Seller applies the Security Deposit or any portion thereof to cure any loss or deficiency under this Agreement, Buyer shall restore the Security Deposit to its initial amount within seven (7) days after the Seller's application of the security.

3.6 After Buyer has fully performed all terms and provisions of this Agreement to Seller's satisfaction, Seller shall refund any remaining portion of the Security Deposit to Buyer.

4. Title Passage.

Title to the Covered Products shall pass to Buyer upon the execution hereof and the payment of the Sale Price to Seller.

5. Logging of Covered Products.

5.1 Buyer agrees to conduct its cutting, logging and road construction and maintenance operations in a diligent and workmanlike manner in accordance with the highest standards and practices recognized in the industry and in compliance with the Best Management Practices (BMP) guidelines of the state of Alabama. Buyer agrees to promptly report in writing to Seller all violations of laws, regulations or permits of which Buyer has knowledge, and to promptly correct all such violations as quickly as possible, and in accordance with the law. A copy of all citations or other written documents received by Buyer from any agency, person or entity shall accompany the notice of violation. Buyer will provide crews that are professionally trained through the *Sustainable Forestry Initiative*® (SFI®) program.

5.2 If a subcontractor is employed, Buyer shall remain fully responsible to Seller for all obligations set forth in this Agreement. Seller representatives shall at all times be allowed access to the operations of Buyer, and shall be furnished such information as may be required for a complete and detailed inspection.

5.3 In conducting its operations hereunder, Buyer or its contractor shall:

5.3.1 At least seven (7) days prior to the commencement of operations, submit in writing a Notice to Seller, which shall provide, among other things, the following: (a) Names, addresses and insurance compliance of any sub-contractors, including timber cutting contractors; (b) Estimated date timber cutting will commence; (c) Statement that all activities will be performed pursuant to this Agreement. The Notice to Seller is incorporated herein, and shall be attached hereto as Exhibit "5.3.1".

5.3.2 Attend a pre-work conference with Seller's authorized representative.

5.3.3 Cut all stumps as low as possible; keep all property owned or controlled by Seller, including without limitation the Contract Area free of litter arising from its operations; and, pile slash and logging debris on designated landings in a relatively dirt-free accumulation to assist in accomplishing debris disposal. Any segment along the road used to deck, sort, handle logs, or any other activity that would be associated with a landing in areas that are logged shall be considered as landings and all slash and logging debris within 60 feet of the nearest ditchline

of the road shall be piled. Slash and logging debris shall not be piled within 100 feet of property lines, standing timber, or plantations unless otherwise approved in writing by Seller's representative.

5.3.4 Upon completion of the requirements of this Agreement, promptly remove from the Contract Area and other property owned or controlled by Seller, all equipment, materials and other property that is not to become the property of Seller. It is further agreed that any such equipment, materials and other property that is not removed within 30 days after the date this Agreement terminates shall, at the election of Seller, be removed from the Contract Area or other property owned or controlled by Seller at Buyer's expense or become the property of Seller and may be used or disposed of by Seller without obligation to Buyer or to any party to whom Buyer may transfer title. Nothing in this Section shall be construed as relieving Buyer from any obligation to clean up, burn, remove or dispose of debris in accordance with other provisions of this Agreement or applicable law.

5.3.5 Use every reasonable effort in harvesting to avoid breakage and damage to merchantable timber and reproduction on or adjacent to the Contract Area not designated for cutting hereunder. Seller shall have the right to suspend felling of timber if Seller determines that Buyer is causing undue damage or breakage, considering the conditions, and may immediately notify Buyer and require correction of defective felling procedures.

5.3.6 Not damage or cut any seedling or tree outside of the Contract Area unless prior written approval is obtained from Seller. Buyer and Seller agree that it is difficult to ascertain or easily determine the actual harm to Seller from Buyer's violations of the prohibitions contained in this Section. Buyer and Seller further desire to set a reasonable amount of liquidated damages and not a penalty to reflect the estimated harm to Seller should such violation occur. Buyer and Seller therefore agree that liquidated damages for any violation of the provisions of this Section shall be as follows:

Stump Diameter	Damages Per Tree
6"	\$1.92
8"	3.99
10"	17.13
12"	36.93
14"	60.00
16"	97.50
18"	127.50
20"	166.00
22"	225.00
24"	270.00
26" and larger	300.00

5.3.7 Repair all fences or structures damaged by its operations and shall maintain and leave all roads used by it in the same condition as they were prior to this Agreement. Buyer shall leave all fire breaks, property lines, running streams and drainage ditches clear of logs, timber, limbs and debris.

5.3.8 Take all practicable precautions to prevent damage arising from Buyer's activities on the Contract Area to the soil, stream banks, and any stream course, lake or reservoir (collectively "water bodies") on or near the Contract Area.

5.3.9 Require its contractors, agents, employees, and customers to become familiar with all of Buyer's duties and undertakings hereunder and to contractually agree with Buyer to abide by said duties and undertakings prior to their entry upon the Contract Area. No such agreement with such contractors, agents, employees, and customers shall relieve Buyer of its duties and undertakings hereunder.

5.4 Buyer shall notify Seller immediately if any threatened, endangered or sensitive species are identified by Buyer on or near the Contract Area. In identifying species and reporting such species to Seller, Buyer shall exercise reasonable diligence, and shall err on the side of reporting any potential species on or near the Contract Area.

6. Payments and Reports.

Intentionally omitted.

7. Taxes.

It is agreed that the Buyer shall be responsible for preparing, reporting and paying when due all taxes, including without limitation harvest, privilege and severance taxes, fees or charges, arising out of the severance and/or removal of the Covered Products. Buyer shall provide Seller with copies of tax report filings and payments when made. Buyer shall defend, indemnify and hold harmless Seller from and against said taxes. The taxes paid by Buyer shall be in addition to the payments owed to Seller under the terms of paragraph 3.1 above.

8. Reforestation.

Buyer is not obligated to reforest the Contract Area.

9. Contract Duration.

Buyer shall have **twelve (12) months** from and after the Effective Date of this Agreement ("the Termination Date") to enter upon the Contract Area for cutting and removing Covered Products. In the event the Buyer does not remove all Covered Products from the Contract Area for any reason prior to the Termination Date, the interest of Buyer in the Covered Products and Buyer's right to cut and remove same, shall revert to, revest in and thereafter be the absolute property of Seller, and except as provided in Section 14.5 hereof, without compensation to the Buyer, and without any duty on the part of the Seller to refund any portion of the Sale Price to Buyer, and the Buyer shall have no further right, title or interest therein. Seller may treat such non-performance as an Event of Default herein.

10. Road Access, Use, Fees, Construction and Maintenance.

10.1 Buyer shall be entitled to the non-exclusive use of access roads over which Seller has control or an agreement permitting use to transport Covered Products from the Contract Area to public roads. Buyer shall have the responsibility for obtaining any access over landowners whose property is between the Contract Area and public roads.

10.2 Seller reserves the right for itself and others claiming under Seller to use any roads on the Contract Area at any time for any purpose so long as such crossing and use does not unreasonably interfere with Buyer's operations. Buyer must maintain these roads free of obstructions and in a passable condition at all times. Provided, however that Buyer's equipment will be allowed to block roads when necessary to perform logging operations, but traffic will not be held up for periods longer than 45 minutes. The Buyer, in using, improving or constructing such roads, shall at no time have or acquire an interest in the land other than the right of temporary access.

10.3 In construction, maintenance, and use of truck roads and tractor trails, and in all other phases of the logging operation, all practicable precautions shall be taken by Buyer to minimize damage to the soil and to prevent the creation of conditions conducive to soil erosion. Construction and maintenance activities shall not interfere with the natural flow of streams.

10.4 Measures shall be taken to prevent the gulying of roads and to repair such damage if it occurs. At the conclusion of use of any part of any road, ditches shall be graded and shaped at Buyer's expense to a condition that allows proper drainage and any damage caused to bridges or culverts shall be repaired by Buyer at Buyer's expense prior to the termination date of this agreement.

10.5 All roads used by the Buyer on lands owned or used by Seller, whether pre-existing or constructed by Buyer, shall be maintained by Buyer in a condition that provides for proper drainage and vehicle passage and adheres to applicable law.

10.6 Buyer will be responsible for road maintenance, on a pro-rata share based on respective use, on roads used by Buyer. Seller reserves the right to determine whether the maintenance of such roads shall be performed by Buyer or by a third party or parties. If performed by a third party or parties, Buyer shall pay its pro-rata share promptly upon being notified thereof by Seller. Such pro-rata share shall be determined by the proportionate volume of forest products or other materials hauled over the road and the miles of road used by the respective users. Maintenance will include, without limitation, removal of bank slides and debris, grading the road surface with a road grader, cleaning and pulling the ditches and the clean-out of culverts and catch basins. Dirt/cinder roads may require dust abatement by watering the road surface during periods of dry weather, as directed by Seller. Seller shall have no obligation to maintain or improve any roads, bridges, culverts, drainage or other improvements and Buyer accepts the existing system of roads, bridges, culverts, drainage and other improvements "as-is".

10.7 Notwithstanding anything herein to the contrary, Buyer shall repair any damage, at Buyer's sole expense, caused by Buyer to roads, bridges, fences, gates, canals, laterals, water boxes, levees or other improvements.

11. Fire Prevention and Suppression and Slash Disposal.

11.1 It is recognized that the activities of Buyer under this Agreement may cause fire risk on the Contract Area; therefore, Buyer agrees to use the highest degree of care to prevent forest fires from starting on or spreading to or from the Contract Area or other lands.

11.2 Should a fire occur on or spread to or from any part of the Contract Area, Buyer shall immediately use all reasonable and practical means to suppress and extinguish the fire, and protect all standing and down timber on the Contract Area and adjacent lands. Buyer shall require the employees and contractors of Buyer to do likewise. In no event shall the requirements of this Section be construed as relieving Buyer of the duty and responsibility under State law to fight, control and suppress fire on forest land; it is understood that the provisions of this Section are in addition to any duty and responsibility required by law. Responsibility of Buyer to prevent and suppress fires shall exist regardless of the responsibility of any political body, fire protection organization or agency or any firefighting effort which they may be expended.

11.3 Seller may require Buyer to furnish fire tools on the Contract Area during the periods before and after the State Fire Season is in effect if in Seller's judgment weather conditions warrant such.

11.4 Buyer shall strictly conform to all Federal, State and local laws and regulations relating to the prevention and suppression of fire.

11.5 Buyer agrees promptly to report by telephone, radio or other expeditious means to fire control agencies and Seller's representative, all fires known by Buyer occurring on or threatening to spread onto the Contract Area. Buyer shall immediately confirm in writing to Seller any verbal notice to Seller.

11.6 Notwithstanding the expiration or earlier termination of this Agreement, this Agreement shall survive and continue to govern all costs, expenses, liability or claim of liability arising out of or on account of any fire or the protection against fire originating on or spreading to or from any part of the Contract Area, provided that the fire started during the general time period Buyer was conducting operations under this Agreement.

12. Independent Contractor.

Seller shall exercise no control or supervision over the performance of the Buyer hereunder except Seller shall have the right to require that the work shall be completed in accordance with the provisions of this Agreement. It is understood and agreed that in the performance of this Agreement, Buyer is an independent contractor and no relation of employer and employee, joint venturer or partner, is or shall be deemed to exist either between Seller and Buyer or between Seller and any person or persons performing labor or services on behalf of Buyer. Buyer shall furnish and be responsible for its own employees, agents, and equipment and shall not subcontract work to other persons or entities without the prior written permission of Seller, which can be withheld in Seller's discretion.

13. Environmental Laws.

13.1 Definitions. The following words and phrases shall have the meanings set forth below:

13.1.1 "Environmental Claim" means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations or proceedings arising under any Environmental Law or arising under any permit

issued under any Environmental Law, including without limitation (i) any and all claims made by governmental authorities for enforcement, cleanup, attorneys' fees, response costs, removal, remedial or corrective actions, damages, fines or penalties pursuant to any applicable Environmental Law, including claims resulting in any judicial or administrative order, consent decree or judgment; and (ii) any and all claims by any Third Party seeking damages, attorneys' fees, contribution, indemnification, cost recovery, compensation or injunctive relief under any Environmental Law or for any alleged injury or threat of injury to the Environment, safety or health.

13.1.2 "Environmental Law" means any applicable statute, law, rule, regulation, ordinance or code relating to the protection of the environment, sensitive, threatened and endangered species, public safety or health, forest practices or the regulation of hazardous materials. Such term shall also include any new Environmental Laws or amendments to pre-existing Environmental Laws, becoming effective after the commencement of this Agreement.

13.1.3 "Environment" means the surface water (including stream courses, lakes and reservoirs), ground water, drinking water supply, land surface (including stream banks) or subsurface strata and air.

13.2 Buyer's Notice of Environmental Claims. If any Environmental Claims arise against Buyer, Seller or any real property (the "Premises") which is the subject of or affected by this Agreement, resulting from Buyer's operations under this Agreement, Buyer shall notify Seller by telephone and facsimile within 24 hours and in writing within two (2) days after Buyer first receives notice of such Environmental Claims and shall provide Seller with a copy of each document reflecting such event.

13.3 Buyer's Agreement to Comply with Environmental Laws. Buyer agrees that, during the term of this Agreement and any extensions thereof, it will comply with all applicable Environmental Laws. When permits, licenses or generator or transporter identification numbers are required by an Environmental Law, Buyer shall provide Seller a copy of such permit, license, or generator or transporter identification number within seven (7) days of receipt by Buyer.

13.4 Storage, Use, Handling and Disposal of Hazardous Wastes. In the event Buyer has occasion or need to dispose of hazardous or toxic substances or wastes, and unless otherwise agreed in writing, Buyer shall retain an independent hazardous waste disposal firm to dispose of any and all such substances at an off-site facility which has been properly approved, licensed and authorized to accept such substances. Buyer shall ensure that the disposal firm is properly licensed and in good standing with the applicable regulatory authorities for such work, and that it has all required transporter identification number.

13.5 Spill or Release of Hazardous Materials. In the event of a spill or release of oil or hazardous materials on the Contract Area, Buyer shall promptly comply with all federal, state and local spill notification and response requirements, including, but not limited to, all federal and state health and safety requirements. Buyer shall at a minimum: (1) prevent further spilling or release; (2) take appropriate corrective actions to mitigate the spill; and (3) notify Seller. Further, and without limiting the foregoing, Buyer shall remediate any soil or roads stained or contaminated with any petroleum or other Hazardous Materials, and shall remediate and be

responsible for all loss or damage incurred by Seller or third parties arising from Buyer's contamination of surface or subsurface water.

14. No Representations by Seller.

14.1 Buyer acknowledges it has completely inspected the Contract Area and is satisfied as to boundaries, and has made its own determination of acreage, volume, species mix, grade, condition, quantity and quality of the Covered Products, access roads, soils or rock, and the costs involved in harvesting and removing the Covered Products, and Seller expressly disclaims any express or implied representations or warranties regarding the same.

14.2 Buyer assumes all risk of personal injury and property damage to itself, its employees, agents, and contractors in connection with operations under this Agreement, and Seller makes no representations or warranties, express or implied, as to the present or future condition of the land upon which this Agreement will be performed.

14.3 Except as set forth in Exhibit "14.3", if attached, at the time of execution of this Agreement, Seller is unaware of any sensitive, threatened or endangered species of fish or wildlife on the Contract Area. Provided, however, that Seller has not made an exhaustive survey for such species and does not warrant their presence or absence.

14.4 If either party is of the opinion that harvest of Covered Products or any operations under this Agreement are prohibited or restricted by any law or regulation protecting threatened or endangered species, Buyer may, at its expense, retain a qualified consulting firm ("the Consulting Firm") which is approved by Seller, in its discretion, in writing to thoroughly evaluate the subject harvest or removal. Seller shall have the right to fully participate in the evaluation process. If, after thorough analysis, the Consulting Firm determines that all or a portion of the subject volume can be harvested and removed with or without change in Buyer's operations, or in a different season of the year, the Buyer shall harvest and remove this volume, as recommended by the Consulting Firm; the Termination Date for this volume only shall be extended through the next season during which harvest can occur, if this season follows the Termination Date under Section 9 above. Nothing in this Section shall be deemed to extend the original Termination Date beyond one year.

14.5 In the case of any discovery of any threatened or endangered species under Section 14.4 above, Seller may, in its discretion, provide Buyer with equivalent substitute volume for any volume, which should not be cut, in the opinion of the Consulting Firm, because of the potential for violation of the Endangered Species Act. Determinations of equivalent substitute volume shall be made under Section 33 below. Notwithstanding anything in this Agreement to the contrary, Buyer agrees that Seller shall have no liability to Buyer in the event a threatened or endangered species is discovered on the Contract Area. For purposes of this paragraph, a "threatened" or "endangered" species shall be a species, which is entitled to protection under the Endangered Species Act or state law equivalent.

15. Insurance.

15.1 Before commencing any activities under this Agreement, Buyer shall, at its own cost and expense, secure a policy or policies of insurance, and during the term of this Agreement,

maintain such insurance in a form reasonably satisfactory to Seller insuring against liability growing out of Buyer's operations, and the operations of its employees, agents, contractors, or other persons acting for or on behalf of the Buyer, including the following:

- (i) Comprehensive general liability, including contractual, with minimum limits of at least \$1,000,000 per occurrence, \$1,000,000 aggregate bodily injury, and \$1,000,000 aggregate property damage.
- (ii) Comprehensive automobile liability including owned, hired and non-owned vehicles with minimum limits of \$1,000,000 per person, \$1,000,000 per accident bodily injury, and \$1,000,000 property damage.
- (iii) Statutory Workers' Compensation Insurance or equivalent Industrial Accident Insurance covering all employees as required by law. Where applicable, such coverage will also provide Coverage B, \$1,000,000/\$1,000,000/\$1,000,000.

15.2 Comprehensive general liability insurance (with no exclusions unless consented to by Seller in writing) shall include coverage for: operations and completed operations; independent contractors; blanket contractual liability (including liability assumed under the indemnification paragraph of this Agreement); explosion; collapse; and underground damage if blasting or excavation is to be done; and automobile liability insurance covering owned, hired and non-owned vehicles. As it respects Section 15.1 (i) and (ii) above, all policies shall by endorsement name SWF Birmingham, LLC, and The Molpus Woodlands Group, LLC as additional insureds with respect to the performance of this Agreement. The Aggregate limit shall be specific to this Agreement. The coverages shall be primary, exclusive of any coverage carried by Seller, and shall be exhausted first notwithstanding that Seller may have other valid and collectible insurance covering the same risk. Nothing herein contained shall limit Buyer's liability to Seller to the scope or the amount of the insurance coverage.

15.3 Prior to commencing performance of this Agreement, Buyer shall deliver to Seller certificates from Buyer's insurance carrier evidencing the coverages described herein. Buyer will immediately provide Seller's land manager, in writing, with any notice, written or oral, it receives or makes with respect to cancellation or material change to any of the insurances referred to herein. Buyer shall also require all subcontractors and owners of vehicles and other equipment used in connection with the performance of this Agreement to have in force and effect insurance policies satisfying the above provisions.

15.4 If Buyer operates without the insurance required in this Section, or if any insurance required herein lapses prior to the Termination Date, an Event of Default shall have occurred allowing Seller in its sole discretion to immediately terminate this Agreement and pursue its remedies under Section 27 below.

Temporary Suspension of Operations.


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15.5 Seller may, in its discretion and at any time for any reason, including but not limited to fire danger, weather conditions, or species concerns, or breach of any provision of this Agreement, temporarily curtail or suspend Buyer's operations under this Agreement, whether or not Buyer is in breach hereof. Seller shall not be liable for any expense, loss or damage that may be sustained by Buyer on account of any temporary suspension or curtailment of Buyer's operations.

15.6 In the event temporary suspensions or curtailments by Seller exceed fifteen (15) total operating days (which may or may not have accumulated concurrently), the time for performance of this Agreement shall be extended fifteen (15) days for each fifteen (15) day increment of days actually lost to such temporary suspension, curtailment or shut-down. For example, Buyer shall not be entitled to a fifteen (15) day extension until the days actually lost reach fifteen (15) total, and Buyer shall not be entitled to a second fifteen (15) day extension until the days actually lost reach thirty (30) total. Buyer shall not be entitled to any extension of time if Seller's temporary suspension of operations is due to Buyer's breach of any provision of this Agreement. In no event shall the sum total of extensions by Seller exceed forty-five (45) days.

16. Force Majeure.

16.1 Buyer and Seller shall be free from any liability to one another for delays in delivery or failure to perform due to acts of God, acts of default of any carrier, acts of any governmental authority, wars, riots, revolutions, strikes and other labor disputes, port congestion, fires, floods, perils of the sea, sabotage, nuclear incidents, earthquakes, storms, epidemics, or any other contingency of any similar nature beyond the control of either party. The foregoing shall apply even though any of such causes exist as of the date of this Agreement or occurs after performance is delayed for other causes. Market conditions shall not be the basis for any Force Majeure and shall not permit any delays or failure to perform on the part of the Buyer.

16.2 If an event Force Majeure causes any delay in the performance of this Agreement, Buyer shall give notice to Seller as soon as practicable that such an event has taken place and outline the relief Buyer is seeking under this provision. Buyer shall make its best efforts to minimize the length of the event of Force Majeure.

16.3 If an event of Force Majeure causes Buyer to delay in the harvest of Covered Products under this Agreement, Seller shall extend the period of time for performance of this Agreement by the number of days Buyer was prevented from conducting harvest operations hereunder. Provided, however, that Buyer must notify Seller within seven (7) days after the commencement of the event of Force Majeure, and provided further, that such extension of time for performance of this Agreement shall not exceed forty-five (45) days.

17. Liens.

17.1 Buyer hereby expressly agrees to pay as due all charges that could result in or create liens or encumbrances or claims arising out of or connected with Buyer's operations hereunder. In the event such liens, encumbrances or claims are or in Seller's reasonable belief may be, asserted against the Contract Area or Covered Products, Seller may require Buyer to furnish security sufficient to satisfy said claim, lien or encumbrance.

17.2 Buyer agrees to pay all costs, expenses and attorney fees incurred by Seller as a result of any claim, lien or encumbrance created or suffered by Buyer.

17.3 Buyer waives and releases any and all liens, claims of lien and rights to lien that Buyer or its subcontractors might obtain under the lien statutes of the State of Alabama against: (i) Covered Products on the Contract Area; (ii) the Contract Area itself; and (iii) any roads or improvements thereon on account of any or all of the following: the contract or agreed price or the reasonable value of all labor, materials, transportation, services or equipment furnished or rented, in the performance of this Agreement. Buyer shall obtain an identical lien waiver from its subcontractors.

17.4 Buyer's waiver and release of any and all liens, claims of lien and rights to lien is a material inducement for Seller to enter this Agreement, and Seller would not enter this Agreement in the absence of such waiver and release.

17.5 Buyer expressly represents and warrants that it is solvent and able to pay all of its obligations in the regular course of business, including those, which are contingent or not matured. The insolvency of the Buyer shall be an Event of Default under this Agreement giving Seller the right to immediately terminate this Agreement and other contracts between Seller and Buyer and exercise all rights and remedies provided for herein.

18. Trespass

Special care shall be taken by Buyer to protect and avoid felling or damaging any tree, other than any tree reasonably deemed hazardous to Buyer, not designated for cutting, or any tree outside Contract Area boundaries unless specific written approval of Seller has first been obtained. In addition to other remedies, which Seller may have under Alabama law, Buyer shall come in, defend, indemnify and hold Seller harmless if Buyer, its contractors, or employees, cut, injure or remove any tree, which is not to be harvested under this Agreement.

19. Indemnity.

Buyer shall come in, indemnify, defend and save harmless Seller and MWG, and their respective members, managers, directors, officers, agents and employees, and the Timber from and against any and all loss, damage, expense, liabilities, attorney's fees, demands and causes of action, and any expense incidental to the defense thereof by Seller, resulting from or related to (a) injury or death of person, or damage to property, occurring on or about Seller's properties or in any manner directly or indirectly growing out of or in connection with the use, occupancy or condition of Seller's properties or any part thereof by Buyer or any person acting for or on behalf of Buyer, or (b) any breach or default by Buyer under this Agreement. The indemnities set forth herein will survive the termination or expiration of this Agreement.

21. Laws, Regulations and Orders.

Buyer agrees to comply with all laws, rules and regulations of the United States, the State of Alabama, and all other governmental bodies and agencies which pertain to Buyer's operations hereunder, including, without limitation, Environmental Laws, and to labor, wages, hours, and working conditions.

22. Notice.

The addresses for notices to Seller and Buyer are as follows:

If to Seller:

SWF Birmingham, LLC
c/o The Molpus Woodlands Group, LLC
178 Bonhomie Road
Hattiesburg, Mississippi 39401
Attention: Mr. Ken Sewell

With a copy to:

The Molpus Woodlands Group, LLC
3580 Lorna Ridge Drive
Hoover, Alabama 35216
Attention: Mr. Don Sanford

With an additional copy to:

The Molpus Woodlands Group, LLC
178 Bonhomie Road
Hattiesburg, Mississippi 39401
Attention: Mr. Michael R. Cooper, General Counsel

If to Buyer:

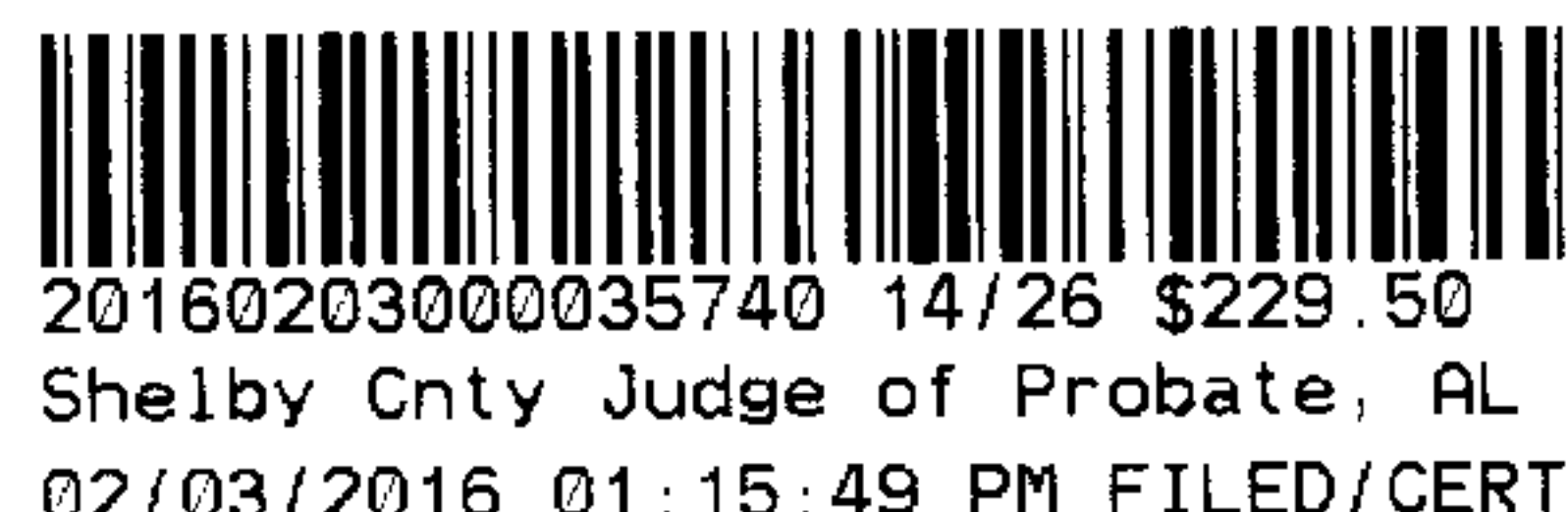
Total Forestry Services, Inc.
Attention: Brad Mitchell
2155 Ingate Road
Centreville, AL 35042

Except for any notices, demands, requests or other communications required under applicable law to be given in another manner, whenever Seller and Buyer give or serve any notices, demands, requests or other communications with respect to this Agreement, each such notice, demand, request or other communication shall be in writing and shall be delivered personally, mailed by certified or registered mail or sent by a nationally recognized courier service such as Federal Express, and properly addressed in accordance with this Section and shall be deemed given upon receipt or refusal to accept. Any party may change its address for such notices by delivering or mailing to the other party hereto, as aforesaid, a notice of such change.

23. Time is of the essence.

Time is of the essence in the performance of this Agreement.

24. Choice of Law and Authority to Bind Entity.



This Agreement shall be governed by the laws of the State of Alabama. Buyer and Seller represent that they are legally organized entities authorized to enter into this Agreement and that their representative executing this agreement is duly authorized to bind the entity to the terms of this Agreement without further approvals.

25. Waiver.

Failure by Seller at any time to require strict performance by Buyer of any provision hereof shall in no way affect Seller's rights hereunder to enforce such provision nor shall any waiver by Seller of any breach of any provision hereof be held to be a waiver of any succeeding breach of any such provision or as a waiver of the provision itself.

26. Number and Gender; Parties.

As used herein, the singular shall include the plural and the plural the singular. The masculine and the neuter shall each include the masculine, feminine and the neuter as the context requires. The covenants, conditions and terms of this Agreement shall extend to, be binding upon and inure to the benefit of the heirs, administrators, executors, successors and assigns of the parties hereto; provided, however, that nothing contained in this paragraph shall alter the restrictions herein contained relating to assignment.

27. Default and Remedies.

27.1 Seller may suspend Buyer's logging and removal of Covered Products from the Contract Area immediately upon notice to Buyer for any breach under the terms of this Agreement. Such suspension shall continue until the breach is remedied or until this Agreement is terminated.

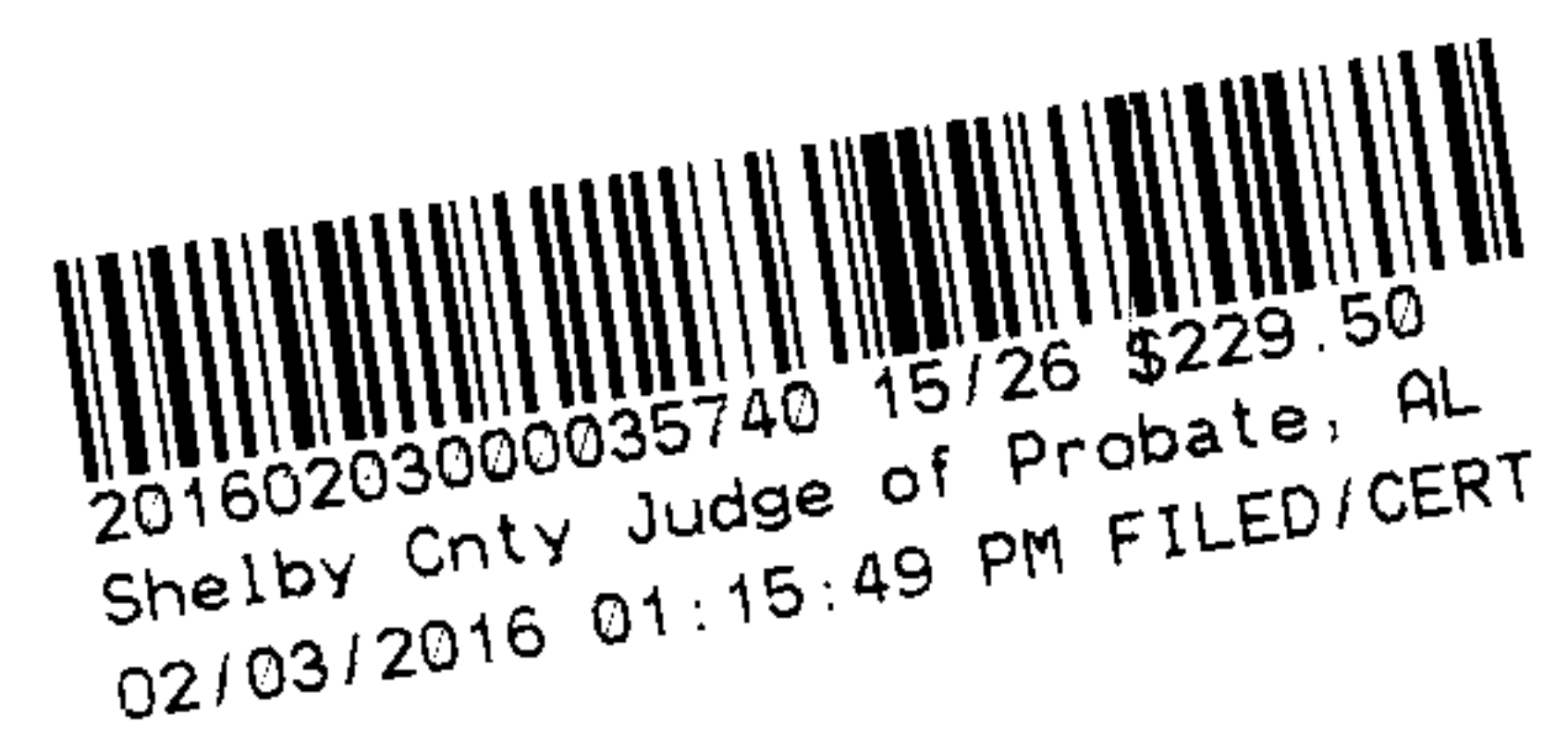
27.2 In the event the Buyer shall fail to make any payment as herein provided, or shall violate any of the other terms, covenants or conditions of this Agreement, Seller shall give written notice to Buyer of such default and in the event Buyer shall continue to be in default for a period of ten (10) days from receipt of or the failure to accept the written notice, an Event of Default shall have occurred and Seller shall have the right to exercise any one or more of the following remedies:

27.2.1 To recover damages for Buyer's breach of contract;

27.2.2 To terminate this Agreement, and declare a forfeiture of Buyer's rights and interest herein, including the Security Deposit.

27.2.3 To exercise any and all rights and remedies now provided or which may hereafter be provided by law, including without limitation those provided in Alabama's Uniform Commercial Code.

27.3 In addition to other remedies, Seller shall be entitled to the appointment of a receiver, whether or not the apparent value of the Covered Products remaining on the Contract Area exceeds the amount of the balance due hereunder, and any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver.



27.4 The remedies provided herein are cumulative and in addition to any other remedies to which Seller is entitled in the case of a breach or threatened breach of this Agreement, whether provided in law or in equity.

27.5 In the event of a breach of this Agreement by Seller, the Buyer's exclusive remedy is limited to the return of any payments which have not been allocated to Covered Products removed, based upon the Forestry Consultant's determination of the volume and fair market value of the Covered Products, and the fair market value and volume of Covered Products removed by Buyer, under Section 33 below. Seller shall not be liable for any damages, whether direct or indirect, punitive, incidental, consequential, or otherwise, whether in contract or tort.

28. Dispute Resolution.

28.1 The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy (and who do not have direct responsibility for administration of this Agreement). The disputing party shall give the other party written notice of the dispute. Within five (5) days after receipt of said notice, the receiving party shall submit to the other a written response. The notice and response shall include (a) a statement of each party's position and a summary of the evidence and arguments supporting its position and (b) the name and title of the executive who will represent the party. The executives shall meet at a mutually acceptable time and place within ten (10) days of the date of the disputing party's notice and, thereafter, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

28.2 If the matter has not been resolved within thirty (30) days of the disputing party's notice or if the party receiving said notice will not meet within the ten (10) days, the parties acknowledge that this Agreement affects interstate commerce and agree to submit the dispute to private and confidential, binding arbitration with an arbitrator, who shall be a lawyer knowledgeable in the field of timber sales and mutually acceptable to Buyer and Seller, and in accordance with the following provisions:

28.2.1 The parties shall each submit to the arbitrator a written summary of their respective position on the dispute. The arbitrator shall endorse one of the two positions based upon which leads to an outcome that most closely resembles the parties' intentions as provided in this Agreement. The arbitrator shall not provide a compromise solution in the absence of both parties' consent, which may be withheld in either party's absolute discretion.

28.2.2 The arbitrator shall follow such procedural rules as the parties may agree upon and, in the absence of agreement, shall follow the procedural rules of the American Arbitration Association.

28.2.3 If the parties fail to agree upon an arbitrator under this Section 28.2 or a Forestry Consultant under Section 33 below within ten (10) days of demand by either party, then either party may request such appointment by a court of competent jurisdiction in Shelby County, Alabama or the federal district court having jurisdiction over that county. Both parties shall equally bear the cost and expense of the arbitrator and the appointment of the same unless the arbitrator cost and expense (including attorneys fees) is assessed differently by the arbitrator.

28.3 The arbitration shall be completed within sixty (60) days after the date of the notice provided in Section 28.1 above or within sixty (60) days after the date of the appointment of the arbitrator as provided in Section 28.2 above, whichever is later.

28.4 Notwithstanding any provisions of this Section, Seller shall have the right to petition a court for injunctive relief to preserve the status quo pending arbitration and award under this Section.

28.5 All parties freely and voluntarily enter into this Agreement including the arbitration provisions hereof and acknowledge that: (i) they are sophisticated business owners capable of understanding the consequences of their actions; (ii) they have received advice of counsel or had the opportunity to do so and have waived their right to seek advice of counsel; (iii) arbitration waives the right to trial by a judge and/or trial by a jury; and (iv) the procedures in arbitration are different from those afforded by litigation and lack the full protection of court rules and laws that are followed in judicial proceedings.

29. Venue, Expert and Attorney Fees.

29.1 In the event any arbitration, action, suit or legal proceeding is instituted by either party to this Agreement, exclusive venue and jurisdiction shall be in Shelby County, Alabama; the prevailing party shall be entitled to recover from the losing party both reasonable attorney fees and reasonable expert witness fees as determined by the court or arbitration panel, both at trial and on appeal or review and in bankruptcy, whether or not the matter in dispute involves an issue peculiar to federal bankruptcy law. Attorney fees and expert witness fees shall be in addition to other costs and disbursements allowed by law. "Prevailing party" shall be determined by the arbitrator, or any court, as the true prevailing party (not statutorily prevailing party) after taking into consideration any settlement offers made by the parties and the number and importance of issues to be determined.

29.2 If Seller becomes involved in litigation (as a plaintiff, defendant, or cross-claimant or cross-defendant) by reason of any debt incurred by Buyer, any alleged personal or bodily injury or property damage related to the Contract Area or Buyer's conduct related to this Agreement, and/or any matter for which Buyer has an indemnity obligation hereunder, then Buyer agrees to fully come in, defend Seller, using lawyers of Seller's choice, upon Seller's tendering of its legal defense to Buyer. Should Buyer refuse the tender of defense, then Buyer shall be liable to Seller for all its costs and fees incurred in connection with such litigation.

30. Survival.

The covenants, terms and conditions of this Agreement, specifically including, but not limited to, the covenants regarding indemnification and attorney fees shall survive the termination hereof.

31. *Intentionally omitted.*

32. Assignment of Agreement.

This Agreement is personal to Buyer. It shall be an Event of Default hereunder for Buyer, without the prior written consent of Seller, to sell, convey, assign, lease, subcontract,

mortgage, assign for security purposes, or otherwise transfer or encumber, voluntarily or involuntarily, all or any portion of the Covered Products or any rights arising out of or related to this Agreement (any change in the controlling interest in the entity comprising Buyer shall be deemed a sale requiring the prior written consent of Seller). Seller's consent may be withheld or conditioned in Seller's discretion. If Seller consents to assignment or subletting of any of Buyer's duties hereunder, Buyer shall remain liable for performance by assignees or contractors in compliance with this Agreement. If a sale of an interest (complete or partial) in Seller or the Contract Area shall occur, this Agreement shall remain in full force and effect. Seller may assign its interests in this Agreement in its discretion, and upon such assignment shall have no liability hereunder from and after the date of such assignment.

33. Covered Products Market Value and Volume.

Whenever this Agreement requires that the fair market value or volume (including equivalent substitute volume) of any of the Covered Products be determined, all factors relevant to value shall be taken into account, including character and quality of the timber as determined by species, age, size, and condition; the quantity of the timber per acre, the total quantity under consideration, and the location of the timber in question with reference to other timber; the accessibility of the timber; and the freight rates by common carrier to markets. Seller and Buyer first shall in good faith seek to agree upon the fair market value and/or volume. If Seller and Buyer are unable to agree, then fair market value and/or volume shall be determined by private, confidential and binding arbitration by a forestry consultant appointed jointly by the Seller and Buyer (the "Forestry Consultant"). The decision of the Forestry Consultant shall be binding on Seller and Buyer. Seller and Buyer shall each bear one half of the costs and fees of the Forestry Consultant, and any other charges required for or by the appointment of the Forestry Consultant ("Consulting Expenses").

34. Severability.

If any terms or provisions of this Agreement are determined to be unenforceable, the remaining terms and provisions shall remain in full force and effect. If subsequent to the date of this Agreement valid state or federal laws or regulations governing the relationship between Seller and Buyer take effect, this Agreement shall be considered to incorporate such laws or regulations so long as they shall be effective, and any provision of this Agreement in conflict therewith shall during such period be void.

35. Counterparts.

This Agreement may be executed in as many counterparts as may be deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. This Agreement may be executed by copy delivered by facsimile; provided that an original "hard copy" shall be delivered to the other party within five (5) days after the Effective Date hereof.

36. Construction of Agreement.

36.1 Section headings in this Agreement are for convenience only, and shall not be considered a part of this Agreement or used in its interpretation. If one or more provisions hereof are ruled invalid, it shall not impair the enforceability of the remainder of this Agreement.

36.2 Any provision herein leaving decisions to Seller's discretion, judgment, or determination shall provide Seller with the right to make such decisions in its absolute discretion.

37. Final Agreement.

This document is the entire and complete agreement of the parties. There are no other written or oral agreements between the parties hereto affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by either party to the other with respect to the subject matter thereof, including without limitation any timber sale prospectus or invitation to bid, and none thereof shall be used to interpret or construe this Agreement. Any amendment, modification, or addendum to this Agreement must be in writing and executed by both Buyer and Seller in order to be effective and binding.

38. Recordation and Distribution.

This Agreement is confidential and proprietary and shall not be recorded in the land records. Except as required by law, this Agreement shall not be distributed by Buyer to any third party person or entity other than Buyer's counsel, accountant or other advisor having a need to know the terms of the Agreement and who agrees to be bound by the terms of this paragraph. Buyer may record at Buyer's expense a memorandum of this Agreement in a form approved by Seller. If Buyer records a memorandum of this Agreement, Buyer agrees to file at Buyer's expense a Notice of Cancellation or a Notice of Termination in a form approved by Seller immediately upon the cancellation or termination of this Agreement.

[Signature pages follow]


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Shelby Cnty Judge of Probate, AL
02/03/2016 01:15:49 PM FILED/CERT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

WITNESSES:

[Signature]

[Signature]

SELLER:

SWF BIRMINGHAM, LLC

By: The Molpus Woodlands Group, LLC,
its authorized agent and property manager

By: [Signature]

Name: Ken Seckel

Title: Chief Operating Officer

Date: 12/16/15

(Buyer's execution follows on next Page)


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BUYER:

TOTAL FORESTRY SERVICES, INC.

By: 

Brad Mitchell

Title: Owner and Authorized Signatory
for Total Forestry Services, Inc.

Date: 12-10-15

WITNESSES:



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ATTACHED EXHIBITS:

Exhibit "A"	Contract Area Legal Description
Exhibit "B"	Harvest Boundary Identification
Exhibit "B-1"	Map of Contract Area
Exhibit "5.3.1"	Notice to Seller
Exhibit "14.3"	List of Sensitive, Threatened and Endangered Species

I have read this Agreement and all of the above noted Exhibits, all of which are fully incorporated herein.

B.M
(initial)


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EXHIBIT "A"

Contract Area Legal Description

Contract area is approximately 34.6 acres and is located in the following Governmental Surveys:

Shelby County, Alabama

Township 21 South, Range 4 West

Section 29: pt. NW $\frac{1}{4}$ of SW $\frac{1}{4}$; pt. N $\frac{1}{2}$ of N $\frac{1}{2}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$

Section 30: pt. E $\frac{1}{2}$ of SE $\frac{1}{4}$

Section 31: pt. NW diagonal $\frac{1}{2}$ of W $\frac{1}{2}$ of NE $\frac{1}{4}$ of NE $\frac{1}{4}$; pt. W $\frac{1}{2}$ of NE $\frac{1}{4}$; pt. NE $\frac{1}{4}$ of NW $\frac{1}{4}$; pt. NW $\frac{1}{4}$ of SE $\frac{1}{4}$

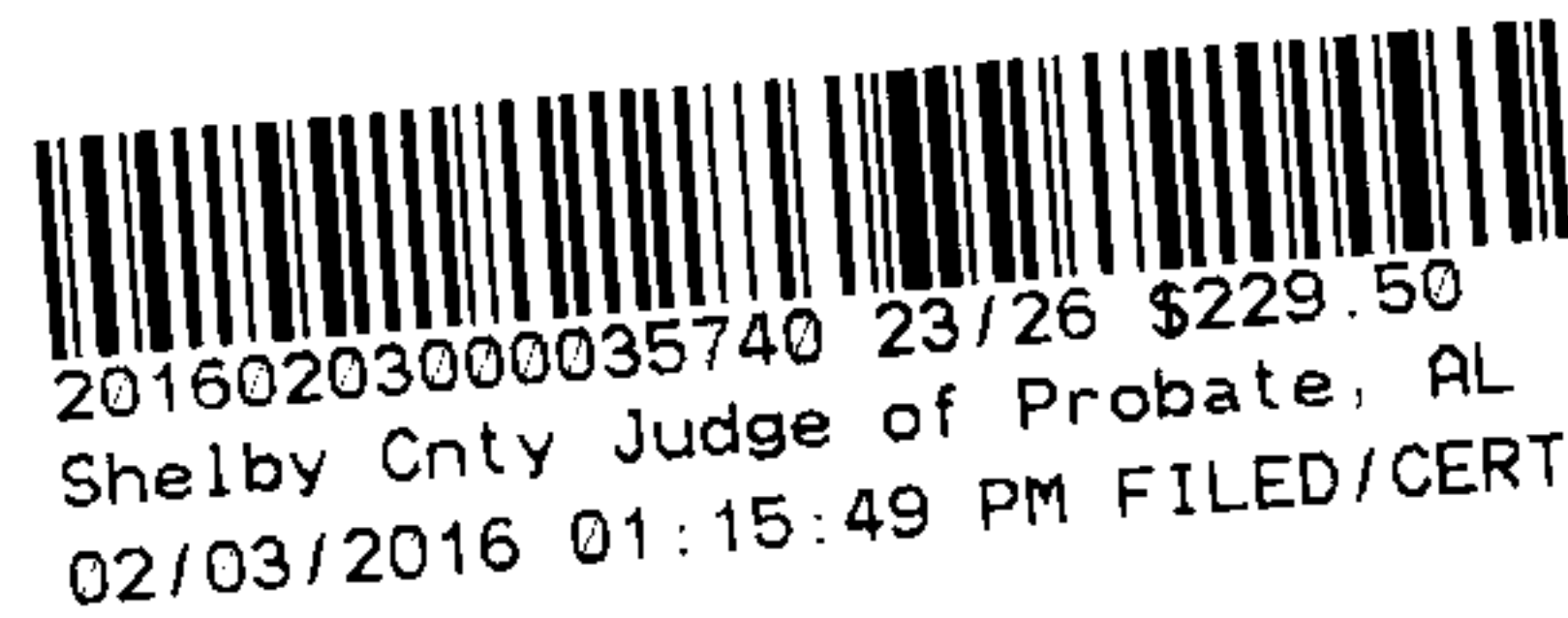


EXHIBIT "B"

Harvest Boundary Identification

Boundary Lines: The boundary lines are identified on Exhibit "B-1". All property boundary lines are marked on the ground with red paint or flagging. Elsewhere, the harvest boundary is defined by blue marking paint. If the Contractor has any question about the boundary the forester representing the Seller will provide assistance. Buyer shall perform all of its logging operations within said boundary lines. Buyer shall fall timber in such manner that it shall lay within the property boundaries and no tops or other debris shall extend outside the property boundaries of the Contract Area. Buyer shall be solely responsible for any loss or damage including but not limited to plantation damage caused by decking, suffered by Seller or other owners in the event of the violation of the provisions of this paragraph.

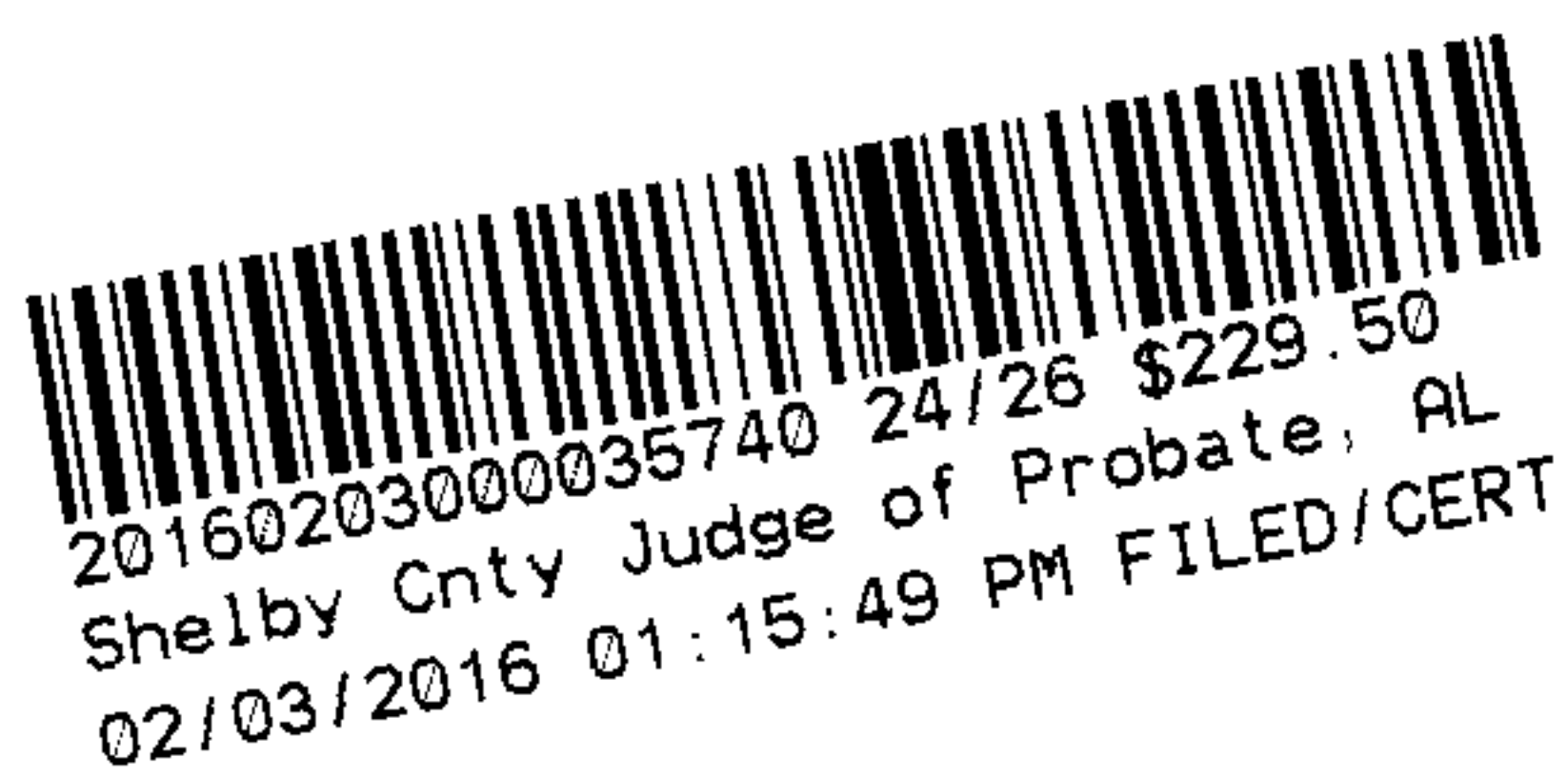


EXHIBIT "5.3.1"

Notice to Seller

To: SWF Birmingham, LLC, a Delaware
Limited Liability Company
through The Molpus Woodlands Group, LLC
Attn: Don Sanford
3580 Lorna Ridge Drive
Hoover, AL 35216
ph: 205.822.7130
fax: 205.824.7898
e-mail: dsanford@molpus.com

Re: Timber Cutting Agreement – Alabama between SWF Birmingham, LLC
("Seller") and Total Forestry Services, Inc. ("Buyer"), effective
_____ ("Agreement").

Dear Sir:

I write to give Notice to Seller pursuant to paragraph 5.3.1 of the above-referenced Agreement with Buyer that:

(a) The names, addresses and insurance compliance of any sub-contractors, including timber cutting contractors are:

_____;

(b) The estimated date timber cutting will commence is _____;

(c) We confirm that all activities will be performed pursuant to the Agreement.

If you have any questions concerning this Notice to Seller or Buyer's performance under the Agreement, please contact me.

Sincerely,

Total Forestry Services, Inc.
("Buyer")

By: _____

Title: _____

Date: _____


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EXHIBIT "14.3"

**List of Sensitive, Threatened and Endangered
Species Known to be On the Contract Area**

None.

