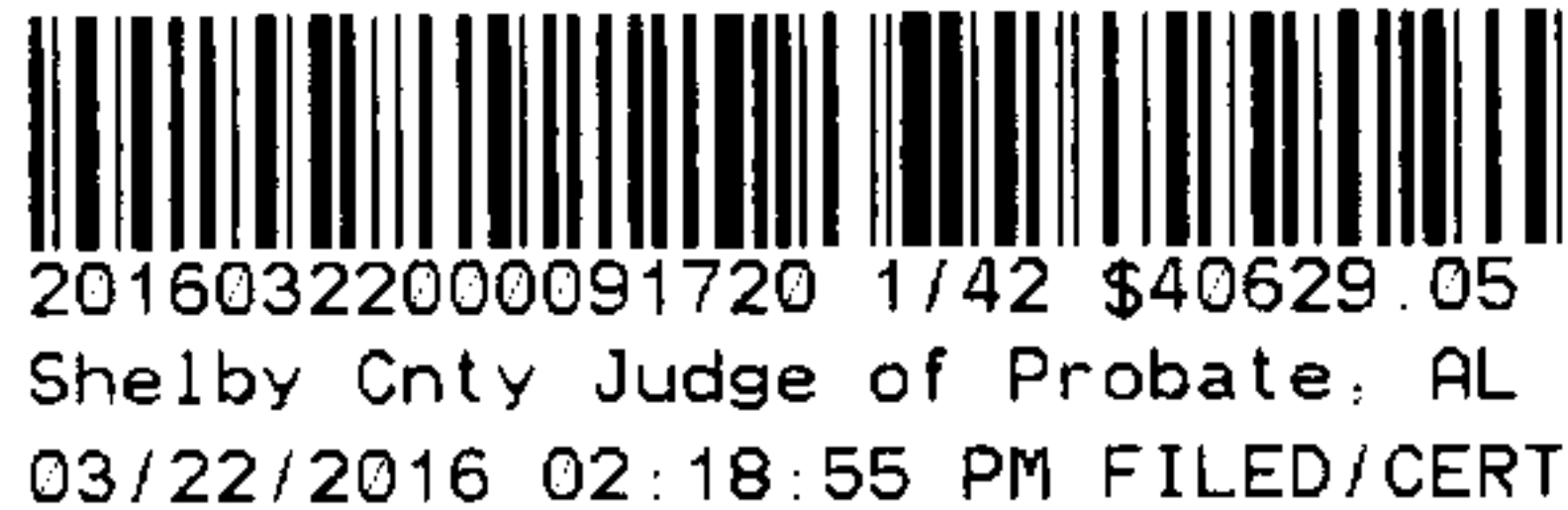


**THIS MORTGAGE WAS PREPARED BY, AND  
RECORDING REQUESTED BY:**

Donald Warren  
Burr & Forman LLP  
Suite 3400  
420 North 20<sup>th</sup> Street  
Birmingham, Alabama 35203  
(205) 251-3000

(COUNTERPART FOR Shelby COUNTY)



STATE OF ALABAMA  
COUNTIES OF BIBB, CALHOUN, CHILTON, CLAY, CLEBURNE, COOSA, ELMORE,  
ETOWAH, RANDOLPH, SHELBY, ST. CLAIR, TALLADEGA AND TALLAPOOSA.

**MORTGAGE, SECURITY AGREEMENT AND  
ASSIGNMENT OF LEASES AND RENTS**

**THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF  
LEASES AND RENTS** (hereinafter, together with all amendments, supplements, extensions,  
restatements and modifications thereto, being referred to as this “**Mortgage**”), made and entered  
into as of March 15, 2016, by and between **HIGH PINE LLC**, a Delaware limited  
liability company with an address at 99 High Street, Boston, Massachusetts 02110  
 (“**Mortgagor**”) and **METROPOLITAN LIFE INSURANCE COMPANY**, a New York  
corporation with an address at 6750 Poplar Avenue, Suite 109, Memphis, Tennessee 38138  
 (“**Lender**” or “**Mortgagee**”).

**THAT FOR AND IN CONSIDERATION** of the sum of Ten and No/100 Dollars  
(\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are  
hereby acknowledged, and in order to secure the indebtedness and other obligations of  
Mortgagor hereinafter set forth, **MORTGAGOR DOES HEREBY GRANT, BARGAIN,  
SELL, CONVEY, PLEDGE, ASSIGN, MORTGAGE, TRANSFER AND SET OVER  
UNTO MORTGAGEE**, its successors and assigns, **WITH THE POWER OF SALE**, all right,  
title and interest in and to the property and interests described in the following granting clauses  
(each a “**Granting Clause**” and collectively, the “**Granting Clauses**”), and does hereby grant to  
Mortgagee a security interest in and a pledge of the property and interests described in the  
Granting Clauses, which constitute or may constitute goods or personal property, including,  
without limitation, timber to be cut and as-extracted collateral (all said property and interests  
described in the Granting Clauses or otherwise granted by Mortgagor herein are collectively  
hereafter referred to as the “**Mortgaged Property**”):

(a) All right, title and interest in and to the pieces or parcels of land described  
on Exhibit A attached hereto and incorporated herein by reference, whether held in fee or  
leasehold (the “**Premises**”), together with all improvements, buildings, structures, fixtures of  
every description and appurtenances now or hereafter located thereon or therein (the  
“**Improvements**”); and



(b) All trees and timber of every size, age, species, kind and description, now or hereafter growing, standing or lying on, or to be planted, grown, harvested from, pertaining to or located on, the Premises (whether owned or leased), goods, inventory and proceeds thereof, and including, without limitation all property related to nursery operations or replanting and reforestation, seedlings, nursery stock, trees, growing trees, standing timber, timber lying on the ground, timber cut and timber to be cut, severed timber, stumpage, forest products, lumber, pulpwood, and all products and by-products of any timber operations conducted or to be conducted on the Premises, and all proceeds, accounts, general intangibles and payment intangibles resulting from the sale of such timber, timber to be cut and timber interests (sometimes collectively referred to herein as **"Timber"**);

(c) All farm products, crops, biomass and other organic products now or hereafter growing, standing or lying on, or to be grown, harvested from, pertaining to and located on, the Premises, goods, inventory and proceeds thereof, and all products and by-products of any agricultural operations conducted or to be conducted on the Premises, and all right, title and interest of Mortgagor in and to any credits, claims, rights or benefits arising from or related to the absorption of carbon dioxide by the trees and other organic plants growing on the Premises, carbon sequestration, carbon credits, carbon financial instruments or any other benefit by any other name or description, financial or otherwise related to the control or reduction of greenhouse gases, carbon dioxide or any other form of air or atmospheric quality incentives, whether created or sponsored through legislation of any government, industry arrangements, barter, private market or otherwise, and all proceeds, accounts and general intangibles resulting from the sale of such agricultural products or the sale, issuance, trade, barter or other transactions with any such credits, claims, rights or benefits (sometimes collectively referred to herein as **"Biomass and Credits"**);

(d) All coal, oil, gas, hydrocarbons, gravel, sand, dirt, rock, phosphate, clay and other minerals and mineral rights owned by Mortgagor and located on, in or under the Premises and extracted or to be extracted, as extracted collateral and all mineral interests, all rights to use the surface in connection with the mineral rights, mining or drilling rights, and all royalties, proceeds, accounts and general intangibles resulting from the sale of such minerals or mineral interests (sometimes collectively referred to herein as the **"Minerals"**);

(e) All easements, rights-of-way, gores of land, ways, riparian rights and rights of use or passage (whether public or private), estates, interests, benefits, powers, rights (including, without limitation, any and all lateral support, drainage, slope, sewer, water, air, mineral, oil, gas and subsurface rights), privileges, claims, franchises, licenses, profits, rents, royalties, tenements, hereditaments, reversions, remainders and appurtenances of every nature whatsoever, whether appurtenant or in gross, in any way now or hereafter belonging, relating, appertaining to or useful in the operation of all or any part of the Premises, Minerals, Timber, Improvements, Biomass and Credits, Equipment, or the harvesting of timber on that certain land on which Mortgagor owns reserved timber which has been pledged to Mortgagee under a certain Security Agreement between Mortgagor and Mortgagee of even date herewith, which land is described on certain UCC-1 Financing Statements referencing such Security Agreement and filed in the real property records naming Mortgagor as debtor and Mortgagee as secured party, whether legal or equitable (all of the above, collectively referred to herein as, the **"Easements"**,



and the Premises, the Improvements, the Minerals, the Easements, the Timber and the Biomass and Credits are hereinafter sometimes collectively referred to as the “**Real Estate**”);

(f) All of Mortgagor’s rights (but not its obligations except as otherwise expressly agreed in writing by Mortgagee) under any and all agreements, leases, subleases, surface leases, licenses, written or oral, and all agreements for any manner of use or occupancy, or exploration, drilling, mining, extraction, storage, transportation, processing and handling of Minerals, and all timber sale agreements, timber cutting agreements, timber deeds, timber purchase agreements or stumpage agreements, timber harvest agreements, log or pulpwood sale agreements and other contracts and agreements pursuant to which Mortgagor has agreed to sell any standing or severed timber, pulpwood or other timber products from the Real Estate, whether deemed to be an easement, lease, timber deed or profit a prendre, and affecting all or any portion of the Real Estate with respect to which the Mortgagor is the landlord or sublandlord, it being intended that this Granting Clause shall apply to the interests of Mortgagor as landowner, lessor, seller, assignor or otherwise in any such agreement, and including, without limitation, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made including subleases thereunder, upon, covering or affecting all or any part of the Real Estate, together with any and all guaranties of the lessee’s, any sublessee’s, or contracting party’s performance thereunder (all such existing or future leases, licenses, subleases, agreements, surface leases, tenancies, timber purchase agreements or stumpage agreements, timber sale agreements, timber cutting agreements, timber deeds, log or pulpwood sale agreements and all other and similar agreements, contracts, instruments or arrangements as heretofore mentioned, and any use or occupancy arrangements created pursuant to Section 365(h) of Title 11 of the United States Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Estate, being hereinafter collectively referred to as the “**Agreements**”) and all right, title and interest of Mortgagor in and to property of any tenant or other person under any such agreement or under any other arrangement entered into in connection with any such agreement, and any and all cash, security deposits, advance payments or rentals and deposits or payments of a similar nature under any such agreement or other arrangement and together with all money payable thereunder or in connection therewith (including, without limitation, any and all cancellation or termination payments);

(g) All permits, special permits, licenses, or approvals affecting the Real Estate now owned or hereafter acquired by Mortgagor;

(h) The immediate and continuing right to collect and receive all of the rents, income, royalties, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of any timber contracts, leases, licenses, bills of sale or deeds, the Agreements or from or out of the Real Estate, or any part thereof, including but not limited to any and all rights and claims of any kind that the Mortgagor may have against any such party under the Agreements or against any subtenants, occupants or licensees of the Real Estate, or against the purchaser under any timber deed, timber cutting agreement, timber sale agreement, coal lease, oil or gas lease, mineral lease, or other agreement in any way relating to the Real Estate, (including any payments received



pursuant to Section 502(b) of the Bankruptcy Code or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings or any assignment for the benefit of creditors in respect of any tenant or occupant of any portion of the Real Estate and all claims as a creditor in connection with any of the foregoing), all such moneys, rents, rights and claims in this paragraph described being hereinafter referred to as the “**Receipts**,” subject, however, to the terms and conditions of this Mortgage;

(i) All right, title and interest in and to all water and water rights and royalties, thermal energy and other geothermal resources and development rights, arising from or relating to the Real Estate;

(j) All accounts, accounts receivable, general intangibles, payment intangibles, trade names, trademarks, commercial tort claims, letter of credit rights and proceeds, supporting obligations of every kind and nature, documents, contract rights, construction contracts, commercial paper, notes, drafts, acceptances, instruments, chattel paper, bonuses, actions and rights in action arising from or relating to any such property now owned or hereafter acquired by Mortgagor or the proceeds thereof, but not Mortgagor’s obligations thereunder, and all funds and deposit accounts and other accounts into which any funds of the Mortgagor are now or hereafter deposited to be held by or on behalf of Mortgagee;

(k) All right, title and interest in and to all building materials, supplies and other property now or hereafter stored at or delivered to the Premises or the Improvements, and all fixtures, fittings, furnishings, apparatus, machinery, appliances, equipment and all other articles of personal property of every nature whatsoever now or hereafter located in or on, or attached to, and used or intended to be used in connection with the Real Estate, or in connection with any operations conducted or intended to be conducted on or with respect to the Real Estate, including without limitation with respect to any activities relating to Timber harvesting or management (collectively, the “**Equipment**”) (all of the Equipment, so far as permitted by law, shall be deemed to be fixtures and part of the Real Estate);

(l) All right, title and interest in information, data, and files, in whatever form, and all computer software and hardware relating to the Real Estate and appurtenances thereto and owned by Mortgagor, including, without limitation: (i) all title records and information, appraisals, opinions with respect to value or title, reports, abstracts of title, maps, aerial photographs, mapping systems, land surveys and similar items; (ii) current forest inventory data providing summary level information by stand, species, component and diameter level and planting records showing seed source and stock type; (iii) geographic information system data relating to elevation, public land surveys, stands, property boundaries, roads, historical harvest units and years of harvest, wildlife threatened and endangered species, thinning, fertilization, and watershed data; (iv) Mortgagor’s road maintenance plan; (v) watershed analysis; and (vi) Mortgagor’s records relating to the accounting and management functions;

(m) All right, title and interest, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to (1) all streets, roads, railroad rights of way, riparian and littoral rights and public places (whether open or proposed) adjoining or otherwise providing access to the Real Estate, (2) the Real Estate lying in the bed of such



streets, roads, railroad rights of way and public places, and (3) all other sidewalks, alleys, ways, passages, vaults, water courses, strips and gores of Real Estate adjoining or used or intended to be used in connection with all or any part of the Equipment, Real Estate or appurtenances thereto;

(n) All right, title and interest of Mortgagor (but not its obligations except as otherwise expressly agreed in writing by Mortgagee), whether now owned or hereafter acquired, in and to: (1) each and every policy of insurance now or hereafter in effect which insures the Real Estate, or any part thereof, (2) any and all judgments, settlements, claims, awards, insurance proceeds and other proceeds and compensation, and interest thereon, now or hereafter made or payable in connection with any casualty or other damage to all or any part of the inventory or goods owned by Mortgagor and set forth herein, the Equipment, the Real Estate or appurtenances thereto, or in connection with any condemnation proceedings affecting any such property or any taking under power of eminent domain (or any conveyance in lieu of or under threat of any such taking) of any such property or any rights thereto or any interest therein, including, without limitation, any and all compensation for change of grade of streets or any other injury to or decrease in the value of such property, (3) all inventory and any and all proceeds of any sales, assignments or other dispositions of any such property or any rights thereto or any interest therein (inventory shall mean and include, without limitation, all goods now owned or hereafter acquired and owned from time to time by Mortgagor which are held for sale or lease or are to be furnished under contracts of service and all goods, materials, raw materials, work in process, finished goods or materials used or consumed in the business of Mortgagor), (4) any and all proceeds of any other conversion (whether voluntary or involuntary) of any such property into cash or any liquidated claim, (5) any and all refunds or rebates of or with respect to any insurance premiums and real estate taxes, impositions or levies, and tax credits or benefits or deposits relating thereto, with respect to such property, (6) all contractual and other indemnities, assurances, guaranties and similar agreements, and all rights, benefits and privileges of Mortgagor in and to any and all contracts relating to operation, maintenance, management or security of any such property, and (7) all investment property, relating to such property, whether now owned or hereafter acquired, including all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts;

(o) All right, title and interest of Mortgagor (whether as seller, purchaser or otherwise), but not its obligations, in and to any and all agreements in the nature of options or for the sale or any other transfer of all or any part of the property described in these Granting Clauses, together with any and all down payments, earnest money deposits and other sums paid or payable or deposited in connection therewith, and all rights which Mortgagor now has or may hereafter acquire to be indemnified and/or held harmless from any liability, loss, damage, cost or expense (including, without limitation, attorneys' fees and disbursements) relating to said property or any part thereof;

(p) All rights, hereditaments and appurtenances pertaining to the foregoing; and all other interests of every kind and character that Mortgagor now has or at any time hereafter acquires in and to the Equipment or the Real Estate described herein and all property that is used or useful in connection therewith, including rights of ingress and egress and all reversionary rights or interests of Mortgagor with respect to such property;



(q) And including all property and rights of the type and nature set forth above hereafter acquired by Mortgagor, and any and all further or greater estate, right, title, interest, claim and demand of Mortgagor, of whatever character (whether vested or contingent and whether now owned or hereafter acquired), in and to any of the property described in the foregoing paragraphs or any rights or interests appurtenant thereto;

(r) All other property of any type or kind whatsoever which is owned by Mortgagor or granted or pledged as collateral for the Secured Obligations under the Loan Agreement or in any other Loan Documents (as hereinafter defined) now or hereafter signed by Mortgagor in favor of Mortgagee, it being the intention of Mortgagor to grant Mortgagee a security interest in all of its assets; and

(s) All proceeds, products, extensions, additions, improvements, betterments, renewals, reversions, substitutions, replacements, accessions, accretions and relictions of and to all or any part of the Real Estate or Equipment and the other property referenced in the foregoing Granting Clauses or encumbered by this Mortgage, including, without limitation, all proceeds arising from the sale or other disposition thereof.

**SUBJECT, HOWEVER,** to the exceptions and encumbrances defined in the Loan Agreement as Permitted Encumbrances.

That portion of the Mortgaged Property which constitutes real property, a leasehold estate or fixtures is sometimes referred to as the “**Real Property Collateral**” and all other Mortgaged Property is sometimes referred to as the “**Code Collateral**.”

**TO HAVE AND TO HOLD** the Real Property Collateral, together with the rights, privileges and appurtenances thereto belonging, to the use, benefit and behoof of Mortgagee, its successors and assigns, **IN FEE SIMPLE** forever and Mortgagor hereby covenants that Mortgagor is lawfully seized and possessed of the Real Property Collateral and has good right to convey and mortgage the same, that the same are unencumbered, except as aforesaid, and that Mortgagor does bind itself and its heirs, executors, administrators, personal representatives, successors and assigns to warrant and forever defend the Real Property Collateral unto Mortgagee and its successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof, together with the rights, privileges and appurtenances thereto belonging, unto Mortgagee and its successors and assigns, forever, and Mortgagor hereby binds itself and its heirs, executors, administrators, personal representative, successors and assigns to warrant and forever defend the Code Collateral unto the Mortgagee, its successors and assigns, against the claim or claims of all persons claiming or to claim the same or any part thereof.

**THIS MORTGAGE** is given to secure the Obligations (as hereinafter defined) and the keeping, performance and observance of, and compliance with, all provisions and agreements required to be kept, performed, observed and complied with by or on behalf of the Mortgagor under the Loan Agreement (as hereinafter defined), this Mortgage or under any of the other Loan Documents, and also to secure repayment, reimbursement and indemnification to Mortgagee of all future advances, fees, liabilities, costs and expenses, including court costs and attorneys’ fees, together with interest thereon as provided in the Loan Agreement, this Mortgage and in the other



Loan Documents, made, paid, suffered or incurred by or for the account of Mortgagee pursuant to the Loan Agreement, this Mortgage and/or the other Loan Documents.

Mortgagor represents and warrants to, and covenants and agrees with, Mortgagee as follows:

1. **LOAN AGREEMENT; NOTE.**

This Mortgage is being executed pursuant to the terms of the Loan Agreement of even date herewith, between Mortgagor and Mortgagee (as amended, restated, renewed, extended, supplemented or otherwise modified from time to time, the “**Loan Agreement**”). Any capitalized terms used in this Mortgage and not otherwise defined herein shall have the meaning assigned to said term in the Loan Agreement. Pursuant to the Loan Agreement, the Mortgagor is or hereafter shall be justly indebted to Mortgagee in the original principal amount of **TWENTY-SIX MILLION, NINE HUNDRED NINETY-FOUR THOUSAND SIX HUNDRED FORTY AND NO/100 US DOLLARS (US \$26,994,640.00)** (the “**Loan**”), as evidenced by two (2) promissory notes in the aggregate amount of the Loan, each from Mortgagor to Lender of even date herewith, and bearing interest and with a maturity date as set forth therein, and all successive extensions and renewals of the indebtedness represented thereby (said notes, as presently constituted and as they may hereafter be amended, extended, renewed, modified or consolidated, together with any and all notes that may hereafter be given in substitution therefor, being hereinafter referred to collectively as the “**Note**” or the “**Notes**”). The Loan Agreement, the Notes, this Mortgage and the other documents evidencing, securing or executed and delivered in connection with the Loan and the Loan Agreement, as presently constituted and as they may hereafter be amended, extended, renewed, restated, consolidated or modified, are herein referred to collectively as the “**Loan Documents**”.

1.1 **Obligations.** Accordingly, this Mortgage is made for the following uses and purposes, and is given to secure and shall secure the prompt payment and performance of the obligations described in this Section 1.1 and its subsections and in Section 1.2 below, which Mortgagor hereby agrees to pay and perform (hereinafter sometimes referred to collectively as the “**Obligations**” or “**Secured Obligations**”):

1.1.1 Payment and performance of all of the indebtedness evidenced by the Notes and all other obligations and liabilities under and pursuant to the Notes, including without limitation, payment of the aggregate principal indebtedness evidenced by the Notes, together with interest thereon at the rate or rates specified in the Notes, including without limitation interest at the Default Rate, as applicable, in accordance with the terms of the Notes, and all premiums payable thereon and all other indebtedness evidenced by the Notes, all of which indebtedness is payable in lawful money of the United States of America;

1.1.2 Any and all sums now or hereafter becoming due and payable by the Mortgagor to the Mortgagee under the terms of this Mortgage, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage with interest as herein provided and any debt or obligation arising as a result of the breach of any warranty or representation set forth in this Mortgage;



1.1.3 Payment and performance and discharge of each and every obligation, promise and agreement of Mortgagor contained in this Mortgage, the Notes, the Loan Agreement and the other Loan Documents;

1.1.4 The Obligations as defined in the Loan Agreement; and

1.1.5 All renewals and extensions of any or all of the obligations of the Mortgagor described in the foregoing subsections, whether or not any renewal or extension agreement is executed in connection therewith; and

1.1.6 The payment of all future and additional indebtedness, direct or indirect, created after the date of this Mortgage, pursuant to the terms hereof or of the Loan Documents, which may be owing by Mortgagor (or by any of the persons herein designated under the term "Mortgagor") to any holder of the Notes at any time prior to the payment in full with interest of the Obligations or the foreclosure of this Mortgage therefor (the event occurring first to be controlling); such additional indebtedness to be secured hereby regardless of whether it shall be predicated upon future loans or advances hereafter made by the holder(s) of the Notes, or obligations hereafter acquired by such holder(s) through assignment or subrogation or otherwise, or shall represent indirect obligations (created after the date of this Mortgage) based upon any endorsements, guaranties or suretyship; and it is agreed that this Mortgage shall stand as security for all such future and additional indebtedness whether it be incurred for any business purpose that was related or wholly unrelated to the purpose of the original loan, or whether it was incurred for some personal or nonbusiness purpose, or for any other purpose related or unrelated, or similar or dissimilar, to the purpose of the original loan; and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of Mortgagor contained in this Mortgage.

1.2 **Future Advances and Other Debts.** It is expressly understood that this Mortgage is intended to and does secure, not only the indebtedness herein specifically mentioned, but also future advances and any and all other indebtedness and other obligations and liabilities, direct or contingent, of said Mortgagor to said Mortgagee under or pursuant to the Loan Documents, whether now existing or hereafter arising, and any and all extensions, renewals and modifications of same, or any part thereof, at any time before actual cancellation of this instrument on the land records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise.

## 2. **MORTGAGOR'S REPRESENTATIONS, COVENANTS AND WARRANTIES**

In order to induce Mortgagee to extend credit to the Mortgagor, the Mortgagor represents, covenants and warrants to Mortgagee that:

2.1 **Valid Title, etc.** The Mortgagor has good and marketable title and is lawfully seized of an indefeasible estate in fee simple in and to the Real Property Collateral and any other real property set forth on Exhibit A; and good and marketable title to the Code Collateral and other property in which a security interest is granted under the Loan Documents; Mortgagor further has a good right to sell and mortgage, grant a security interest in, and assign, the



Mortgaged Property; the Mortgaged Property is free and clear of any deeds of trust, mortgages, liens, encumbrances, assignments or security interests other than Permitted Encumbrances; and the Mortgagor will forever warrant and defend the title to the Mortgaged Property unto the Mortgagee against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

This Mortgage constitutes a valid and subsisting first priority Mortgage and lien on the Mortgaged Property and Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the first lien on, security interests in, and assignments of, the Mortgaged Property created hereby, subject to the Permitted Encumbrances. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Mortgaged Property, except as otherwise permitted under the terms of this Mortgage. If any such lien or security interest is asserted against the Mortgaged Property, Mortgagor will, except as otherwise provided in the Loan Agreement, promptly after becoming aware thereof, at its own cost and expense: (a) pay the underlying claim in full or take such other action so as to cause same to be released whether by substitution of bond or otherwise, and (b) within fifteen (15) days from the date such lien or security interest is so asserted, give Mortgagee notice of such lien or security interest. Such notice shall specify who is asserting such lien or security interest and shall detail the origin and nature of the underlying claim giving rise to such asserted lien or security interest. Without limiting the generality of the foregoing, Mortgagor will pay or cause to be paid in full all sums owing or claimed for labor, materials, supplies, personal property (whether or not forming a fixture hereunder), and services of every kind and character used, furnished or installed in or on the Mortgaged Property, provided, however, that Mortgagor shall have the right to contest such lien in accordance with the Loan Agreement.

**2.2 Operation for Permitted Use.** Mortgagor will operate the Mortgaged Property only as a commercial timberland and in accordance with the Loan Agreement, and will not use, maintain, operate or occupy, or allow the use, maintenance, operation or occupancy of, the Mortgaged Property in any manner which violates any provisions governing the use, operation, occupancy or maintenance of the Mortgaged Property set forth in this Mortgage, the Loan Agreement, or any of the other Loan Documents.

**2.3 Maintenance of Rights of Way, Easements and Licenses:** Mortgagor will maintain, preserve and renew all rights of way, easements, grants, privileges, licenses and franchises reasonably necessary for the use of the Mortgaged Property from time to time. Except as specifically provided in the Loan Agreement, Mortgagor will not, without the prior written consent of Mortgagee, grant, initiate, join in or consent to any private restrictive covenant, easement, servitude or other public or private restriction as to the use of the Mortgaged Property, or any condominium declaration, plat or other document having the effect of subjecting the Mortgaged Property to the condominium or cooperative form of ownership. Mortgagor shall comply with all easements, servitudes and restrictive covenants which may at any time affect the Mortgaged Property, zoning ordinances and other public or private restrictions relating to the use of the Mortgaged Property.



### 3. **COVENANTS AND AGREEMENTS OF MORTGAGOR**

The Mortgagor covenants and agrees that, until the Obligations are paid in full and this Mortgage is satisfied in writing by the Mortgagee:

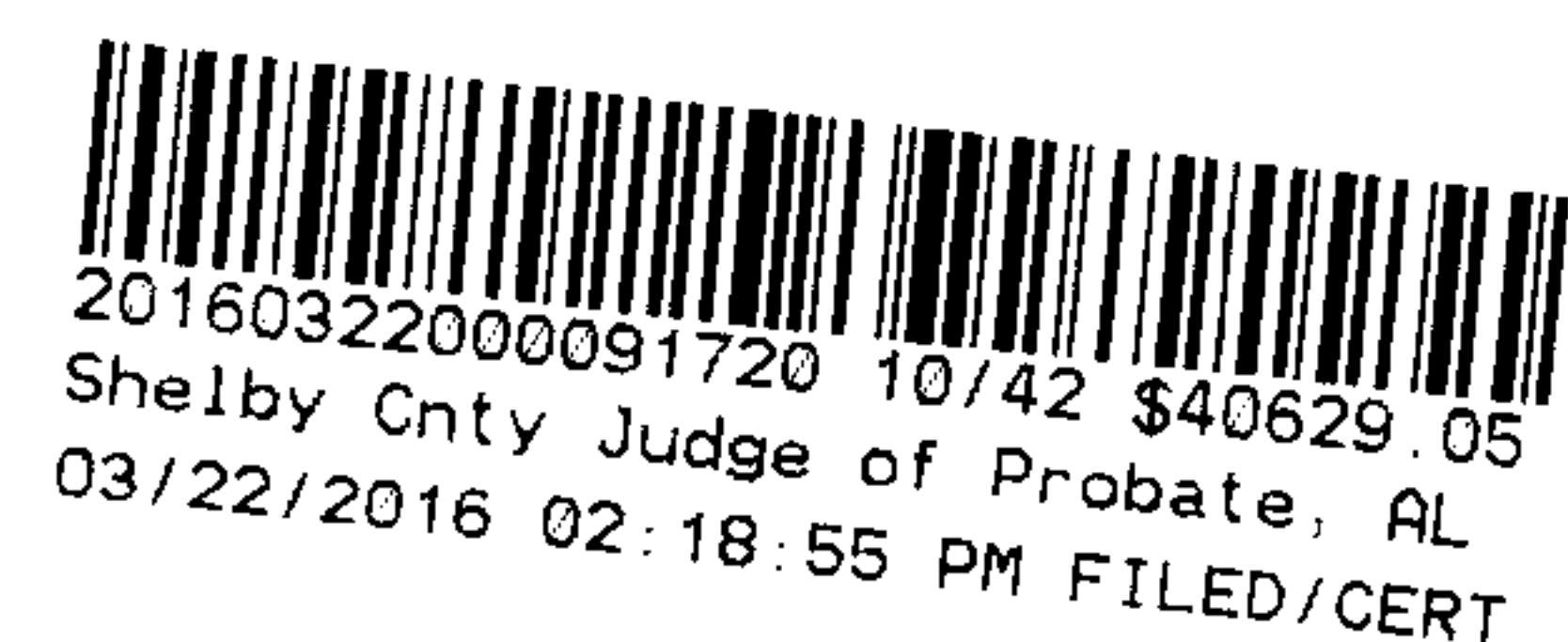
3.1 **Payment of Taxes and Other Assessments.** Mortgagor will pay before they become delinquent all real estate taxes and assessments assessed or levied on the Mortgaged Property and all severance, harvesting or any other governmental charges or impositions, and all interest, penalties and costs associated therewith, general and special, ordinary and extraordinary, foreseen or unforeseen, of any kind or nature whatsoever that at any time may be assessed, levied, imposed or become a lien upon the Mortgaged Property or any part thereof, unless contested in accordance with the terms of the Loan Agreement. Mortgagor will fulfill all of its obligations in connection with the payment of such taxes and other assessments as more fully set forth in the Loan Agreement.

3.2 **Insurance.** Mortgagor shall keep or cause to be kept insurance with respect to the Mortgaged Property in accordance with the Loan Agreement.

3.3 **Compliance with Law.** Mortgagor shall comply or cause compliance with all applicable laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Property, and shall obtain any and all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the Mortgaged Property or the conduct of its business, and Mortgagor shall not suffer nor permit any act to be done in or upon the Mortgaged Property in violation thereof; except, in each case, as specifically provided in the Loan Agreement.

3.4 **Waste, Demolition, Alteration or Replacement and Preservation and Use of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in a manner consistent with the permitted use and in compliance with the terms of the Loan Agreement, normal wear and tear excepted (subject to damage by casualties) shall not commit or permit waste thereon, and shall comply with the terms of the Loan Agreement with respect to any repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Upon any material failure to maintain the Mortgaged Property in accordance with the provisions of the Loan Agreement and this Mortgage, and after notice to Mortgagor of such failure, which is not cured by Mortgagor within thirty (30) days of receipt of such notice, Mortgagee, at its option, may enter the Mortgaged Property and cause reasonable repair and maintenance work to be performed at the cost of Mortgagor.

3.5 **Protection of Security.** Mortgagee may appear in and defend any action or proceeding purporting to affect the security hereof and may bring any action or proceeding, in its own name or in the name of and on behalf of Mortgagor, which Mortgagee shall decide should be brought to protect its interests in the Mortgaged Property, including, without limitation, any material title defect or claim, and Mortgagor shall pay all reasonable costs and expenses, including reasonable costs of evidence of title and attorneys' fees incurred by Mortgagee in connection with any such actions or proceedings.





**3.6 Timber Management and Harvest Provisions.** Mortgagor shall comply or cause compliance with all of the covenants and restrictions regarding the management and harvesting of Timber and the management, extraction, processing and handling of coal, oil, gas or other minerals located or stored on the Mortgaged Property in accordance with the terms and conditions of the Loan Agreement.

**3.7 Assignment of Receipts and Agreements.**

3.7.1 Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of its right, title and interest in all Agreements and Receipts and all proceeds from the sale, cancellation, surrender or other disposition of the Agreements, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Agreement or otherwise to impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments in form and substance satisfactory to Mortgagee, as may hereafter be reasonably requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this Section, Mortgagee grants to Mortgagor a revocable license to collect the Receipts. Upon the occurrence of an Event of Default, the license granted to Mortgagor herein shall be automatically revoked and Mortgagee shall immediately be entitled to receive all Receipts and to exercise or enforce, or seek to exercise or enforce, or avail itself of, any and all of the rights, powers, privileges, authorizations or benefits assigned and transferred to Mortgagee hereunder, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at Mortgagee's option, upon the revocation of the license granted herein to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Receipts. Any Receipts collected after the revocation of the license herein granted may be applied toward payment of the Obligations in such priority and proportion as Mortgagee, acting reasonably, shall deem proper. It is further the intent of Mortgagor and Mortgagee that the Receipts hereby absolutely assigned are no longer, during the term of this Mortgage, property of Mortgagor or property of any estate of Mortgagor as defined in Section 541 of the Bankruptcy Code. The term "Receipts" as used herein shall mean the gross receipts without deduction or offsets of any kind.

3.7.2 It is the intention of Mortgagee and Mortgagor that the assignment effectuated by this Mortgage with respect to the Agreements and Receipts shall be a direct and currently effective assignment and shall not constitute merely the granting of a lien, security interest or pledge for the purpose of securing the Obligations. Notwithstanding such expressed intent of the parties, Mortgagor hereby pledges and grants to Mortgagee a security interest in the Agreements and Receipts, and it is agreed and understood that the granting and recording of this Mortgage shall be sufficient action by Mortgagee to perfect and/or enforce such lien on or security interest in or pledge of the Agreements and Receipts (to the extent such lien, security interest or pledge shall not have been theretofore perfected or enforced under applicable law), including, without limitation, the right to: (1) enforce the perfected lien on or security interest in or pledge of the Receipts, (2) take possession thereof and (3) entitle Mortgagee to immediate and direct payment of the Receipts, for application as provided in the Loan Documents or this



Mortgage, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Mortgaged Property or any portion thereof.

3.7.3 All Agreements executed after the date of this Mortgage, shall be subordinate to this Mortgage and all Material Contracts shall so provide and state that the party or parties thereto agree to attorn to Mortgagee; provided, however, that nothing herein shall affect Mortgagee's right to designate from time to time any one or more Agreements as being superior to this Mortgage and Mortgagor shall execute and deliver to Mortgagee and shall cause to be executed and delivered to Mortgagee from each party under such Agreement any instrument or agreement as Mortgagee may deem necessary to make such Agreement superior to this Mortgage.

3.7.4 Mortgagor shall not, without the prior written consent of Mortgagee or in accordance with the Loan Agreement, enter into any Agreement for all or any portion of the Real Property Collateral, other than timber sale agreements which are not Material Contracts. At any time that Mortgagor shall enter into an Agreement, other than a timber sale agreement which is not a Material Contract, Mortgagor shall, at the request of Mortgagee, cause the other parties thereto, and any guarantor thereunder to execute and deliver to Mortgagee a Consent and Agreement in the form then currently being generally used by Mortgagee.

3.7.5 With respect to any Agreement (other than with respect to timber sale agreements which are not Material Contracts or as otherwise provided in the Loan Agreement), (a) Mortgagor shall not, without the prior written consent of Mortgagee: (i) alter, amend, change or waive the terms of any such Agreement or cancel, terminate, abridge, release a party thereto or otherwise modify the terms of any such Agreement, whether by written document, course of dealing or otherwise, (ii) consent to any assignment of or subletting under any such Agreement, (iii) cancel, terminate, abridge or otherwise modify any guaranty of any such Agreement or the terms thereof, or (iv) collect or accept prepayments of installments of Receipts in advance of the due date thereof, (b) Mortgagor shall enforce (not including termination) at its cost and expense the obligations of the other parties under the Agreements and the obligations of any guarantor under any guarantee, to the full extent thereof, and (c) Mortgagor shall not, without prior written consent of Mortgagee, further assign the whole or any part of any such Agreement or the Receipts therefrom.

3.7.6 With respect to each Agreement (other than as provided in the Loan Agreement) Mortgagor shall, in each case, (i) observe and perform each and every provision thereof on the Mortgagor's part to be fulfilled or performed under each Agreement and not do or permit to be done anything to impair the value of the Agreement as security for the Loan, including surrender or voluntary termination of any Agreement, (ii) promptly send to Mortgagee copies of all notices of default which Mortgagor shall send or receive thereunder, other than with respect to timber sale agreements which are not Material Contracts (iii) enforce all of the terms, covenants and conditions contained in each Agreement, (iv) execute and deliver, at the request of Mortgagee, all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall, from time to time, reasonably require, (v) upon request, furnish Mortgagee with executed copies of all Agreements, and (vi) not perform any act or execute any other instrument that might prevent Mortgagee from enjoying and exercising any of its rights and privileges evidenced hereby. Mortgagor shall from time to time upon request of



Mortgagee, deliver to Mortgagee a list of all Agreements, with terms, rent, Receipts, payments, information on all parties and other information required by Mortgagee which shall be certified as true and correct by Mortgagor.

3.7.7 MORTGAGEE SHALL NOT BE OBLIGATED TO PERFORM OR DISCHARGE, NOR DOES IT HEREBY UNDERTAKE TO PERFORM OR DISCHARGE, ANY OBLIGATION, DUTY OR LIABILITY UNDER THE AGREEMENTS OR CONTRACTS BY REASON OF THIS MORTGAGE. MORTGAGOR HEREBY INDEMNIFIES AND HOLDS MORTGAGEE HARMLESS FROM AND AGAINST ANY ALL LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE WHICH MORTGAGEE MAY INCUR BY REASON OF THIS ASSIGNMENT OF RECEIPTS AND AGREEMENTS, OR FOR ANY ACTION TAKEN BY MORTGAGEE HEREUNDER, OR BY REASON OR IN DEFENSE OF ANY AND ALL CLAIMS AND DEMANDS WHATSOEVER WHICH MAY BE ASSERTED AGAINST MORTGAGEE ARISING OUT OF THE AGREEMENTS OR WITH RESPECT TO THE RECEIPTS REGARDLESS OF WHETHER THE CLAIMS OR CAUSES OF ACTION OF WHATEVER NATURE ARE FOUNDED IN WHOLE OR IN PART UPON THE NEGLIGENCE (EITHER ACT OR OMISSION) OF MORTGAGEE EXCEPT TO THE EXTENT THEY ARISE OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF MORTGAGEE. IN THE EVENT MORTGAGEE INCURS ANY SUCH LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE, THE AMOUNT THEREOF, TOGETHER WITH ALL REASONABLE ATTORNEYS' FEES WILL BE PAYABLE BY MORTGAGOR IMMEDIATELY UPON DEMAND AND WILL BE DEEMED A PART OF THE OBLIGATIONS SECURED HEREBY.

3.7.8 Mortgagee's acceptance of this assignment shall not, prior to entry upon and taking possession of the Mortgaged Property by Mortgagee, be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate Mortgagee to appear in or defend any proceeding relating to any of the Agreements or to the Mortgaged Property, take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under the Agreements, or assume any obligation for any deposits delivered to Mortgagor by any party to an Agreement and not delivered to Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Mortgaged Property. This Section 3 shall not place responsibility upon Mortgagee for control, care, management or payment of taxes with respect to any property which is the subject of the Agreements or make Mortgagee responsible or liable for any negligence in the management, operation, or control of said property resulting in any loss or damage.

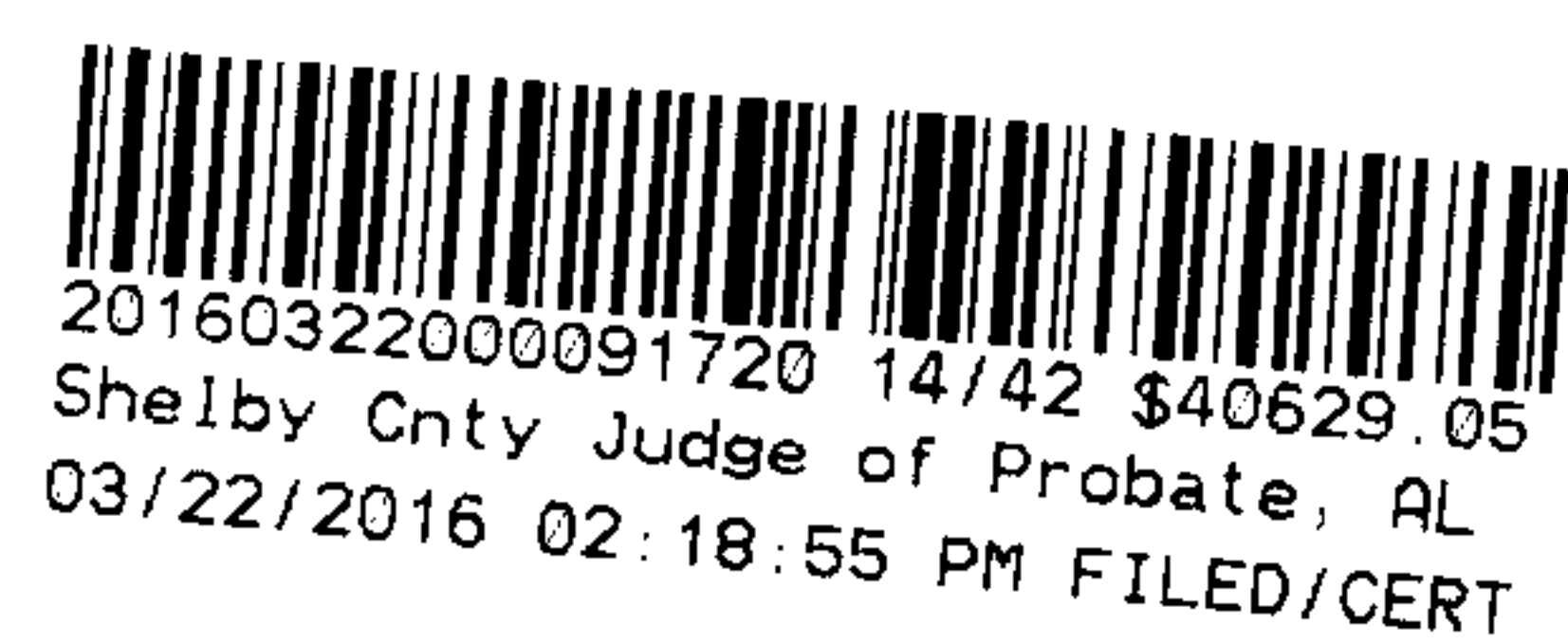
3.7.9 Mortgagor hereby irrevocably authorizes and directs the parties under the Agreements to pay all Receipts to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor and regardless of whether Mortgagee has taken possession of any other portion of the Mortgaged Property, and the parties to the Agreements may rely upon any written statement delivered by Mortgagee to them. Any such party is hereby authorized by Mortgagor to rely upon and comply with any notice or demand by the Mortgagee for the payment to the Mortgagee of any amounts that may be or become due under the Agreement to which it is a party, or for the performance of any obligations under such Agreement. Mortgagor agrees that any party following such instructions from Mortgagee shall not be liable to Mortgagor or any person claiming under Mortgagor, for making any payment or rendering any



performance to Mortgagee. No party shall have any obligation or right to inquire whether any default has actually occurred or is then existing. **BY ITS EXECUTION OF THIS MORTGAGE, MORTGAGOR AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS ANY PARTY FROM ANY LOSS, DAMAGE OR CLAIM ARISING FROM SUCH PARTY MAKING ANY PAYMENT OR TAKING ANY ACTION IN RELIANCE UPON THE TERMS HEREOF.** Mortgagee agrees that it shall not exercise its rights under this Section 3.7.9 except after the occurrence of a Default Condition (as hereinafter defined) or an Event of Default.

3.7.10 Upon the occurrence of a material default by Mortgagor under any Material Contract or other material Agreement (a “**Default Condition**”) which continues for thirty (30) days after such occurrence, or such shorter period as such default may be required to be cured under the Agreement involved, shall, in addition to those matters set forth in Section 4.1 below, constitute an Event of Default hereunder. Upon the occurrence of any Event of Default, Mortgagee shall have the right at its option to enforce and to exercise any or all of its rights hereunder or otherwise, whether or not Mortgagee has possession of the property which is the subject of the Agreement, and without notice to Mortgagor, and shall have the immediate and continuing right to cause Mortgagor to make and deliver, or to make and deliver on behalf of Mortgagor, any and all timber deeds, releases, bills of sale or other documents required thereunder, to collect and receive all sums which may become due to Mortgagor or to which Mortgagor is now or shall hereafter become entitled or may demand or claim, arising from or out of any such Agreements, to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the Agreements and to do any and all other things whatsoever which Mortgagor is, or may become, entitled to do under any Agreements in order to realize fully the rights, entitlements and benefits of Mortgagor thereunder, including without limitation, the right and authority to (i) demand, sue for, receive, collect all amounts that may be or become payable to Mortgagor under the Agreements; (ii) exercise and enforce by suit or otherwise compliance with and any remedies for non-compliance, with respect to other parties to the Agreements for breaches of the terms and conditions of the Agreements; (iii) compromise or give acquittance for amounts due under the Agreements; (iv) take any action or actions or institute, appear in and defend any proceedings which Mortgagee may deem to be necessary or advisable in connection with the Agreements; (v) delegate any and all rights and powers given to Mortgagee by this Mortgage; and (vi) use such measures, legal or equitable, and take such actions, as in its sole discretion, may be necessary to perform the obligations of Mortgagor under the Agreements or carry out and effectuate the provisions of this Mortgage. All such actions shall be taken at the expense of the Mortgagor, and Mortgagor agrees to reimburse Mortgagee for all amounts expended, including legal and other professional fees, together with interest thereon from the date of expenditure at the Default Rate stated in the Notes, upon demand, which amounts shall be secured hereby. Further, Mortgagee shall have full power and authority, and Mortgagor does hereby constitute Mortgagee as Mortgagor’s true and lawful attorney-in-fact, irrevocably, with full power (in the name of Mortgagor, or otherwise), coupled with an interest, whether or not Mortgagee has taken possession of the property which is the subject of the Agreements, to take any or all of the above actions.

3.7.11 Upon Mortgagee’s request, from time to time, Mortgagor shall provide in writing to Mortgagee details as to the status of the Agreements and the compliance by the parties thereto with their respective obligations thereunder. Mortgagor shall give Mortgagee copies of





any notices or communications of a material substantive nature to or from any other party to the Agreements, including, without limitation, any such notices or communications claiming any default, breach or violation by any party thereto.

### **3.8 Transfer or Further Encumbrance of the Mortgaged Property.**

3.8.1 Mortgagor shall not, without the prior written consent of Mortgagee, or in accordance with the Loan Agreement, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit or suffer the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred, except that condemnation by eminent domain shall be governed by Section 3.13 below. A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property within the meaning of this Section and as set forth in the Loan Agreement shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments, (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Agreements or any Receipts, or (iii) the voluntary or involuntary sale, conveyance, encumbrance, pledge, hypothecation, dilution or transfer of any direct or indirect ownership or beneficial interest in Mortgagor, or a change in control of Mortgagor, which is not permitted under the Loan Agreement.

3.8.2 Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Secured Obligations immediately due and payable upon Mortgagor's default under Section 3.8.1. This provision shall apply to every default under Section 3.8.1, regardless of whether voluntary or not. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property made in contravention of this Section shall constitute an Event of Default, and, at the option of Mortgagee, shall be null and void and of no force and effect.

3.8.3 Any purchaser, transferee or future ground lessee of any portion of the Mortgaged Property, which is not released by Mortgagee from the lien of this Mortgage, shall be deemed to have assumed and agreed to pay the Secured Obligations and to have assumed and agreed to be bound by and to keep, observe, perform and comply with all covenants, agreements, conditions and provisions of this Mortgage (including, without limitation, the terms of this Section) unless Mortgagee specifically agrees in writing to the contrary. Without limiting the generality of the foregoing, each such purchaser, transferee, lessee, pledgee and assignee shall be deemed to have made and agreed to each waiver, consent, authorization, direction and appointment made by or agreed to by Mortgagor under this Mortgage. Mortgagor agrees that, in the event ownership of all or any part of the Mortgaged Property becomes vested in a person other than Mortgagor other than in accordance with the Loan Agreement, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the other Loan Documents and the Obligations, without in any way vitiating or discharging Mortgagor's liability with respect thereto. Any such purchaser, transferee, lessee, pledgee or assignee shall confirm the above in writing at the request of Mortgagee and shall furnish any other performance or documentation required by Mortgagee. No sale, conveyance, transfer, pledge, encumbrance, assignment or lease referred to in the



immediately preceding Section, and no forbearance, extension or assumption by or to any person with respect to the Obligations or any of the Loan Documents, shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, unless Mortgagee specifically agrees in writing to the contrary.

**3.9 Inspection.** Mortgagor agrees that Mortgagee and/or its agents and independent contractors, shall have the right to enter the Mortgaged Property at reasonable times and intervals, to inspect and test the Mortgaged Property, for the purpose of determining whether Mortgagor is in compliance with the provisions of this Mortgage and the other Loan Documents.

**3.10 Security Agreement.**

3.10.1 This Mortgage is both a real property Mortgage and a “security agreement” within the meaning of the Uniform Commercial Code in effect in the State in which the Premises are located (the “Code”). The Mortgaged Property includes both real and personal property, including timber to be cut, as-extracted collateral and goods, including goods which are or are to become fixtures, and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor, by executing and delivering this Mortgage, grants to Mortgagee, as security for the Obligations, a security interest in and lien upon the Code Collateral and in all other Mortgaged Property to the full extent that the Code Collateral and such other Mortgaged Property may be subject to the Code. Mortgagee, by accepting this Mortgage, agrees to and enters into this Mortgage.

3.10.2 The following covenants are made in connection with the Code Collateral:

(a) Mortgagor shall prevent any Code Collateral from being or becoming an accession to any property not subject to security interests created by this Mortgage.

(b) From time to time hereafter at the request of Mortgagee, Mortgagor shall deliver to Mortgagee up to date schedules of any items of Code Collateral.

(c) Mortgagor shall not change its name, its mailing address, its state of organization, its form of organization, its state-issued organizational identification number or the location of its chief executive office without giving at least thirty (30) days prior written notice to Mortgagee.

(d) If any Code Collateral is at any time during the continuance of a Default or Event of Default in the possession of a bailee, the Mortgagor shall promptly notify the Mortgagee thereof and, if requested by the Mortgagee, shall promptly obtain an acknowledgement from the bailee, in form and substance satisfactory to the Mortgagee, that the bailee holds such Code Collateral for the benefit of the Mortgagee and shall act upon the instructions of the Mortgagee, without the further consent of the Mortgagor.

3.10.3 The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto that: (a) indicate the Code Collateral as being assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Code Collateral falls within the scope of Article 9 of the Uniform Commercial Code of such jurisdiction, or with greater



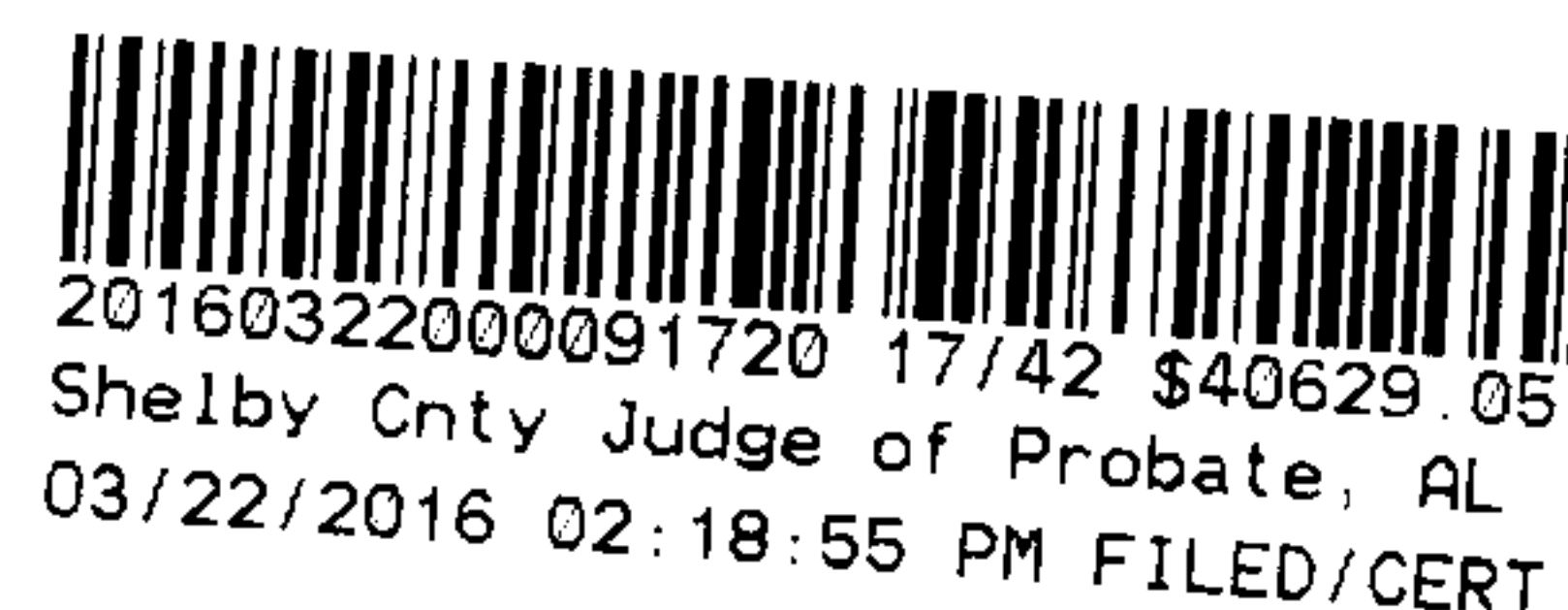
detail, and (b) contain any other information required by part 5 of Article 9 of the Uniform Commercial Code of the state where this Mortgage is recorded for the sufficiency or filing office acceptance of any financing statement or amendment, including, without limitation, (i) whether the Mortgagor is an organization, the type of organization and any organization identification number issued to the Mortgagor and, (ii) in the case of a financing statement filed as a fixture filing or indicating Code Collateral that is as-extracted collateral or timber to be cut, a sufficient description of the real property to which the Code Collateral relates and, if Mortgagor does not have an interest of record in the real property, provide the name of the record owner. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor also ratifies its authorization for the Mortgagee to have filed in any Uniform Commercial Code jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof. Mortgagor shall promptly execute, file and record, at its sole cost and expense, such Code forms as are necessary to maintain the validity and priority of the lien of Mortgagee upon and security interest in the Code Collateral. In addition, Mortgagor shall promptly execute, file and record such additional Code forms or continuation statements and further assurances as Mortgagee shall deem necessary to insure the attachment, perfection and first priority of, and the ability of Mortgagee to enforce, the Mortgagee's security interest in any and all of the Code Collateral, and shall pay all reasonable expenses and fees in connection with the filing and recording thereof. Mortgagor hereby grants to Mortgagee an irrevocable power of attorney, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Code Collateral covered by this Mortgage.

3.10.4 For avoidance of doubt it is expressly understood and agreed that any terms included in the description of Code Collateral shall refer to any definitions thereof in the Code, as the same may be revised from time to time, it being the intention of the parties hereto that the description of Code Collateral set forth herein be construed to include the broadest possible range of property and assets.

**3.11 Personal Property.** Except as permitted by the Loan Agreement and the other Loan Documents, that portion of the Mortgaged Property consisting of personal property and equipment, shall be owned by Mortgagor and shall not be the subject matter of any lease or other transaction whereby the ownership or any beneficial interest in any of such property is held by any person or entity other than Mortgagor nor shall Mortgagor create or suffer to be created any security interest, other than a Permitted Lien, covering any such property as it may from time to time be replaced, other than the security interest created herein.

**3.12 Subrogation.** To the extent permitted by law and the provisions of the Loan Agreement, Mortgagee shall be subrogated, notwithstanding their release of record, to any mechanic's or vendor's lien or liens, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities, and charges of all kinds heretofore or hereafter existing on the Real Property Collateral to the extent that the same are paid or discharged by Mortgagee, whether or not from the proceeds of the Notes; provided, however, this Section shall not be deemed or construed to obligate Mortgagee to pay or discharge the same.

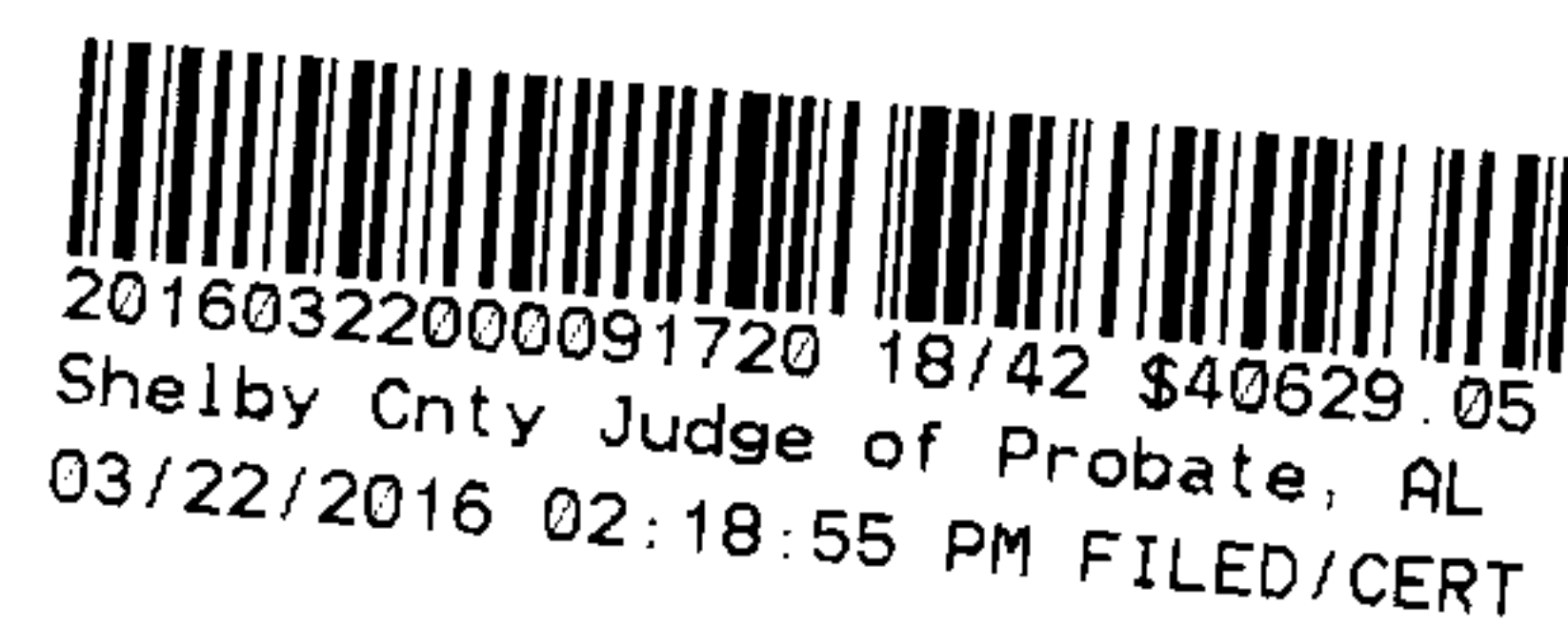
**3.13 Condemnation.** Immediately upon Mortgagor's obtaining knowledge of the institution of any proceeding for the condemnation of, or for the exercise of the right of eminent





domain with respect to, the Mortgaged Property, or any part thereof, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then file or defend its claim thereunder and prosecute and/or negotiate same with due diligence to its final disposition or settlement, subject to the reasonable review and approval of the actions of Mortgagor in connection with such proceeding, and shall pay or cause to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage any awards or settlements. Mortgagor may be the nominal party in such proceeding, but Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by Mortgagee from time to time to permit such participation. In addition to any remedy or result set forth in the Loan Agreement, if all or any portion of the Mortgaged Property is taken or diminished in value, or if a consent settlement is entered, by or under threat of such proceeding, then any loss in value of the Mortgaged Property which causes the LTV ratio to fail to be in compliance shall require Mortgagor to make a prepayment of the Loan in accordance with the terms of the Notes and Loan Agreement to establish compliance. Any award or settlement with respect to such taking payable to Mortgagor by virtue of its interest in the Mortgaged Property shall be, and by these presents is, assigned, transferred and set over unto Mortgagee subject to the lien and security interest of this Mortgage, and if paid to Mortgagee in accordance with this Section may, at the Mortgagee's election, but subject to the provisions of the Loan Agreement, be used in any one or more of the following ways: (a) apply the same in the manner set forth in the Notes and the Loan Agreement, so that any award, as well as additional amounts, may be required to be used to prepay the Loan, which prepayments shall be subject to the prepayment premium provisions of the Notes; (b) use the same or any part thereof to perform or discharge any of the Obligations; (c) use the same or any part thereof to restore, repair or replace the Mortgaged Property to a condition satisfactory to the Mortgagee (with the disbursement of such funds being made in accordance with the procedures approved by Mortgagee); or (d) release the same to Mortgagor. Subject to the foregoing, Mortgagee is empowered to collect and receive the proceeds of any condemnation or eminent domain award or settlement; Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (coupled with an interest) to collect and receive such proceeds. Mortgagee shall not be obligated to collect, and shall not be liable for failure to collect, any such proceeds.

**3.14 Environmental Covenants.** In the event Mortgagor shall fail to provide to Mortgagee any environmental assessment, audit or update or shall fail to remove or remediate any toxic or hazardous substances as required under the Loan Agreement, Mortgagor grants to Mortgagee and its employees and agents an irrevocable and non-exclusive license subject to the rights of any party to an Agreement to enter the Mortgaged Property to conduct testing and to remove or remediate any such toxic or hazardous substances and the costs of such testing and removal shall immediately be due and payable by the Mortgagor upon demand by Mortgagee together with interest at the Default Rate and shall be secured by this Mortgage. Mortgagor covenants and agrees that it shall comply with all terms and conditions of the Loan Agreement relating to environmental matters, including, without limitation, all Environmental Protection Laws which are applicable to the Mortgaged Property and shall not permit the Mortgaged Property to be used for a mine (except in compliance with the terms of the Loan Agreement), landfill, dump or other disposal facility and shall not permit any underground storage tanks of any kind or character on the Mortgaged Property and shall not permit the presence on the Mortgaged Property of any hazardous substances in violation of any environmental protection law.





**3.15 Hold Harmless.** MORTGAGOR WILL DEFEND, AT ITS OWN COST AND EXPENSE, AND HOLD MORTGAGEE HARMLESS FROM, ANY ACTION, PROCEEDING OR CLAIM AFFECTING MORTGAGEE, THE MORTGAGED PROPERTY OR THE LOAN DOCUMENTS, OR RESULTING FROM OR ARISING OUT OF THE FAILURE OF MORTGAGOR TO PERFORM OR DISCHARGE THE OBLIGATIONS OR OTHERWISE TO COMPLY WITH THE PROVISIONS OF THE LOAN DOCUMENTS, INCLUDING ANY ACTIONS TAKEN BY MORTGAGEE UNDER SECTION 4 BELOW NOTWITHSTANDING THE SOLE, CONCURRENT OR COMPARATIVE NEGLIGENCE OF MORTGAGEE, AND ALL COSTS AND EXPENSES INCURRED BY MORTGAGEE IN PROTECTING ITS INTERESTS HEREUNDER (INCLUDING ALL COURT COSTS AND ATTORNEYS' FEES) SHALL BE BORNE BY MORTGAGOR, PROVIDED THAT MORTGAGOR SHALL HAVE NO OBLIGATION TO DEFEND OR INDEMNIFY MORTGAGEE WITH RESPECT TO THE CONSEQUENCES OF MORTGAGEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**4. DEFAULT AND REMEDIES.**

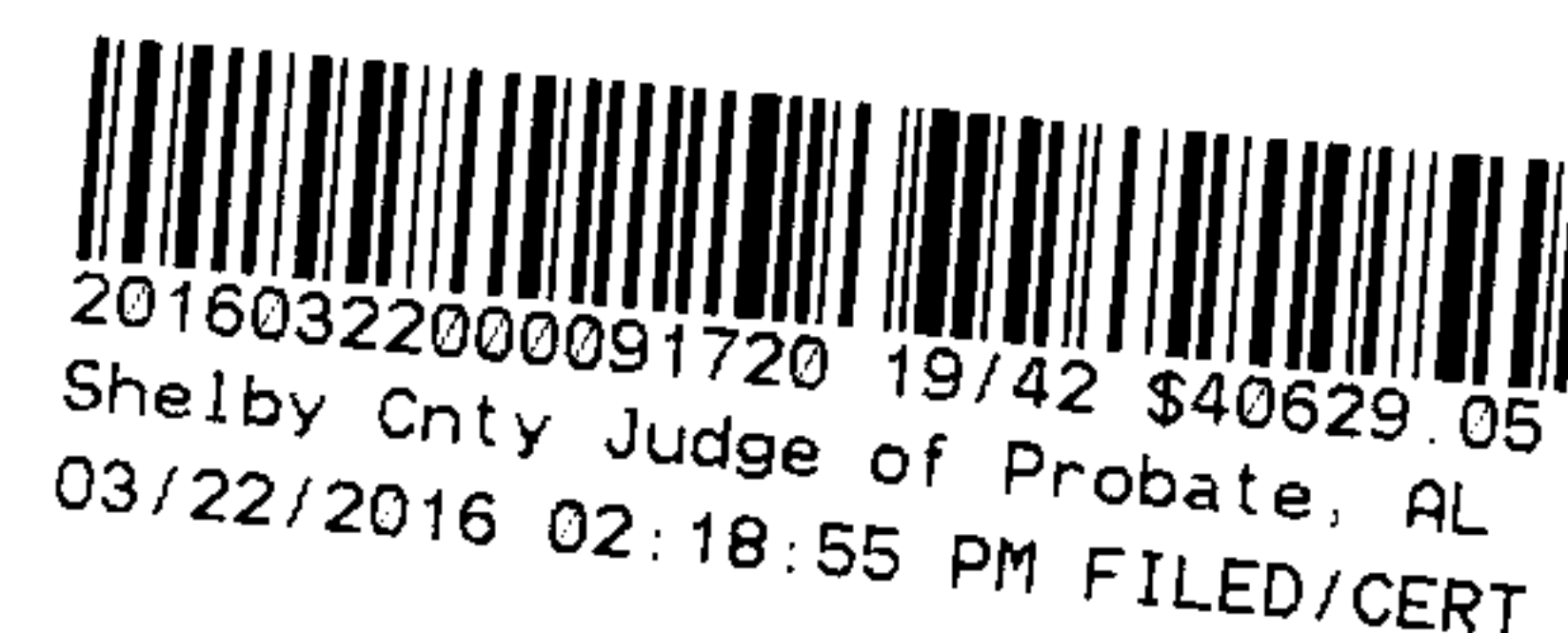
**4.1 Events of Default.** The term “Event of Default,” as used in this Mortgage, shall mean the occurrence or happening, at any time and from time to time, of an “Event of Default” under the Loan Agreement, or any of the other Loan Documents, or any one or more of the following:

4.1.1 (i) Failure to make payment of any scheduled installment of interest or principal under the Notes on or before the date which is four (4) days after the due date, (ii) failure to make payment of partial prepayment of principal under the Notes and any premium thereon on or before the date due, (iii) failure to make payment of the entire indebtedness under the Notes and any premium thereon on or before the applicable maturity or due date, or (iv) failure or neglect by Mortgagor to pay, perform, keep or observe any of the other Obligations, subject to any notice and/or grace period with respect to any such other Obligations expressly set forth in Section 7.1 of the Loan Agreement;

4.1.2 If Mortgagor shall cause or permit any default in the performance of or compliance with the Section hereof entitled “Transfer or Further Encumbrance of the Mortgaged Property;”

4.1.3 A default or event of default (as defined therein) or commencement of a foreclosure or other enforcement remedy shall exist or occur under any other mortgage, deed of trust or other instrument encumbering all or any portion of the Mortgaged Property (whether superior or junior to this Mortgage and the lien hereof), regardless of whether or not the creation of such mortgage, deed of trust or other encumbrance has been previously consented to by Mortgagee (without hereby implying Mortgagee's consent to the existence, placing, creating or permitting of any such lien or security interest);

4.1.4 Without the prior written consent of Mortgagee, Mortgagor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Mortgaged Property, unless such action is expressly permitted by the Loan Agreement or consented to in writing by Mortgagee;





4.1.5 The dissolution, liquidation or termination of Mortgagor or Mortgagor's failure to maintain good standing in the State of Delaware or State of Alabama; or

**4.2 Rights and Remedies of Mortgagee Upon Default/Acceleration of Indebtedness.** Upon the occurrence and during the continuance of an Event of Default, Mortgagee may, at its option and without demand upon or notice to the Mortgagor, declare all or any part of the Obligations to be immediately due and payable, whereupon all such Obligations shall become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Mortgagor (provided, that all Obligations shall be automatically due and payable upon certain Events of Default as set forth in the Loan Agreement), and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Notes, any of the other Loan Documents and applicable law and equity. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Notes, any of the other Loan Documents and applicable law.

**4.3 Rights and Remedies of Mortgagee Upon Default.**

4.3.1 Mortgagee may, upon the occurrence and during the continuance of an Event of Default, to the fullest extent permitted by applicable law:

(a) In person or by agent or by a receiver appointed by a court, with or without bringing any action or proceeding and without regard to the adequacy of its security, the solvency of Mortgagor or the existence of waste, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name or in the name of its agent, and do any acts that it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, to increase the income therefrom or to protect the security hereof; and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the Receipts, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured by this Mortgage, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, and the collection of such Receipts and the application thereof, as aforesaid shall not cure or waive any Event of Default or notice of default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property, and/or the collection, receipt and application of Receipts, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including any right to exercise any power of sale under applicable law;

(b) Sell the same Mortgaged Property in person or by auctioneer before the courthouse door in the county or counties in the state of Alabama where the Mortgaged Property or a substantial and material part thereof is located, at public outcry, for cash, after having first given notice of the time, place and terms of sale, together with a description of the Mortgaged to be sold, by publication, once a week for three successive weeks prior to said sale in some newspaper published in the county or counties, where the Mortgaged Property is located, and,



upon payment of the purchase money, the Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale, a deed to the Mortgaged Property or portion thereof so purchased. If no newspaper is published in a county where the Mortgaged Property is located, the Notice shall be placed in a newspaper published in an adjoining county. Mortgagee may bid at said sale and purchase the Mortgaged Property or portion thereof if the highest bidder therefor. The Mortgagor hereby waives the requirement of separate sale, and at the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold from time to time in lots, parcels or in any other manner as Mortgagee may elect.

(c) Foreclose the Mortgage in a court having jurisdiction thereof for which the Mortgagor will pay a reasonable attorney's fee and all court costs therefore, which fee and costs shall be and constitute a part of the obligations secured hereby.

(d) Proceed as to both the real and personal property in accordance with Mortgagee's rights and remedies in respect of the Mortgaged Property, or proceed to sell any Code Collateral separately and without regard to the Real Property Collateral in accordance with Mortgagee's rights and remedies. Mortgagee shall have all rights and remedies under this Mortgage and the other Loan Documents, at law and in equity.

(e) Postpone sale of all or any portion of the Mortgaged Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement or subsequently noticed sale, and without further notice make such sale at the time fixed by the last postponement; or Mortgagee may, in its discretion, give a new notice of sale. Mortgagee may rescind any such notice of default at any time before Mortgagee's sale. The exercise by Mortgagee of the right of rescission shall not constitute a waiver of any default and demand for sale, or notices of default and of election to cause the Mortgaged Property to be sold, nor otherwise affect the Note(s) or this Mortgage, or any of the rights, obligations or remedies of Mortgagee hereunder.

(f) In the event the foreclosure sale is not concluded and Mortgagee has allowed Mortgagor to cure any and all defaults occasioned hereunder, Mortgagor shall pay to Mortgagee all costs and expenses incurred by Mortgagee as a result of Mortgagor's default, including reasonable attorneys' fees.

(g) In the event of a sale of the Mortgaged Property or any part thereof, and the execution of a deed or deeds therefor, the recital therein of default, and of the giving of notice of sale, and of a demand by Mortgagee, or its successors or assigns, that such sale should be made, shall be conclusive proof of such default, and of the due giving of such notice, and that the sale was regularly and validly made on due and proper demand by Mortgagee, its successors or assigns; and any such deed or deeds with such recitals therein and otherwise conforming with applicable law shall be effectual and conclusive against Mortgagor, its successors and assigns, and all other persons; and the receipt for the purchase money recited or contained in any deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money.



4.3.2 If an Event of Default shall have occurred and be continuing, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor herein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the powers and duties available to receivers under the law and all the powers and duties of Mortgagee in case of entry as provided above and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

4.3.3 Without limiting the generality of the foregoing, on the happening of any Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the personal property and other non-real estate collateral included in the Code Collateral all rights, remedies and powers of a secured party under the Code with reference to the Code Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Code Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Code after default hereunder, without regard to preservation of the Code Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Code Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Code Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor, at Mortgagor's expense, shall assemble the Code Collateral and make the Code Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Code Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Code Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Section 5.1 below, at least ten (10) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice. Mortgagee shall not be obligated to make any sale of the Code Collateral regardless of notice of sale having been given. Mortgagee may adjourn any public or private sale from time to time by announcement at the time and place fixed therefore, and such sale may, without further notice, be made at the time and place to which it was so adjourned. The proceeds of any disposition of the Code Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Obligations in such priority and proportions as Mortgagee in its discretion shall deem proper.

4.3.4 Without limiting the generality of the foregoing, upon the occurrence of an Event of Default, or at any time thereafter:



(a) The Mortgagee at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Receipts and Agreements:

(i) to enforce the termination of the license granted to the Mortgagor hereunder to collect the Receipts, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy upon the Receipts (including all income received or receivable with respect to any of the Mortgaged Property), to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof to the Obligations in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security for the Obligations);

(ii) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver or keeper to be appointed by court, to enter upon, take possession of, manage and operate the property or any part thereof for the account of the Mortgagor; make, modify, enforce, cancel or accept surrender of any Agreement; remove and evict any lessee; increase or reduce rents or Receipts; cut, remove, sell and dispose of timber and exercise all rights under deeds or contracts and otherwise do any act, or incur any cost or expense the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could and to apply any funds to the operation and management of the Mortgaged Property (including payment of reasonable management, brokerage and attorneys' fees) and payment of any Obligations in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security);

(iii) to require Mortgagor to transfer and pay over to Mortgagee all security deposits, prepayments and records thereof, together with all original Agreements; and

(iv) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this Mortgage.

(b) the collection of the Receipts and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Mortgaged Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Receipts may have cured the original default. If the Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

4.3.5 All payments received by the Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows (except as otherwise required by law): (i) to the payment of all necessary expenses of the Mortgagee incident to the execution of any foreclosure



sale or sales or other remedies under this Mortgage, including attorneys' fees, appraisal fees, title search fees, and foreclosure notice costs, (ii) to the payment in full of any of the Obligations that is then due and payable (including without limitation principal, accrued interest, prepayment premiums and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Notes, all in such order as the Mortgagee may elect in its sole discretion, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as determined by Mortgagee for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

4.3.6 In case of any sale of the Mortgaged Property as authorized by this Section 4.3, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

4.3.7 It is specifically understood and agreed that the foregoing acceleration provisions will be applicable not only to the maturities recited in the original Notes but also to any substituted maturities created by extension or renewal. The failure of the holder(s) of the secured indebtedness to declare an acceleration of maturities when a ground therefor exists, even though such forbearance may be repeated from time to time, will not constitute a waiver of the right of such holder(s) to accelerate maturities upon a recurrence of the same ground therefor; nor will the act of such holder(s) in remedying any condition resulting from declaring an acceleration of maturities by reason of such default.

4.3.8 If Mortgagee shall expend any sum or sums for the protection of any of the Mortgaged Property or the lien of this Mortgage (such Mortgagee to have uncontrolled discretion as to the necessity of making any such expenditures), the repayment of such sum or sums on demand (with interest thereon at the highest rate allowed by law from the date of each expenditure) shall be the personal obligation of the Mortgagor; and such obligation to repay will constitute a part of the indebtedness secured hereby. The expenditures thus made reimbursable will include, without limitation, taxes, special improvement assessments, insurance premiums, repairs and maintenance expenses, security expenditures, sums paid to discharge prior liens, rents on premises in which mortgaged personalty may be situated, etc. The cost of any abstract or supplemental abstract procured by Mortgagee to facilitate foreclosure will also constitute a part of the reimbursable expenses secured hereby.


**4.4 Advances by Mortgagee.** If Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in good condition and free from contamination, the performance of the Mortgagor's obligations under any Agreement, the payment of any prior mortgages, or the protection of any of the Mortgaged Property or the lien of this Mortgage or the performance of any other term or covenant herein contained, the Mortgagee may, without further notice to or demand upon Mortgagor and without waiving or releasing any other right, remedy or recourse, but shall not be obligated to, make such payment or perform such act for the account of and at the expense of Mortgagor (such Mortgagee to have uncontrolled discretion as to the



necessity of making any such expenditures), and shall have the right to enter upon the Mortgaged Property for such purpose and to take all such action as it may deem necessary or appropriate. The repayment of any such sum or sums on demand (with interest thereon at the Default Rate as provided for and as defined in the Notes, or the highest rate permitted by law, whichever shall be less, from the date of each expenditure) shall be the personal obligation of the Mortgagor; and such obligation to repay will constitute a part of the indebtedness secured hereby. The expenditures thus made reimbursable shall include, without limitation, taxes, special improvement assessments, insurance premiums, repairs and maintenance expenses, security expenditures, sums paid to discharge prior liens, and rents on premises in which mortgaged personalty may be situated. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at such Default Rate and all sums so advanced with interest shall constitute Obligations and shall be secured hereby. The cost of any title abstract or report or supplemental abstract or report procured by Mortgagee to facilitate foreclosure will also constitute a part of the reimbursable expenses secured hereby.

**4.5 Other Rights.** Mortgagee may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity or at law for the protection and preservation of the Mortgaged Property.

**4.6 Remedies Cumulative, Concurrent and Nonexclusive.** Mortgagee shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including, without limitation, those granted by the Code and applicable to the Mortgaged Property, or any portion thereof), and same (1) shall be cumulative and concurrent, (2) may be pursued separately, successively or concurrently against Mortgagor or others obligated for the Obligations, or any part thereof or against any one or more of them, or against the Mortgaged Property, at the sole discretion of Mortgagee, (3) may be exercised as often as occasion therefor shall arise, it being agreed by Mortgagor that the exercise of or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (4) are intended to be, and shall be, nonexclusive, and Mortgagee may pursue inconsistent remedies, and no action hereunder by Mortgagee shall be deemed to prejudice Mortgagee's right thereafter to foreclose this Mortgage. Nothing herein and no action of Mortgagee shall be construed as an election to proceed under any provision to the exclusion of any other provision or as prohibiting Mortgagee from seeking a deficiency judgment against Mortgagor to the extent such action is permitted by law. Mortgagee shall be entitled to enforce payment and performance of the Obligations and to exercise all rights and powers under this Mortgage or under the Notes and other Loan Documents or any other agreement executed in connection herewith or any laws now or hereafter in force, notwithstanding some or all of the such indebtedness and Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, it being agreed that Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as Mortgagee may in its sole and absolute discretion determine.

  
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#### **4.7 Other Matters Regarding Remedies.**

4.7.1 Mortgagee may adjourn from time to time any sale by Mortgagee to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

4.7.2 If required by law, upon the completion of any sale or sales made by Mortgagee under or by virtue of this Section, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the Mortgaged Property and rights sold. Mortgagee is hereby irrevocably appointed the attorney-in-fact of Mortgagor, coupled with an interest in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Section, whether made under any power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

4.7.3 Upon any sale made under or by virtue of this Section (whether made under any power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Secured Obligations the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

4.7.4 No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Mortgaged Property or any part thereof, or other liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

**4.8 No Waiver in Foreclosure.** Mortgagor agrees for itself, its successors and assigns, that the acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings under this Mortgage, of insurance proceeds, eminent domain awards, rents, Receipts or anything else of value to be applied on or to the Secured Obligations by Mortgagee or any person or partying holding under Mortgagee shall not constitute a waiver of such foreclosure. This agreement by Mortgagor is intended to apply to the acceptance and such applications of any such insurance proceeds, eminent domain awards, rents,



Receipts and other sums or anything else of value, whether the same shall be accepted from, or for the account of, Mortgagor or from any other sources whatsoever by Mortgagee or by any person or party holding under Mortgagee at any time or times in the future while any portion of the Secured Obligations shall remain outstanding.

**4.9 General Remedies.** In addition to all other rights and remedies contained herein, if an Event of Default shall have occurred and be then in existence, Mortgagee may take such action, without notice or demand, as it shall deem advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property or any part thereof or interest therein, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee: (i) enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore, harvest and sell timber and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat, (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable, (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property, (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify, timber sale contracts, log or pulpwood sale contracts, stumpage sale agreements, leases, and other agreements and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits, Receipts and other income of the Mortgaged Property and every part thereof and (E) receive and collect the receipts from the Mortgaged Property, give proper receipts, releases and acquittances therefore, and apply the same to the payment of the Secured Obligations, after deducting therefrom all expenses (including reasonable attorneys' fees and expenses) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of the Mortgagee and its counsel, agents and employees, or (ii) institute proceedings for the complete foreclosure of this Mortgage in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels, or (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Secured Obligations then due and payable, subject to the continuing lien of this Mortgage for the balance of the Secured Obligations not then due, or (iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all or any part of any estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to any power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of or estate in the Mortgaged Property, or (v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Notes or any other Loan Document, or (vi) recover judgment on the Notes or any guaranty either before, during or after any proceedings for the enforcement of this Mortgage or (vii) pursue such other remedies as Mortgagee may have under applicable law or equity. Further, once Mortgagee has exercised any of its rights or remedies hereunder, or under



the Loan Documents, during the existence of an Event of Default, all actions theretofore or thereafter taken by Mortgagee in pursuit of such rights and remedies shall not be affected by any cure of such Event of Default, unless Mortgagee shall accept the cure and terminate pursuit of any such right or remedy, in which case, the parties shall be restored to their position which existed prior to Mortgagee's exercise of its rights or remedies.

**4.10 Waiver of Jury Trial.** MORTGAGOR, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY MORTGAGOR AGAINST MORTGAGEE BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THE LOAN DOCUMENTS, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THE LOAN OR THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH MORTGAGOR MAY BE PERMITTED TO ASSERT THEREUNDER OR WHICH MAY BE ASSERTED BY MORTGAGEE ANY OF ITS AGENTS AGAINST MORTGAGOR, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AND AGREES THAT NO SUCH ACTION WITH RESPECT TO WHICH A JURY TRIAL HAS BEEN WAIVED SHALL BE SOUGHT TO BE CONSOLIDATED WITH ANY OTHER ACTION WITH RESPECT TO WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS WAIVER BY MORTGAGOR OF ITS RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE MAKING OF THE LOAN.

## **5. MISCELLANEOUS PROVISIONS**

**5.1 Addresses for Notices.** All notices, requests, demands and other communications provided for hereunder shall be in writing and shall be sent United States mail, certified with return receipt requested, personal service or Federal Express or similar national courier that provides receipts, to the applicable party at its address indicated on the first page of this Mortgage, or shall be sent in accordance with the Loan Agreement, and shall be deemed given upon receipt or refusal to accept, and any party may designate another address in accordance with the Loan Agreement.

**5.2 Waiver and Election.** The exercise by the Mortgagee of any right, power or remedy given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other right, power or remedy given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under any power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this



Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Loan Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances. The Mortgagor expressly waives the right to any notice of the assignment of the Notes or this Mortgage and the right to enforce the provisions of any applicable law requiring such notice.

**5.3 Enforceability.** If any provision of this Mortgage is held to be illegal, invalid, or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage a provision that is legal, valid and enforceable and as similar in terms to such illegal, invalid or unenforceable provision as may be possible. Further, if the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that is not secured or not fully secured by said lien, assignment or security interest created hereby.

**5.4 Applicable Law.** This Mortgage shall be governed by the internal laws of the State of Alabama without regard to principles of conflicts of laws. Without limiting the foregoing, Mortgagor agrees that Alabama law without regard to its conflict of laws rules shall apply to all actions, defenses and remedies under the Loan Documents, including without limitation, the existence and calculation of any deficiency judgment upon foreclosure of this Mortgage and any right to collect any such deficiency judgment against Mortgagor, any guarantor or any other person liable for the Obligations.

**5.5 Meaning of Particular Terms.** Whenever used, the singular number shall include the plural and the plural, the singular, the pronouns of one gender shall include all genders; and the words "Mortgagor," "Mortgagee" and "Lender" shall include their respective heirs, personal representatives, successors and assigns.

**5.6 Release or Extension by Mortgagee.** The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Mortgaged Property not expressly released, may release any part of the Mortgaged Property or any person liable for any of the Obligations and may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of



the Notes, any of the Loan Documents, this Mortgage or any other instrument evidencing or securing any of the Obligations.

**5.7 Partial Payments.** Acceptance by the Mortgagee of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

**5.8 Titles.** All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

**5.9 Absence of Obligations of Mortgagee With Respect to Mortgaged Property.** Notwithstanding anything in this Mortgage to the contrary, (1) to the extent permitted by applicable law, the Mortgaged Property is comprised of Mortgagor's rights, title and interests therein but not its obligations, duties or liabilities pertaining thereto, (2) Mortgagee shall not assume, be deemed to assume or have any obligations, duties or liabilities in connection with any of the items described in connection with the definition of "Mortgaged Property" herein, either prior to or after obtaining title to such Mortgaged Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or willful conduct related thereto, and (3) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Mortgaged Property, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Mortgaged Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Mortgaged Property, as party under any Agreement or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of the Mortgagor's duties, responsibilities and obligations under any Agreements and with respect to the Mortgaged Property.

**5.10 Construction and Presumption.** This Mortgage may be construed as a deed of trust, mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation, or contract, or any one or more of them, in order fully to effectuate the lien, security interest and assignment created hereby and the purposes and agreements herein set forth. Although the initial draft of this Mortgage and the Loan Documents was drafted by Mortgagee, Mortgagor and Mortgagor's legal counsel have had full opportunity to review, negotiate and approve the final form of this Mortgage and the other Loan Documents. Accordingly, in the event of any ambiguity in the construction or interpretation of any provision of this Mortgage, or the Loan Documents, no presumption shall be indulged in favor of either party in the resolution of such ambiguity.



**5.11 Collection Costs.** The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in enforcing the Mortgagee's rights hereunder and in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any lien on the Mortgaged Property, or any part thereof, unless this Mortgage is herein expressly made subject to any such lien; and all costs incurred in the foreclosure or other enforcement of this Mortgage, either under any power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Obligations, and shall bear interest at the Default Rate provided in the Notes or such lesser amount as shall be the maximum amount permitted by law, and shall be secured by this Mortgage.

**5.12 Defeasance.** If all of the Obligations (as defined herein) have been paid in full, including but not limited to all sums (principal, interest, premium and charges) payable under the Notes and any and all extensions and renewals of the same; and all sums due, or to become due, and payable by the Mortgagor under the terms of this Mortgage, the Loan Agreement and any of the other Loan Documents, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage, and if there is no outstanding breach by Mortgagor of the obligations, covenants, duties, conditions and agreements herein and in the Loan Agreement, Notes and other Loan Documents imposed on or agreed to by the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instrument(s) acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect. No release or modification of this conveyance, or of the lien, security interest or assignment created and evidenced thereby, shall be valid unless executed by Mortgagor.

**5.13 Change in Ownership.** If the ownership (legal or beneficial) of the Mortgaged Property or any part thereof becomes vested in a person or entity other than Mortgagor, or in the event of a change of any ownership of Mortgagor legal or beneficial (except as permitted under the Loan Agreement), Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Obligations in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or with respect to the Obligations and without affecting any default created hereunder by such ownership change, including, without limitation, all of Mortgagee's rights and remedies arising from such default. No sale of the Mortgaged Property, and no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Obligations, shall operate to release or affect the original liability of Mortgagor.

**5.14 Partial Release of Lien, Extension, Subdivision etc.** Any part of the Mortgaged Property or any other property which is security for the Loan may be released by Mortgagee without affecting the lien, security interest and assignment hereof against the remainder and Mortgagee may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Notes, any of the Loan Documents, this



Mortgage or any other instrument evidencing or securing any of the Obligations, in each case without affecting the lien, security interest and assignment hereof against the Mortgaged Property. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the Obligations. The taking of additional security, or the extension or renewal of the Obligations or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser or guarantor or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal or extension of the Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Obligations are paid. From time to time at Mortgagee's option, by instrument executed by Mortgagee and recorded in the mortgage records where this Mortgage has been recorded, Mortgagee may subordinate the lien created by this Mortgage to any interest in the Mortgaged Property, provided, however, that any such subordination shall be solely at Mortgagee's option, and in no event shall Mortgagee be obligated to subordinate the lien created by this Mortgage.

**5.15 Entire Agreement and Modification.** There are no oral agreements between the parties. The Loan Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Loan Documents may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted, and any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.

**5.16 Relationship; Joint and Several Liability.** The relationship of Mortgagee to Mortgagor under this Mortgage and with respect to the Loan Documents is strictly and solely that of creditor and debtor and nothing contained in this Mortgage or any other Loan Document is intended to create, or shall in any event or under any circumstance be construed to create, a partnership, joint venture, tenancy in common, joint tenancy or other relationship of any nature whatsoever between Mortgagee and Mortgagor, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated. If at any time there shall be more than one party which are together referred to herein as Mortgagor, then each such party hereby agrees that each of them shall be jointly and severally liable for all obligations and liabilities of Mortgagor under this Mortgage and further each agree that Mortgagee may, in its sole discretion, take any action hereunder against both of them, or either of them, without prejudice to or effect on any future action against either or both of them, and that any notice to or from either of them shall be deemed to be received or given by them both.

**5.17 Further Assurances.** Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purpose of the Loan Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, betterments or appurtenances to the then Mortgaged Property.



**5.18 Recording and Filing.** Mortgagor will cause this Mortgage and any Financing Statements and all amendments and supplements thereto and substitutions therefor to be recorded, filed, rerecorded and refiled in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, rerecording and refiling taxes, fees and other charges.

**5.19 Successors and Assigns.** All of the terms of the Loan Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them, and all of the obligations and liabilities of Mortgagor contained herein and in the Loan Documents are intended by the parties to be, and shall be construed as, covenants running with the Mortgaged Property. The word “**Mortgagor**” shall mean Mortgagor and/or any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein. The word “**Mortgagee**” shall mean Mortgagee or any subsequent holder of a Note.

**6. ADDITIONAL COVENANTS AND AGREEMENTS OF MORTGAGOR.**  
Mortgagor covenants and agrees as follows:

**6.1 Multiple Originals.** This Mortgage is being executed in multiple originals in order to be recorded simultaneously in each of the counties where the Mortgaged Property is located. All such originals shall constitute one and the same Mortgage. Mortgagee may cause a foreclosure sale or file an action to enforce any right or remedy under this Mortgage or applicable law as to all of the Mortgaged Property, regardless in which county the Mortgaged Property is located, in any county in which some of the Mortgaged Property is located, in Mortgagee’s sole and absolute discretion. Mortgagor consents to venue and jurisdiction in any such county as determined by Mortgagee.

**6.2 After Acquired Mortgaged Property.** Mortgagor covenants and agrees that, if and to the extent that any of its respective rights, titles, estates and interests in any of the Mortgaged Property is not acquired until after delivery of this Mortgage, this Mortgage shall nonetheless apply thereto and the security interest of Mortgagee hereby created shall attach to such Mortgaged Property at the same time as Mortgagor acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment or assurance and thereafter such Mortgaged Property shall be subject to the security interests created under this Mortgage.

**6.3 Waiver of Marshaling and Certain Rights.** Mortgagor agrees, to the extent permitted by law, that neither Mortgagor nor any person at any time claiming through or under Mortgagor shall set up, claim or seek to take advantage of any appraisement, valuation, stay, notice of election to accelerate, mature or declare due the Obligations, extension, redemption or moratorium laws, any right of division, or any exemption from execution or sale, or any rights of dower, curtesy or homestead, now or hereafter in force, in order to prevent or hinder the enforcement of this Mortgage. Mortgagor, for itself and for all who may at any time claim through or under Mortgagor or who hereafter may otherwise acquire any interest in or title to all or any part of the Mortgaged Property, hereby waives, releases and renounces to the extent permitted by law, all benefit of any such law or laws, any and all rights of redemption from sale under any power of sale permitted by law or pursuant to any judgment, order or decree of foreclosure of this Mortgage, and any and all right to have the assets constituting the Mortgaged




Property marshaled upon any foreclosure or other enforcement of this Mortgage or to direct the order in which any of the Mortgaged Property shall be sold in the event of any sale or sales pursuant hereto, as well as rights regarding the administration of estates of decedents or any other rights which might defeat, reduce or affect the right of Mortgagee to sell the Mortgaged Property for the collection of its obligations. Mortgagee or any court having jurisdiction to exercise or enforce rights with respect to this Mortgage may sell the Mortgaged Property in part or as an entirety. Mortgagee shall not be required to accept any part or parts of the Mortgaged Property in satisfaction of all or any part of the Secured Obligations. Mortgagee shall not be required to accept any apportionment of the Secured Obligations to or among any part or parts of the Mortgaged Property. If any law now in force of which Mortgagor might take advantage despite this Section shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

**6.4 Statute of Limitations.** Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of any and all Secured Obligations secured by this Mortgage.

**6.5 Time of Essence.** Time is of the essence of the obligations of Mortgagor in this Mortgage and each and every term, covenant and condition made herein by or applicable to Mortgagor.

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**EXHIBIT A**

**PROPERTY DESCRIPTION**

  
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**The following described property situated in Shelby County, Alabama:**

**Township 19 South, Range 1 East**

Southeast 1/4 of the Southwest 1/4	27	19 South	1 East
Southeast 1/4 of the Southeast 1/4	27	19 South	1 East
NW 1/4 of the NE 1/4 Less and except railroad right of way	34	19 South	1 East
Northeast 1/4 of the Northwest 1/4	34	19 South	1 East

**Township 20 South, Range 1 East**

East 1/2	14	20 South	1 East
Northeast 1/4 of the Southwest 1/4	14	20 South	1 East
Northwest 1/4 of the Northeast 1/4	23	20 South	1 East

**Township 21 South, Range 4 West**

All of Section	16	21 South	4 West
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Less and except the following:

That part of the North One-half of the Northeast Quarter (N 1/2 of NE 1/4) North of the Cahaba River;

The Northwest Quarter (NW 1/4) North and West of the Cahaba River;

That part of the Northwest Quarter of the Southwest Quarter (NW 1/4 of SW 1/4) West of the Cahaba River;

Said parcel being the same property as described in deed from Cahaba Forests, LLC to Farmer-Wallace LLC, dated January 17, 2002, and recorded as Inst. #2002-04998, in the Probate Office of Shelby County, Alabama.

Less and except the following:

The Southeast Quarter of the Southeast Quarter (SE 1/4 of SE 1/4);

The Southeast Diagonal One-Half of the Northeast Quarter of the Southeast Quarter (SE 1/2 of NE 1/4 of SE 1/4)

Said parcel being the same property described in deed from Cahaba Forests, LLC to Hope Coal Co., Inc. dated April 18, 2007 and recorded as Inst. #20070521000234340, in the Probate Office of Shelby County, Alabama.



Less and except the following:

That part of the Northeast Quarter of the Northeast Quarter (NE 1/4 of NE 1/4) lying East of the Cahaba River;

That part of the Southeast Quarter of the Northeast Quarter (SE 1/4 of NE 1/4) lying North and East of Piney Woods Creek;

That part of the Northwest Quarter of the Northeast Quarter (NW 1/4 of NE 1/4) lying South of the Cahaba River and East of Piney Woods Creek;

That part of the Southwest Quarter of the Northeast Quarter (SW 1/4 of NE 1/4) lying North of Piney Woods Creek;

That part of the Northeast Quarter of the Southeast Quarter (NE 1/4 of SE 1/4) lying North of Piney Woods Creek.

Said parcels being the same property described in deed from Cahaba Forests, LLC to Twin Pines Coal Company, Inc. dated February 22, 2008, and recorded as Inst. #20090604000213010, in the Probate Office of Shelby County, Alabama.

**LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:**

The Northwest Diagonal One Half of the Northeast Quarter of the Southeast Quarter (NW 1/2 of the NE 1/4 of the SE 1/4) Lying South of Piney Woods Creek;

The Southwest Quarter of Southeast Quarter (SW 1/4 of the SE 1/4);

The Northwest Quarter of the Southeast Quarter (NW 1/4 of the SE 1/4);

The Southeast Diagonal One Half of the Southeast Quarter of the Southwest Quarter SE 1/2 of the SE 1/4 of the SW 1/4).

Being the same property as described in Deed from Cahaba Forests, LLC to Jesse Creek Mining, LLC, dated September 21, 2015, and recorded as Inst. #20151002000346120, in the Probate Office of Shelby County, Alabama.

South 1/2 of the Southeast 1/4 17 21 South 4 West

Less that portion of lying North and West of the Cahaba River, by deed from Cahaba Forests, LLC to Farmer-Wallace LLC, dated January 17, 2002, and recorded as Inst. #2002-04998, in the Probate Office of Shelby County, Alabama.

West 1/2 of the Northeast 1/4 19 21 South 4 West

Less that portion lying West of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

Northwest 1/4 of the Southeast 1/4 19 21 South 4 West

Less that portion lying North of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

North 1/2 of the Southwest 1/4 19 21 South 4 West





Less that portion lying West of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

Southeast 1/4 of the Southwest 1/4 30 21 South 4 West

A part of the Southeast 1/4 of the Northeast 1/4 30 21 South 4 West

described as follows: Beginning at a point on the south line of the Southeast 1/4 of the Northeast 1/4 of Section 30, Township 21 South, Range 4 West, 208.7 feet east of the southwest corner of said SE 1/4 of NE 1/4 go east along said south line for 374.6 feet; thence left 89 deg. 49 min. for 296.93 feet; thence right 89 deg. 49 min. for 377.15 feet; thence right 90 deg. 11 min. for 296.93 feet to said south line of SE 1/4 of NE 1/4; thence east along said south line to southeast corner of said SE 1/4 of NE 1/4; thence north to northeast corner of said SE 1/4 of NE 1/4; thence west to northwest corner of said SE 1/4 of NE 1/4; thence south along west line of said SE 1/4 of NE 1/4 to a point 208.7 feet north of southwest corner of said SE 1/4 of NE 1/4; thence left 90 deg. 11 min. for 208.7 feet; thence right 90 deg. 11 min. for 208.7 feet to the point of beginning.

LESS AND EXCEPT THE FOLLOWING TWO PARCELS OWNED BY GORDON TIMBERLANDS, TO-WIT:

- a. The surface rights to one (1) acre square; commence 426 feet from the northwest corner of the Southwest Quarter of the Northeast Quarter of Section 30, Township 21 South, Range 4 West. Being the same property conveyed from Ruth L. Gordon to Gordon Timberlands, LTD dated October 10, 1995 and described in Inst. #1997-01148, recorded in the Probate Office of Shelby County, Alabama.
- b. The North 300 feet of the East 432 feet of the Southeast Quarter of the Northeast Quarter of Section 30, Township 21 South, Range 4 West.

North 1/2 of the Northeast 1/4, 30 21 South 4 West

LESS AND EXCEPT the West 5 acres of the NW 1/4 of the NE 1/4 of said Section The parcel being included herein is more particularly described as follows: Begin at the northeast corner of said North 1/2 of Northeast 1/4; thence in a southerly direction along the east boundary of said North 1/2 of Northeast 1/4 to the southeast corner of said North 1/2 of Northeast 1/4; thence in a westerly direction along the south boundary of said North 1/2 of Northeast 1/4 for 2,439.60 feet, more or less, to a point 221.78 feet east of the southwest corner of said North 1/2 of Northeast 1/4; thence in a northerly direction along



a straight line to intersection with the north boundary of said North 1/2 of Northeast 1/4; thence in an easterly direction along said north boundary 2,431.00 feet, more or less, back to the point of beginning of herein included parcel.

Southwest 1/4 of the Northeast 1/4 EXCEPT 1/2 acre in Boothe Family Cemetery	30	21 South	4 West
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A part of the Northeast 1/4 of the Southeast 1/4 described as follows: Beginning at a point on the west line of the NE 1/4 of SE 1/4, Section 30, 104.64 feet south of the northwest corner of said NE 1/4 of SE 1/4, said point being on the south edge of the Tuscaloosa public road; thence south along said west line for 285.00 feet; thence left 64 deg. 30 min. for 372.9 feet; thence left 115 deg. 30 min. for 276.03 feet to the south side of said public road; thence left 57 deg. 30 min. for 73.62 feet along said road; thence left 7 deg. 00 min. for 299.83 feet to the point of beginning.	30	21 South	4 West
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A part of the Northeast 1/4 of the Southeast 1/4 described as follows: Beginning at the NE corner of the NE 1/4 of the SE 1/4, Section 30, running south 539 feet on 1/4 section line on east side of said NE 1/4 of SE 1/4 of said Section 30, to an iron stake; thence west 330 feet to an iron stake; thence north 539 feet to 1/4 section line on north side of NE 1/4 of SE 1/4 of said Section 30; thence east 330 feet to point of beginning.	30	21 South	4 West
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Ten (10) acres in the northeast corner of the Northwest 1/4 of the Southeast 1/4	30	21 South	4 West
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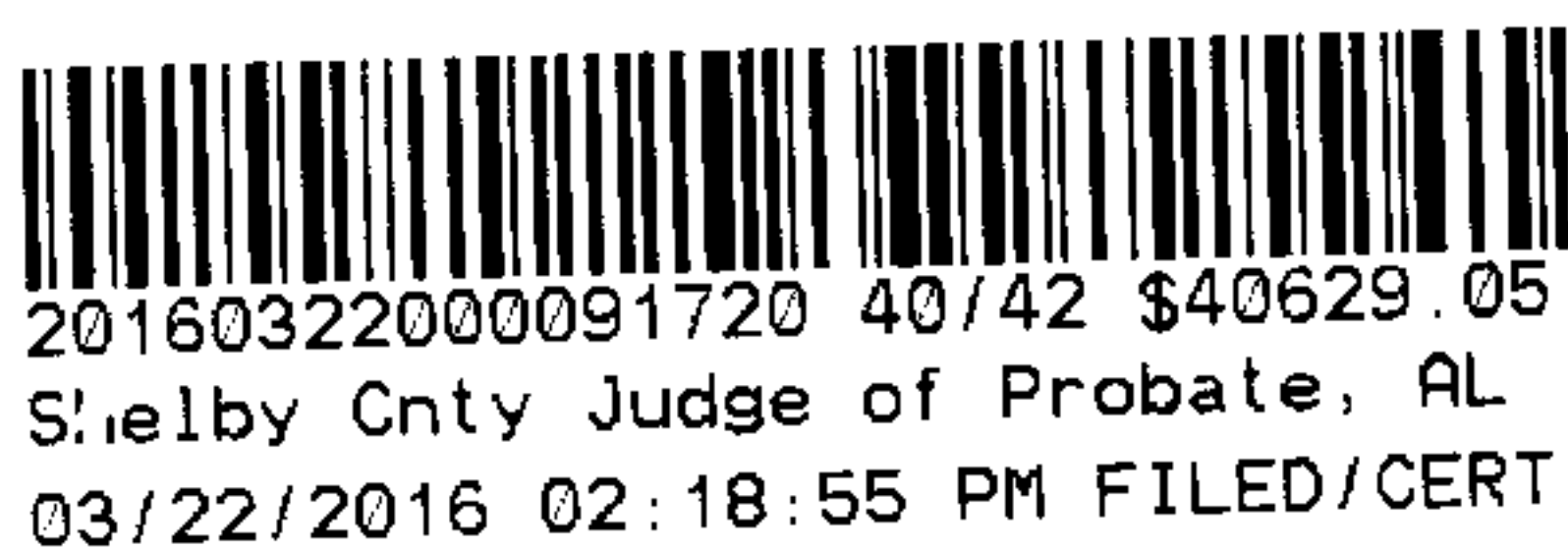
Southeast 1/4 of the Northwest 1/4	31	21 South	4 West
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Northeast 1/4 of the Southwest 1/4	31	21 South	4 West
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**Township 21 South, Range 5 West**

East 1/2 of the Northeast 1/4	36	21 South	5 West
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LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:  
That portion of the Northeast Quarter of the Northeast Quarter (NE 1/4 of NE 1/4) lying West of the Cahaba River.





Being the same property as described in deed from Cahaba Forests, LLC to Shelby Investments, LLC, dated August 21, 2015 and recorded as Inst. # 20151015000361580, in the Probate Office of Shelby County, Alabama.



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**1. Beneficial easements as described in that certain Special (Statutory) Warranty Deed from Cahaba Forests, LLC to Shelby County, Alabama, dated September 6, 2006, and recorded in Inst. #20060926000478370, in the Probate Office of Shelby County, Alabama.**

West 1/2 of the Northeast 1/4 19 21 South 4 West  
Less that portion lying West of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

Less that portion lying North of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

North 1/2 of the Southwest 1/4 19 21 South 4 West  
Less that portion lying West of the Cahaba River by deed from Cahaba Forests, LLC to Shelby Investments, LLC dated October 31, 2008 and recorded as Inst. #20081215000466260, in the Probate Office of Shelby County, Alabama.

