

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

POCAHONTAS SURFACE INTERESTS LLC, )  
POCAHONTAS LAND LLC, and )  
POCAHONTAS DEVELOPMENT LLC, )

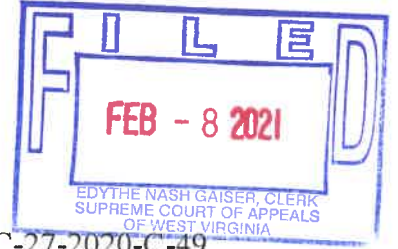
Plaintiffs, )

v. )

APPALACHIAN FORESTS A, LLC, and )  
THE FORESTLAND GROUP LLC, )

Defendants. )

Case No. CC-27-2020-C-49  
Cir. Ct. McDowell County  
(Rudolph J. Murensky, II, Judge)



**TO: HONORABLE EVAN JENKINS, CHIEF JUSTICE**

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS'**  
**MOTION TO REFER TO BUSINESS COURT DIVISION**

Plaintiffs Pocahontas Surface Interests LLC, Pocahontas Land LLC, and Pocahontas Development LLC (collectively, “Plaintiffs”), by counsel, file this Response in Opposition to the Motion to Refer to Business Court Division (the “Motion to Refer”) filed by Defendants Appalachian Forests A, LLC (“Appalachian”) and The Forestland Group LLC (“TFG,” and together with Appalachian, “Defendants”), and state as follows:

This case is a real estate dispute between two sets of business entities. Those characteristics do not, however, satisfy the statutory requirements for referral to the Business Court Division. TRIAL COURT RULE 29.04(a); *see THF Clarksburg Development Two, LLC v. IIAAMM, LLC*, 15-C-404-2-HRR (Jan. 5, 2016) (denying unopposed judicial motion for referral of real estate action involving breach of contract and declaratory judgment claims concerning permitted uses under real property deed). *See also, e.g., Shonk Land Company LLC v. Carbon Energy Corporation*, 20-C-613-KAN (Dec. 30, 2020) (denying referral of declaratory judgment action seeking construction of gas leases); *Acme Enterprises, Inc. v. M C Development Company, Inc.*, 20-C-84-CBL (Dec. 8, 2020) (denying referral of commercial construction

dispute involving breach of contract and unjust enrichment claims); *Justice Holdings LLC v. Glade Springs Village Property Owners Association, Inc.*, 19-C-481-RAL (Jul. 8, 2020) (denying referral of commercial loan dispute involving breach of contract claims).

To qualify for referral to this Business Court, Section 29.04(a) of the West Virginia Trial Court Rules requires Defendants, as movants, to demonstrate that this case

presents commercial and/or technology issues in which **specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy** because of the **need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable**.

TRIAL COURT RULE 29.04(a)(2) (emphasis added). That is, among other things, Defendants must show that (1) this case presents the “need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable”; and (2) if such a need is demonstrated, then “specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.” *Id.* Defendants have shown and can show neither.

Defendants’ Motion to Refer should be denied for three independent reasons:

1. This case does not present the “need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” TRIAL COURT RULE 29.04(a)(2). This case is, simply put, a real estate law dispute. Interestingly, the parties agree that the case turns on the interpretation of contract provisions found in a real property purchase agreement, real estate deeds, and a short associated surface use contract. *See, e.g.*, Exs 1-4. Prior to filing their Motion to Refer in this Court, Defendants represented to the Circuit Court (Judge Murensky) in a Motion to Dismiss that this case should be resolved based on a “simple review of the [conveyance] documents.” Although the parties disagree as to the conveyance documents’ proper interpretation, the parties do share some common ground: This case turns on basic contract interpretation. The interpretation of these documents requires “simple” interpretation principles, not “specialized knowledge or expertise.” *See infra* Part II(A).
2. This case does not present “commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable

resolution of the controversy.” *Id.* First, again, there is no specialized knowledge or expertise required to engage in the core task of interpreting the real estate contract documents. *See, e.g.,* Exs 1-4. Second, Judge Murensky has already demonstrated extensive experience handling similar real property issues in prior litigation. *See, e.g., Energy Dev. Corp. v. Moss*, 214 W. Va. 577, 587, 591 S.E.2d 135, 145 (2003) *affirming* 98-C-173 (June 19, 2002). It would be difficult to “improve the expectation of a fair and reasonable resolution” given Judge Murensky’s demonstrated background in similar cases. Even aside from his specific prior experience, Judge Murensky possesses all the skill and experience required to provide a fair, reasonable, and expeditious resolution of this type of case, without the need for “specialized treatment.” Third, there are no legitimate specialized technological or commercial discovery issues involved here. *See infra* Part II(B).

3. Defendants’ Motion to Refer invokes the Business Court Division’s jurisdiction for an invalid purpose. Defendants’ Motion to Dismiss asks Judge Murensky to review the key documents at issue and render an interpretation (*i.e.*, adopt Defendants’ contract interpretation). In two ways, Defendants acknowledge that Judge Murensky is qualified to engage in that key judicial function—contract interpretation—without the need for any specialized treatment in Business Court. First, by agreement, the parties have set Defendants’ Motion to Dismiss for hearing before Judge Murensky on February 24, 2021. Second, Defendants’ Motion to Refer explicitly seeks referral to the Business Court Division *if and only if Judge Murensky denies its Motion to Dismiss*. Defendants’ actions both (1) confirm that Judge Murensky is qualified to handle the key issues in this case; and (2) show that Defendants seek a transfer conditioned on the need for a contingency plan in the event Judge Murensky does not adopt Defendants’ contract interpretation. Plaintiffs respectfully submit that the purpose of the Business Court is not to serve as a backup plan for parties who have received or may receive an adverse ruling on a key liability issue in the case. *See infra* Part II(C).

## **I. Background**

Plaintiffs own real property located in several counties in West Virginia, Virginia, and Kentucky (the “Property”). In a set of agreements executed in 2000, Plaintiffs conveyed to the predecessor of Appalachian certain specified “Timber Interests” in the Property. The specific “Timber Interests” conveyed were precisely defined and limited to certain activities, including the right to grow and maintain timber and the “right to retain the proceeds derived *from* harvesting the same.” Ex. 1 at 2. *Plaintiffs nowhere conveyed the right to develop or sell carbon credits related to the Property. Indeed, Plaintiffs expressly reserved “all interests,*

*rights and privileges” in the Property, including the right to use the surface of the Property for “other uses,” specifically including the right to use the Property for “storage of all . . . minerals and substances . . . by any means or methods, whether now known or hereafter developed.”* Ex. 2 at 2 ¶2; Ex. 3.

This suit arises out of Defendants’ attempts to use the Property for “other uses” not included in the definition of the Timber Interests, namely the development and sale of carbon credits on the Property, which entails a purported dedication of the Property to a 100-year land use. As set forth in its First Amended Complaint, Defendants’ actions—which were undertaken without Plaintiffs’ knowledge or consent—violate Plaintiffs’ rights under the applicable deeds and contemporaneously executed Surface Use Agreement. Resolution of the dispute therefore turns on the Court’s construction of these contract documents.

The ultimate contract interpretation question involved here is whether Defendants received the right to store carbon and sell carbon credits developed on the Property at issue under conveyance documents that (1) make no mention of carbon sequestration rights and reserve all unenumerated uses to the surface owner; (2) were executed more than 20 years ago, well before carbon sequestration was a known commercial enterprise in West Virginia; and (3) affirmatively demonstrate in a variety of ways that Defendants did not receive the commercial carbon sequestration rights they now claim. This question of interpretation does not turn on science; it turns on settled principles of West Virginia real property law, including the principle that West Virginia Courts “will not find an implied right to conduct a given activity (not mentioned in the [conveyance]) unless that activity is clearly demonstrated to have been a common practice in the area, at the time of the [conveyance document’s] execution.” *Energy Dev. Corp. v. Moss*, 214 W. Va. 577, 587, 591 S.E.2d 135, 145 (2003).

## II. Argument

“Business Litigation” eligible for referral to the Business Division must satisfy all three elements of section 29.04(a) of the West Virginia Trial Court Rule, including subsection (a)(2):

the dispute presents commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.

TRIAL COURT RULE 29.04(a)(2). This case does not satisfy this standard.

### A. No Need for “Specialized Knowledge or Expertise”

This case does not present the “need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable.” *Id.* This is a real property case turning on basic and well-settled contract interpretation principles.

Plaintiffs’ First Amended Complaint asserts breach of contract and unjust enrichment claims, and requests declaratory judgments construing the contracts at issue. The contractual language at issue includes (i) the definition of “Timber Interests,” (ii) a reservation clause expressly reserving certain rights and interests in Plaintiffs (the surface owners), and (iii) certain provisions under the parties’ 12-page Surface Use Agreement that specifically grants Plaintiffs a continuing right to utilize any or all of the surface of the Property for uses other than timber harvesting, even if those uses “require[] that the surface be materially cleared of trees growing thereon.” Ex. 4 ¶3(a). Resolution of the dispute requires the Circuit Court to construe these contract provisions to give effect to the intent of the parties at the time they were executed in 2000.

Defendants statements to Judge Murensky in their Motion to Dismiss, that this case should be resolved based on a “simple review of the [conveyance] documents,” essentially

concede as much. The interpretation of these documents requires “simple” interpretation principles, not “specialized knowledge or expertise.”

**B. Specialized Treatment Is Not “Likely to Improve Expectations of a Fair and Reasonable Resolution”**

This case does not present “commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy.” *Id.* In reality, this case requires the standard treatment at issue in contract interpretation cases. Specialized treatment is not likely to improve the expectations of a fair and reasonable resolution for at least three reasons.

First, as stated above, there is no specialized judicial knowledge or expertise required here. Thus, there is no basis or need for any “specialized treatment.”

Second, Judge Murensky has demonstrated that he is certainly capable of construing the language in these types of agreements and, to the extent necessary, hearing evidence relevant to the intent of the parties at the time of their execution. In his two decades on the bench, Judge Murensky has substantial experience construing real property agreements, specifically including disputes concerning competing claims to natural resources in severed estates. *See Energy Dev. Corp. v. Moss*, 214 W. Va. 577, 587, 591 S.E.2d 135, 145 (2003) *affirming* 98-C-173 (June 19, 2002).

Third, there are no specialized technological or commercial discovery issues involved here. Contrary to the arguments Defendants make to Judge Murensky in their Motion to Dismiss, Defendants’ Motion to Refer claims that this case is the “next frontier” in West Virginia jurisprudence and presents “novel questions” because it involves the issue of carbon sequestration. But the case does not involve specialized “technology issues” related to carbon storage: the basic facts concerning carbon storage are not disputed (*i.e.*, carbon is stored in trees

and other plants as they grow, and in forest soil). The scientific and technological issues surrounding carbon storage are no more implicated in this case than are the scientific and technological issues of fossil fuels in oil and gas lease interpretation disputes, which are routinely decided outside the Business Court.

Defendants assert that “discovery will likely involve the development of biological, geological, and other evidence and testimony concerning the science of carbon sequestration,” Motion to Refer at 5–6, but they provide no explanation of why such discovery would be necessary. Nor do they even identify the issues to which such scientific evidence would be relevant. To the extent evidence other than the controlling agreements becomes relevant, it will likely focus on the straightforward factual questions regarding the intent of the parties, whether carbon sequestration was a common practice in Appalachia in 2000, and the like. These factual questions can be answered easily enough, without any need for significant scientific evidence.

**C. The Business Court Should Not Be Used as a Contingency Plan**

The Court should reject Defendants’ attempt to forum shop in the event of an adverse ruling concerning contract interpretation. Defendants’ Motion to Dismiss acknowledges that “simple” contract interpretation principles should guide the resolution of this case. Defendants ask Judge Murensky to make that determination. Defendants believe Judge Murensky is qualified to rule on their pending Motion to Dismiss. Motion to Dismiss at 5–6. By agreement, Judge Murensky plans to hear that Motion to Dismiss on February 24, 2021. Defendants condition any transfer by this Court on an adverse ruling before Judge Murensky on the key issue raised in their Motion to Dismiss. But if Judge Murensky does not adopt Defendants’ contract interpretation, then Defendants want a different judge. Plaintiffs respectfully submit that, in these circumstances, Defendants’ conditional request does not comport with the statutory purpose of the Business Court.

### III. Conclusion

Defendants have not demonstrated that this case meets the definition of Business Litigation. Accordingly, Plaintiffs respectfully request that the Court deny the Motion to Refer.

Respectfully submitted,

POCAHONTAS SURFACE INTERESTS LLC  
POCAHONTAS LAND LLC  
POCAHONTAS DEVELOPMENT LLC

By Counsel

C. William Davis  
Richardson & Davis, PLLC  
P.O. Box 1778  
Bluefield, WV 24701  
West Virginia State Bar No. 946  
Telephone: 304/327-7158  
[cwg@richardsondavislaw.com](mailto:cwd@richardsondavislaw.com)

By   
C. William Davis

Wade W. Massie  
Penn, Stuart & Eskridge  
P.O. Box 2288  
Abingdon, VA 24212  
West Virginia State Bar No. 7267  
Telephone: 276/623-4409  
[wmassie@pennstuart.com](mailto:wmassie@pennstuart.com)

Brandon T. Allen  
James A. Schuelke  
Reynolds Frizzell LLP  
1100 Louisiana Suite 3500  
Houston, Texas 77079  
Admitted *Pro Hac Vice*  
Telephone: 713/485-7200  
[ballen@reynoldsfrizzell.com](mailto:ballen@reynoldsfrizzell.com)  
[jschuelke@reynoldsfrizzell.com](mailto:jschuelke@reynoldsfrizzell.com)



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v. )

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(Rudolph J. Murensky, II, Judge)

)  
APPALACHIAN FORESTS A, LLC, and )  
THE FORESTLAND GROUP LLC, )  
 )  
Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2018, I served the Plaintiffs' Response In Opposition To Defendants' Motion To Refer To Business Court Division upon the Central Office of the Business Court Division by mailing a true copy thereof to:

Carol A. Miller, Executive Director  
Berkeley County Judicial Center  
Business Court Division, Suite 2100  
380 W. South Street  
Martinsburg, WV 25401

and upon Honorable Rudolph J. Murensky, II, Judge, Francine Spicer, Clerk of the Circuit Court of McDowell County and counsel of record by filing the same with said Clerk using the West Virginia Circuit Clerk E-filing System.

  
C. William Davis

Pocahontas Surface Interests LLC, et al.  
v. Appalachian Forests A, LLC, et al.

Exhibit 1  
to Plaintiffs' Response in Opposition to  
Defendants' Motion to Refer to Business Court Division

Purchase Agreement

**PURCHASE AGREEMENT**

**made and effective September 29, 2000**

**by and among**

**POCAHONTAS LAND CORPORATION  
POCAHONTAS DEVELOPMENT CORPORATION  
SOUTHERN REGION INDUSTRIAL REALTY, INC.  
(INDIVIDUALLY AS A "COMPANY" AND  
COLLECTIVELY AS THE "COMPANIES")**

**and**

**PLC TIMBER, LLC  
PDC TIMBER, LLC  
SRIR TIMBER, LLC  
(INDIVIDUALLY AS A "SELLER" AND COLLECTIVELY AS THE "SELLERS")**

**and**

**BLUEFIELD TIMBER LLC  
(THE "BUYER")**

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#### Attachments:

#### Maps

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Attachment 1B - Outconveyances

Attachment 1C - Existing Agreements

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### Exhibit B - Seller Timber Deeds

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### Exhibit D-2 - Seller Assignment

### Exhibit E-1 - Company Timber Rights Assignment

### Exhibit E-2 - Seller Timber Rights Assignment

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## **PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT ("Agreement") made and effective as of the 29<sup>th</sup> day of September, 2000, by and among POCAHONTAS LAND CORPORATION, a Virginia corporation ("PLC"), POCAHONTAS DEVELOPMENT CORPORATION, a Kentucky corporation ("PDC") and SOUTHERN REGION INDUSTRIAL REALTY, INC., a Georgia corporation ("SRIR") (PLC, PDC and SRIR being hereinafter referred to individually as a "Company" and collectively as the "Companies"); PLC TIMBER, LLC, a Delaware limited liability company ("PLC LLC"); PDC TIMBER, LLC, a Delaware limited liability company ("PDC LLC") and SRIR TIMBER, LLC, a Delaware limited liability company ("SRIR LLC") (PLC LLC, PDC LLC and SRIR LLC being hereinafter referred to individually as a "Seller" and collectively as the "Sellers"); and BLUEFIELD TIMBER LLC, a Delaware limited liability company (the "Buyer").

### **RECITALS:**

PLC owns interests in certain property in the State of West Virginia and the Commonwealth of Virginia. PDC owns interests in certain property in the Commonwealth of Kentucky. SRIR owns interests in certain property in the Commonwealth of Virginia. The boundaries and acreages of such property (the "Property") are more generally shown on the maps (the "Maps") to be attached to the deeds to be delivered at Closing, the forms of which are attached hereto as Exhibit A (the "Company Timber Deeds").

The Maps divide the Property among (i) "Timber Lands" identified on the Maps by the color green or green striping, except for the Maps attached to those Company Timber Deeds pertaining to the rights to harvest timber acquired from Ark Land Company, and in those instances such lands are identified by cross hatch or striping and except for the Maps attached to those Company Timber Deeds pertaining to jointly-owned lands, and in those instances such lands are identified by striping and in all such instances such Timber Property is identified as jointly owned or as undivided interests; (ii) the "Mineral Resource Properties" identified on the Maps by the color grey; (iii) the lands excluded from timber conveyance (the "Excluded Property") identified on the Maps by the color yellow (except in some instances where less than 10 acres, but all such Excluded Property is described on Attachment 1D to the Company Timber Deeds); and (iv) the "Lands of Others" identified on the Maps, as such.

Attachment 1A to the Company Timber Deeds identifies the documents by which the Companies acquired or reserved their interests in the Timber Lands (the "Inconveyances"); Attachment 1B to the Company Timber Deeds identifies the documents by which the Companies (or its predecessors have outconveyed an interest in the property acquired by the documents identified on Attachment 1A (the "Outconveyances"); Attachment 1C to the Company Timber Deeds identifies certain matters affecting the Timber Lands (the "Existing Agreements"); and Attachment 1D to the Company Timber Deeds identifies the Excluded Property.

As used in this Agreement, "Timber Property" means the Timber Lands, less and except the Excluded Property. As used in this Agreement, "Timber Interests" means all timber, including all species of timber now standing, growing or lying or hereafter standing, growing or lying, on the Timber Property, together with the perpetual right and easement to plant, grow, cultivate, maintain, protect, cut, remove and harvest all such timber on the Timber Property, the right to retain the proceeds derived from harvesting the same and the right and easement to use so much of the surface of the Timber Property as is reasonably necessary in connection therewith, subject to the provisions of the Surface Use Agreement referred to hereinafter.

Buyer wishes to purchase from Sellers, at the Closing, immediately after giving effect to transfers from the Companies to the Sellers, all of the Timber Interests. Buyer also wishes to purchase from PLC and PDC, at the Closing, Buyer's Pre-Closing Timber Sale Proceeds. As used in this Agreement, "Buyer's Pre-Closing Timber Sale Proceeds" is an amount estimated to equal one-half of the proceeds received or anticipated to be received by PLC and PDC for all timber harvested from the Timber Property after the date hereof and prior to Closing, which amount is agreed to be \$936,000.00 (\$635,348.00 from PLC and \$300,652.00 from PDC), all as more fully summarized on Schedule 1.2(c) attached hereto.

#### **WITNESSETH:**

That for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### **ARTICLE 1 SALE OF TIMBER INTERESTS; PURCHASE PRICE**

##### **1.1 Sale.**

(a) At the Closing (as hereinafter defined), upon the terms and subject to the conditions set forth herein, each of the Companies shall sell, assign, transfer, convey and deliver to its counterpart Seller (such counterpart being identified by the similarity of name), and each such Seller shall accept from its counterpart Company, the Timber Interests, by delivering duly executed Company Timber Deeds in the form attached hereto collectively as Exhibit A. At the Closing, immediately after giving effect to such conveyances, upon the terms and subject to the conditions set forth herein, each Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from each Seller, the Timber Interests, and Buyer shall accept the Timber Interests, by delivering duly executed deeds (the "Seller Timber Deeds"), in the form attached hereto collectively as Exhibit B.

(b) At the Closing, PLC and PDC shall pay to Buyer the Buyer's Pre-Closing Timber Sale Proceeds.



## 1.2 Purchase Price.

(a) Buyer's Purchase Price. As consideration for the sale of the Timber Interests from the Sellers and for the sale of Buyer's Pre-Closing Timber Sale Proceeds from PLC and PDC, Buyer shall pay at Closing the sum of \$93,500,000.00 (the "Base Purchase Price"), subject to adjustment as hereinafter provided in Sections 6.3 and 9.2 hereof (the Base Purchase Price, as adjusted, being referred to herein as the "Purchase Price") as follows: first, Buyer shall pay PLC and PDC \$936,000.00 in immediately available funds (\$635,348.00 to PLC and \$300,652.00 to PDC); second, Buyer shall pay the remaining outstanding balance of the Purchase Price (the "Remaining Purchase Price") to Sellers by executing and delivering the "Notes" as defined in, and pursuant to, the separate Note Agreements (the "Note Agreements") to be executed and delivered at Closing by Buyer, Sellers, and PLC LLC, as agent for the holders of the Notes (the "Note Agent"). The Notes will be secured by the Guaranty (as defined in the Note Agreement, herein referred to as the "Guaranty"), in the form attached to the Note Agreements, and a portion of the Buyer's obligations under the Notes will be secured by the Policy (as defined in the Note Agreements and herein referred to as the "Policy"), all as set forth in the Note Agreements.

(b) Sellers' Purchase Price. As consideration for contribution and sale of the Timber Interests from the Companies, each Seller shall at the Closing issue to its counterpart Company the "Capital Account Credit" and the "Short Term Note", as each such term is defined in the applicable Contribution Agreement.

(c) Allocation of Remaining Purchase Price. As between the Buyer and Sellers and as between the Sellers and Companies, the Remaining Purchase Price shall be allocated in its entirety among the Timber Interests in accordance with the allocation schedule set forth on Schedule 1.2(c) attached hereto, as the same may be adjusted prior to Closing by virtue of adjustments, if any, pursuant to Sections 6.3 and 9.2 hereof. Companies, Sellers and Buyer shall file all information and tax returns (and any amendments thereto) in a manner consistent with this Section 1.2. If, contrary to the intent of the parties hereto as expressed in this Section 1.2, any taxing authority makes or proposes an allocation different from that set forth in this Section 1.2, the parties shall cooperate with each other in good faith to contest such taxing authority's allocation or proposed allocation; provided, however, that after consultation with the party adversely affected by such allocation (or proposed allocation), the other party hereto may file such protective claims or returns as may reasonably be required to protect its or their interest. The party requesting cooperation shall reimburse the cooperating party for its reasonable out-of-pocket expenses incurred in rendering such cooperation.

## ARTICLE 2 CLOSING

2.1 Time and Place. The closing of the transactions contemplated herein (the "Closing") shall take place at 10:00 A.M. on September 29, 2000. The Closing shall take place at the offices of Companies' counsel, Jackson & Kelly PLLC, 1600 Laidley Tower, Charleston, West Virginia, or at such other place as the parties hereto may agree. The date and time of the Closing are hereinafter referred to as the "Closing Date".

### 2.2 Companies' Obligations at Closing. At the Closing:

- (a) Companies shall execute and deliver to Sellers the Company Timber Deeds and the separate Contribution and Sale Agreements between each Company and its counterpart Seller (the "Contribution Agreements");
- (b) Companies shall execute and deliver to Buyer the Surface Use Agreement ("Surface Use Agreement") in the form attached hereto as Exhibit C together with memorandums of same for recording in the applicable counties in the form attached hereto as Exhibit C-1;
- (c) Companies shall execute and deliver to Sellers the Assignment and Assumption of Timber Contracts (the "Company Assignment") in the form attached hereto as Exhibit D-1;
- (d) Companies shall execute and deliver to Sellers the Timber Rights Assignment (the "Company Timber Rights Assignment") in the form attached hereto as Exhibit E-1;
- (e) Companies shall deliver to Buyer an Estoppel Certificate (in form and content satisfactory to Buyer) duly executed by International Lumber, Inc. and International Industries, Inc. substantially in the form attached hereto as Exhibit F;
- (f) Companies shall deliver to Buyer letters to all third parties to the Timber Contracts, advising such parties of the consummation of the transactions contemplated in this Agreement and advising such parties that after the Closing Date, all further communications with respect to such Timber Contracts shall be with Buyer, said letters to be substantially in the form attached hereto as Exhibit G.
- (g) PLC's and PDC's obligation to deliver Buyer's Pre-Closing Timber Sale Proceeds (\$635,348.00 from PLC and \$300,652.00 from PDC) to Buyer shall

be offset by the Buyer's obligation to deliver a like amount to PLC (\$635,348.00) and to PDC (\$300,652.00) at Closing.

2.3 Sellers' Obligations at Closing. At the Closing:

(a) Sellers shall execute and deliver to Buyer the Seller Timber Deeds;

(b) Sellers shall execute and deliver to Buyer the Assignment of Timber Contracts (the "Seller Assignment") in the form attached hereto as Exhibit D-2; and

(c) Sellers shall execute and deliver to Buyer the Timber Rights Assignment (the "Seller Timber Rights Assignment") in the form attached hereto as Exhibit E-2; and

(d) Sellers shall execute and deliver to Companies the Company Assignment, the Company Timber Deeds, the Company Timber Rights Assignment, the Seller Notes and the Contribution Agreement.

2.4 Buyer's Obligations at Closing. At the Closing:

(a) Buyer shall deliver the Purchase Price in accordance with Section 1.2 hereof; and

(b) Buyer shall execute and deliver to Companies the executed Surface Use Agreement, and Buyer shall execute and deliver to Sellers the executed Seller Timber Deeds, Seller Assignment and the Seller Timber Rights Assignment.

(c) Buyer's obligation to deliver \$635,348.00 to PLC and \$300,652.00 to PDC in exchange for Buyer's Pre-Closing Timber Sale Proceeds shall be offset by the PLC's and PDC's obligation to deliver Buyer's Pre-Closing Timber Sale Proceeds (\$635,348.00 from PLC and \$300,652.00 from PDC) to Buyer at Closing.

2.5 Property and Other Taxes.

(a) Companies shall be responsible for paying all property taxes applicable to the Property (including the Timber Interests) for all periods prior to the Closing Date. For all other subsequent periods, Buyer shall be responsible for paying all property taxes attributable to the Timber Interests, including, without limitation, taxes imposed with respect to the severance and harvest of the Timber Interests, but subject to the remaining provisions of this Section.

(b) Property taxes for calendar year 2000 are assessed in Virginia and Kentucky based on ownership as of January 1, 2000 and in West Virginia based on ownership as of July 1, 1999. Accordingly, Companies will be assessed property taxes for the Timber Interests for calendar year 2000. Also, because PLC will own the Timber Interests in West Virginia on July 1, 2000, PLC will be assessed West Virginia property taxes for calendar year 2001.

PLC warrants that it has paid the first of two equal property tax installments for West Virginia for calendar year 2000 property taxes, the second installment for West Virginia being due March 1, 2001. At Closing, Buyer shall reimburse PLC for Buyer's pro rata share of the first property tax installment PLC paid to West Virginia for calendar year 2000 property taxes in the amount of \$59,358.55.

After Closing, Companies agree to pay and Buyer agrees to reimburse the appropriate Company Buyer's pro rata share of calendar year 2000 property taxes paid applicable to the Timber Interests in Virginia and Kentucky (if not paid and reimbursed at Closing) and the 2<sup>nd</sup> installment of year 2000 Timber Interests property taxes due March 1, 2001 and all the anticipated year 2001 Timber Interests property taxes due September 1, 2001 and March 1, 2002 for West Virginia when paid. After calendar year 2000 in Virginia and Kentucky and after calendar year 2001 in West Virginia, if any of the Timber Interests where any of the Companies own the surface are not separately assessed for property tax purposes, Buyer shall reimburse each Company for 50% of such property taxes paid by the Company. Buyer is obligated to reimburse each Company for Timber Interests property taxes paid after Closing within 30 days after Companies have provided Buyer with 1) a written affidavit, executed by a knowledgeable representative of the Company, certifying that the Company has paid said property taxes, 2) a summary of the taxes paid by state and county and 3) a detailed electronic list of each tax bill paid. Upon request, Companies will provide hard copy documentation supporting specific tax bills paid. The 30-day period is to begin on the date the written affidavit is received by the Buyer (via mail or fax). Any reimbursement not made within such 30-day period shall bear interest at the rate of 10% per annum from the due date until the date paid, inclusively. Companies agree to hold Buyer harmless for any penalty or interest resulting from the failure of the Companies to make timely payments.

The calendar year 2000 anticipated Timber Property taxes from which the Buyer's pro rata share would be based are \$106,712.10 for Kentucky and \$8,566.11 for Virginia. The Buyer's pro rata share of the second year 2000 installment in West Virginia would be based on \$237,434.21. The amount for each installment for the year 2001 Timber Property taxes for West Virginia are anticipated to be based on \$217,000.00 and \$217,000.00, respectively. Such property taxes are summarized on Schedule 2.5(b) attached hereto.

(c) Except with respect to the taxes and allocations thereof

specifically identified in (b) above for calendar years 2000 and 2001, the amounts of which may be challenged only by Companies, each party expressly reserves the right to challenge in good faith, by legal and proper means, the amount of any taxes, levies or assessments respecting its estate in the Property; provided that any party who exercises such right to challenge shall at all times protect the other party's title to such other party's estate in the Property from tax liens, tax sales or other encumbrances or impairments resulting directly or indirectly from any such challenge, and the challenging party shall be responsible for any interest, penalty or similar charges incurred as a result of any such challenge.

(d) Buyer shall be responsible for all costs and fees related to the recordation of any closing documents, including, but not limited to, the Company Timber Deeds and the Seller Timber Deeds. Companies and Sellers shall be responsible for the payment of the grantor's tax and any other transfer tax associated with the conveyance of the Timber Interests from Sellers to Buyer and Buyer shall be responsible for the payment of the grantor's tax and any other transfer tax associated with the conveyance of the Timber Interests from the Companies to Sellers. If Buyer determines in its sole discretion that no grantor's tax or any other transfer tax is payable with respect to the conveyance of the Timber Interests from the Companies to the Sellers, then in such event the Company Timber Deeds shall be modified to so provide in the manner permitted under applicable state law and any declaration to be appended to any such Company Timber Deed shall be executed by Buyer or other knowledgeable person on Buyer's behalf.

### **ARTICLE 3 CONDITIONS TO CLOSING**

3.1 Conditions to Obligations of Buyer to Close. The obligation of Buyer to consummate the transactions contemplated hereby shall be subject to satisfaction (unless expressly waived by Buyer) at or prior to the Closing of the following conditions:

(a) The representations and warranties of Sellers and Companies set forth in Article 4 hereof shall be true and correct as of the Closing Date;

(b) Sellers and Companies shall have performed and complied with all covenants required by this Agreement to be performed by the Companies and the Sellers at or prior to the Closing;

(c) Buyer shall have received all deliveries set forth in Section 2.2 and in Section 2.3 hereof, as appropriate;

(d) No order of any court or administrative agency shall be in effect and no litigation or proceeding shall be pending which enjoins or seeks to enjoin the

transactions contemplated by this Agreement;

(e) Buyer shall have received at Closing a title policy or policies (in the form of "marked up" commitments) having an effective date no earlier than the date of recordation of the Seller Timber Deeds and otherwise in accordance with the provisions of Section 9.1 below;

(f) Ark Land Company and all other owners of the surface of any real property that is the subject of those certain Joint Use Agreements by and between PLC or PDC and Ark Land Company, and each being dated July 31, 1995, shall have consented to the assignment of those Joint Use Agreements (as amended to Buyer's satisfaction) to Buyer;

(g) Sellers and the Note Agent shall have executed and delivered to Buyer the Note Agreement; and

(h) Counsel to Sellers and Companies (which may be in-house counsel) shall have delivered to Buyer a favorable opinion as to the due authorization, execution of the Contribution Agreement, the Note Agreements, and all other agreements, contracts and instruments delivered pursuant to the Note Agreement, which opinion shall otherwise be in form and substance satisfactory to Buyer.

3.2 Conditions to Obligations of Sellers and Companies to Close. The obligations of Sellers and Companies to consummate the transactions contemplated hereby shall be subject to satisfaction (unless expressly waived by Sellers and Companies) at or prior to the Closing of the following conditions:

(a) The representations and warranties of Buyer set forth in Article 5 hereof shall be true and correct as of the Closing Date;

(b) Buyer shall have performed and complied with all covenants required by this Agreement to be performed by Buyer at or prior to the Closing;

(c) Sellers and Companies shall have received all deliveries set forth in Section 2.2, Section 2.3 and Section 2.4 above, as appropriate;

(d) No order of any court or administrative agency shall be in effect and no litigation or proceeding shall be pending which enjoins or seeks to enjoin the transactions contemplated by this Agreement;

(e) Buyer shall have executed and delivered to Sellers the Note Agreement;

(f) Buyer shall have issued, and delivered the originals of, the Notes to Sellers;

(g) Sellers shall have received the Policy and the Guaranty;

(h) Buyer shall have performed and complied with all agreements and conditions contained in the Note Agreement to be performed or complied with by it at or prior to the "Closing" (as defined in the Note Agreement); and

(i) Counsel to Buyer shall have delivered to Sellers and the Companies a favorable opinion as to the due authorization and execution of the Note Agreements, and all other agreements, contracts and instruments delivered pursuant to the Note Agreements, which opinion shall state that it may be relied upon by any and all transferees and pledgees of the Notes and shall otherwise be in form and substance satisfactory to Sellers and the Companies.

#### **ARTICLE 4**

#### **REPRESENTATIONS AND WARRANTIES OF COMPANIES AND SELLERS**

Each of the Companies and Sellers, severally, not jointly, represents and warrants to Buyer that the statements contained in this Article 4, to the extent that such statements apply to such Company or such Seller or to such Company's or such Seller's property, are correct and complete as of the date hereof and will be correct and complete as of the Closing Date.

4.1 Organization. Each of the Companies and each of the Sellers is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and, to the extent it is a foreign corporation or limited liability company doing business therein, is in good standing under the laws of the jurisdiction in which it does business. Each of the Companies and each of the Sellers has full corporate or limited liability company power and authority to carry on its business as now being conducted, to own, lease or operate its properties, and to enter into, deliver and perform this Agreement and all other agreements and instruments to be executed by such Person in connection herewith and to consummate the transactions contemplated hereby and thereby.

4.2 Execution and Authorization. The execution, delivery and performance by each of the Companies and each of the Sellers of this Agreement, and all other agreements and instruments to be executed and delivered by such Person in connection herewith, and the consummation by such Person of the transactions contemplated hereby and thereby, have been

duly authorized and approved by all requisite corporate or limited liability company action. This Agreement has been, and all other agreements and instruments required to be executed and delivered by each of the Companies and each of the Sellers at the Closing will be, duly executed and delivered by such Person; and this Agreement is, and all other agreements and instruments required to be executed and delivered by such Person at Closing will be, legal, valid and binding obligations of such Person enforceable against such Person in accordance with their respective terms.

4.3 No Violation. Neither the execution, delivery or performance by the Companies and the Sellers of this Agreement or of any agreement or instrument required to be executed and delivered by the Companies or the Sellers pursuant hereto, nor consummation of the transactions contemplated hereby or thereby, will (i) violate any provisions of the Articles of Incorporation or By-Laws of any of the Companies or the Certificate of Formation or Limited Liability Company Agreement of any of the Sellers, (ii) require the approval, consent or authorization of any federal, state or local governmental authority, other than as set forth in this Agreement, (iii) violate or result in the breach of any term or provision of any contract or other restrictions to which any of the Companies or any of the Sellers is a party or by which any of the Timber Interests is bound, or (iv) result in the creation at or after Closing of any mortgage, lien or encumbrance on the Timber Interests.

4.4 Title to the Timber Interests. The Company Timber Deeds will convey to Sellers all of the Timber Interests, subject to the matters set forth in the form of Company Timber Deeds. The Seller Timber Deeds will convey to Buyer the Timber Interests, subject to the matters set forth in the form of Seller Timber Deeds. To the extent there are any obligations imposed on any of the Companies or any of the Sellers in any documents by which any such Person obtained title to the Timber Interests, each such Person represents and warrants that it is not in default of any such obligations. The Company Assignment will assign to Sellers all right, title and interest of the Companies in and to the "Timber Contracts" listed on Schedule 4.4. The Seller Assignment will assign to Buyer all right, title and interest of Sellers in and to the "Timber Contracts" listed on Schedule 4.4. Companies represent and warrant that they have good and marketable title to the Timber Interests, and Sellers represent and warrant that, as of the Closing Date, they will have good and marketable title to the Timber Interests. Other than the Companies and Sellers, no other Affiliate (as hereinafter defined) of the Companies or Sellers has any ownership interest in the Timber Property.

4.5 Litigation. Except as set forth on Schedule 4.5, to the Companies' and the Sellers' knowledge, there is no existing litigation, arbitration or governmental proceeding, that could adversely affect the value of the Timber Interests or could result in any lien or encumbrance thereon. The Companies and the Sellers shall remain responsible for such litigation and shall indemnify, defend and hold Buyer harmless with respect thereto. This indemnity shall survive the Closing, and shall not be limited by the provisions of Article 7



hereinbelow. In no event shall any matter set forth on Schedule 4.5 be a Permitted Exception (as hereinafter defined). To the Companies' and Sellers' knowledge, none of the Companies or Sellers is subject to any judgment, court order or decree which could have an adverse effect on the Timber Interests.

4.6 Permits. There are no existing permits, licenses, certificates, bonds, approvals or other such authorizations pertaining to the ownership of the Timber Interests.

4.7 Governmental Regulation. Except as set forth on Schedule 4.7 attached hereto, each of the Companies and the Sellers is in compliance in all material respects with all applicable laws, statutes, regulations, orders, writs, injunctions and decrees of any governmental authority, court or administrative agency having jurisdiction over it and applicable to the Timber Interests. None of the Companies and none of the Sellers is subject to any judgment, order, writ, rule, decree, regulation or ordinance which adversely affects, or might reasonably be expected to adversely affect, any of the Timber Interests.

4.8 Conduct of Business. Since March 7, 2000, the date on or about which Buyer began its due diligence investigation regarding the Timber Interests, Companies have conducted their respective businesses, to the extent that they involved the Timber Interests, in the ordinary course and consistent with past practices (including, but not limited to, cutting and removing timber from the Timber Property). Except as described in this Agreement and as provided in the Timber Contracts listed on Schedule 4.4 or as set forth on Schedule 6.2, neither the Companies nor the Sellers shall cut or remove any trees or timber from the Timber Property prior to Closing. Buyer is purchasing the Buyer's Pre-Closing Timber Sale Proceeds at Closing. The Companies and the Sellers shall deliver to Buyer prior to Closing a copy of all of their applicable records related to all timber harvested from the Timber Property after the date hereof and prior to Closing.

4.9 Environmental. Except as set forth on Schedule 4.9A: (a) to the Companies' and Sellers' knowledge, no Environmental Conditions (as hereinafter defined) affect the Timber Property or any portion thereof; (b) neither the Companies nor the Sellers know of, nor have been advised of, any legal or administrative proceedings, claims, violations, deviations, or infractions of any laws, rules, or regulations relating to the condition of the Timber Property or any part thereof, nor suggesting that the Timber Property is, has been or may be targeted for clean-up of Hazardous Materials (as hereinafter defined); (c) to the Companies' and Sellers' knowledge, no portion of the Timber Property contains any underground tanks or underground storage facilities of any kind or description; (d) no portion of the Timber Property has ever been used by any Company or the Sellers or to the Companies' and Sellers' knowledge by any prior owner or any prior or existing occupant, as a landfill to receive solid waste, whether or not hazardous, or for the dumping, discharge, treatment, storage, release or disposal of oil or any Hazardous Material (other than in compliance with

applicable law). The Environmental Conditions are set forth on Schedule 4.9B attached hereto and hereby made a part hereof.

4.10 Endangered Species. Except as set forth on Schedule 4.10, to the Companies' and Sellers' knowledge, there is no existing or proposed finding or promulgation under any state or federal endangered species or archeological protection law, rule or regulation, or the like, that would prevent Buyer from harvesting by conventional methods, with the passage of time, all or a significant portion of the timber from the Timber Property.

4.11 Eminent Domain. Except as set forth on Schedule 4.11, there are no pending eminent domain proceedings against the Timber Property or any part thereof, and, to the Companies' and Sellers' knowledge, no such proceedings are presently threatened or contemplated by any taking authority.

4.12 Contracts.

(a) The Timber Contracts are in full force and effect, and none of them have been modified or amended except as set forth on Schedule 4.4;

(b) Neither any Company or any Seller, nor to the Companies' and Sellers' knowledge the other parties thereto, are in default of any obligations under the Timber Contracts.

4.13 Relationships to Other Entities. As used in this Agreement, "Lessees' Group" means International Lumber, Inc., Gilbert-NS Lumber LLC, Gilbert-Pocahontas Limited Liability Company, Gilbert-PLC Lumber, a limited partnership, any Person that is a party to one or more Timber Contracts with Sellers or Companies that will be assigned to and assumed by Buyer pursuant to the Seller Assignment, any Person from whom Buyer will receive payments pursuant to the Seller Timber Rights Assignment, and any Person that has a right under one or more contracts to harvest any of the timber included in the Timber Interests.

As used in this Agreement, "Owners Group" means Sellers, Companies, Norfolk Southern Corporation, Norfolk Southern Properties, Inc., and any direct or indirect subsidiary of Sellers, Companies, Norfolk Southern Corporation or Norfolk Southern Properties, Inc.

None of the entities included in the Lessees' Group currently bears or will, at any time during the period that begins on the Closing Date and ends one year and one day after the Closing Date, bear a relationship described in section 267(b) or 707(b) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States internal revenue law) to any of the entities included in the Owners' Group.

4.14 Disclaimers. Except for the representations and warranties contained in this Agreement (and except for any representations and warranties which may be contained in the documents to be delivered at Closing), the Companies and the Sellers offer, extend and make no other representation or warranty, express or implied, about or pertaining to title to the Timber Interests, the condition (physical or otherwise) of the Timber Interests, the income to be derived from or the expense to be incurred with respect to the Timber Interests, the present use of the Timber Interests or the suitability of Buyer's intended use of the Timber Interests. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT (AND EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES WHICH MAY BE CONTAINED IN THE DOCUMENTS TO BE DELIVERED AT CLOSING), THE COMPANIES AND SELLERS HEREBY EXPRESSLY DISCLAIM ANY OTHER REPRESENTATIONS AND ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER WITH RESPECT TO THE TIMBER INTERESTS, INCLUDING ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT (AND EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES WHICH MAY BE CONTAINED IN THE DOCUMENTS TO BE DELIVERED AT CLOSING), THE TIMBER INTERESTS ARE SOLD AND CONVEYED TO BUYER "AS IS" AND "WITH ALL FAULTS".

4.15 Knowledge. As used in this Article 4, "knowledge" means the actual knowledge of the Companies and the Sellers without any independent duty of inquiry.

## ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to the Companies and the Sellers that the statements contained in this Article 5 are correct and complete as of the date hereof and will be correct and complete as of the Closing Date.

5.1 Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to enter into, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

5.2 Execution and Authorization. The execution, delivery and performance by Buyer of this Agreement, and all other agreements and instruments to be executed and delivered by Buyer in connection herewith, and the consummation by Buyer of the transactions contemplated hereby and thereby, have been duly authorized and approved by all requisite corporate action. This Agreement has been, and all other agreements and instruments required to be executed and delivered by Buyer at the Closing will be, duly executed and delivered by

Buyer; and this Agreement is, and all other agreements and instruments required to be executed and delivered by Buyer at Closing will be, legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with its terms.

5.3 No Violation. Neither the execution, delivery or performance by Buyer of this Agreement or of any agreement or instrument required to be executed and delivered by Buyer pursuant hereto, nor the consummation of the transactions contemplated hereby or thereby will (i) violate the Certificate of Formation or Limited Liability Company Agreement of Buyer, (ii) require the approval, consent or authorization of any federal, state or local governmental authority, other than as set forth in this Agreement, or (iii) violate or result in the breach of any term or provision of any contract or other restrictions to which Buyer is a party or by which Buyer is bound.

5.4 Buyer's Investigations. Buyer expressly acknowledges that, except as identified as such is this Agreement and the Exhibits and Schedules hereto and the documents to be delivered at Closing, none of the Companies or Sellers has made any representations, warranties or guaranties as to environmental matters or as to the existence, quantity, quality, accessibility or value of any timber on any part of the Property; and otherwise, except as so identified, Buyer is relying solely upon its own independent due diligence investigation in order to verify such matters.

## ARTICLE 6 ADDITIONAL AGREEMENTS

6.1 Due Diligence Investigation. Prior to and after the Closing, Buyer's employees, representatives and agents shall have the right to enter upon the Timber Property to inspect, examine, survey and make timber cruises and such other investigations with respect to the Timber Interests as Buyer may deem necessary or advisable. Buyer hereby agrees to indemnify and hold the Companies and Sellers harmless from and against any and all costs and expenses resulting from any claims or damages caused by such inspections, surveys and investigations. For a period expiring four years after the Closing Date, the Companies and Sellers shall also provide Buyer's employees, representatives and agents access to, and the opportunity to reproduce, at Buyer's expense and during Companies' and the Sellers' normal business hours, any and all maps, charts, surveys, timber cruises, deeds, reports and other documents relating to the Timber Interests within the Companies' or the Sellers' reasonable possession or control.

6.2 Operation In Normal Course. Prior to the Closing, the Companies and the Sellers shall conduct their respective businesses, to the extent that they involve any of the Timber Interests, in the ordinary course and consistent with past practices (including, but not limited to, cutting and removing timber from the Timber Property), and shall not otherwise

enter into any transaction which might adversely affect the Timber Interests unless such transaction is made pursuant to the Timber Contracts or is subject to the terms, conditions, rights and obligations set forth in the Surface Use Agreement. Schedule 6.2 attached hereto discloses all timber harvesting planned for the Timber Property for the balance of calendar year 2000. The Companies and the Sellers shall notify Buyer immediately regarding any transaction that the Company or the Sellers enter into affecting the Timber Interests after the date hereof and any contract for cutting timber on the Timber Property entered into after the date hereof shall become a Timber Contract and be listed as a supplement to Schedule 4.4 at Closing, provided the same is contemplated on Schedule 6.2 and is otherwise entered into in accordance with the terms of this Agreement. Subject to the foregoing provisions of this Section, the Companies and the Sellers further agree that the Timber Interests will be in the same condition at the Closing as they exist on the date hereof, subject to condemnation and casualties beyond the Companies' and the Sellers' control, and the Companies and the Sellers covenant that they will not, from and after the date of this Agreement, cut or remove, or permit or suffer the cutting or removal of, any trees or timber from the Timber Property, except as otherwise provided in this Agreement.

6.3 Casualty Event. The Companies and the Sellers shall bear the risk of casualty losses with respect to the Timber Interests prior to Closing. If prior to Closing a Casualty Event (as hereinafter defined) occurs, the Base Purchase Price shall be reduced in an amount equal to \$173.00 multiplied by the number of acres affected. In the event a Casualty Event occurs prior to Closing that is not discovered by Buyer until after Closing, the Companies and the Sellers shall, promptly after being notified of same by Buyer and provided said notification is made within 60 days after the Closing Date, make a cash refund as a reduction in the Base Purchase Price in an amount equal to \$173.00 multiplied by the number of acres affected. The provisions of this Section 6.3 shall survive Closing. For purposes of this Agreement, a Casualty Event shall mean a fire, hurricane, windstorm, tornado, insect infestation, disease, unauthorized harvest or other casualty which affects any contiguous 500 acre tract of the Timber Property.

6.4 Black Mountain Transaction. PDC and Commonwealth of Kentucky ("Kentucky") did execute that certain Offer to Sell Timber, dated June 30, 1999 (the "Offer"), wherein PDC did agree to sell and Kentucky did agree to buy all of the timber and timber rights owned by PDC within the "Timber Purchase Area" (as said term is defined in the Offer) (the "Black Mountain Transaction"). The Offer was amended by Amendment to Purchase Contract (the "Amendment") made and entered into August 1, 2000 between PDC and Kentucky. Contemporaneously with the Amendment, PDC, Buyer and Fifth Third Bank, Kentucky, Inc. ("Escrow Holder") executed and delivered an Escrow Agreement together with Exhibit A thereto (the "Pocahontas Deeds") and Exhibit B thereto (the "Bluefield Deed" and together with the Pocahontas Deeds, the "Deeds") to be held in escrow by the Escrow Holder. In addition, PDC and Buyer executed that certain letter agreement (the "Letter Agreement") dated

July 31, 2000. Copies of all of the foregoing documents are in possession of PDC and Buyer.

PDC and Buyer each agrees to fully comply with all of the provisions of the Letter Agreement and the Escrow Agreement applicable to it.

6.5 Certain Mining Leases. Reference is made to the following leases (the "Leases"): (i) Indenture of Lease made October 23, 1974 between Kentenia Corporation (predecessor of PDC) and Harlan Fuel Company; (ii) Lease made October 25, 1990 between PLC and Bear Cub Coal Company, Inc. as supplemented on September 27, 1996; and (iii) Lease made January 1, 1965 between PLC and Low Volatile Coals, Inc. PLC and PDC, as their respective interest may appear, each agrees to use good faith efforts to obtain the agreement of the Lessees under such Leases that any "Surface Activity" (as defined in the Surface Use Agreement) upon lands covered by such Leases and on which Buyer owns the Timber Interests will be subject to the provisions of the Surface Use Agreement. Each such Company, as its respective interest may appear, shall provide a copy of any such proposed agreement to Buyer for review and approval prior to the execution thereof.

## ARTICLE 7 SURVIVAL AND INDEMNIFICATION

7.1 Survival of Representations and Warranties. The representations and warranties of the Companies and the Sellers contained in Article 4 hereof (as they may have been amended in any certificate delivered at Closing) and of Buyer contained in Article 5 hereof (as they may have been amended in any certificate delivered at Closing) shall survive the Closing and may serve as a basis for an indemnity claim only for a period of two years thereafter as provided in Section 7.4(a) below, except for the representations of the Companies and the Sellers under Sections 4.1, 4.2 and 4.3 and of Buyer under Sections 5.1, 5.2 and 5.3, which shall survive forever.

### 7.2 Indemnification Provisions for Benefit of Buyer.

(a) Each of the Companies and each of the Sellers shall severally, not jointly, defend, indemnify and hold harmless Buyer or any Affiliate of Buyer, and their respective members, managers, directors, officers, employees, agents, successors and assigns ("Buyer Indemnified Parties") from and against any losses, damages, penalties, fines, costs, amounts paid in settlement, expenses and fees, including court costs and reasonable attorneys' fees and expenses (hereinafter collectively referred to as "Damages") that any Buyer Indemnified Parties may incur arising out of or relating to (i) any breach by such Company or such Seller of its representations and warranties set forth in Article 4 hereof; or (ii) any breach by such Company or such Seller of any of its covenants or obligations in this Agreement.

(b) Notwithstanding the foregoing, (i) the Buyer Indemnified Parties shall not be entitled to indemnification from any Company or any Seller hereunder with respect to any breach of the representations and warranties contained in Article 4 (as they may have been amended in any certificates delivered at Closing) unless and until the amount of Damages incurred by the Buyer Indemnified Parties due to such breach or breaches exceeds \$50,000.00 in the aggregate, in which event such Company or such Seller shall only be responsible to the extent the Damages exceed \$50,000.00, and (ii) the Companies and the Sellers shall not have any liability hereunder for any consequential, incidental, punitive, exemplary or indirect damages or lost profits of any nature or kind, except to the extent resulting solely from fraud or intentional tortious misconduct on the part of any Company or Seller.

7.3 Indemnification Provisions for Benefit of the Companies and the Sellers.

(a) Buyer shall defend, indemnify and hold harmless the Companies and the Sellers or any Affiliate of the Companies and the Sellers, and their respective members, managers, directors, officers, employees, agents, successors and assigns ("Seller Indemnified Parties"), from and against any Damages that any Seller Indemnified Party may incur arising out of or relating to (i) any breach by Buyer of its representations and warranties set forth in Article 5 hereof; (ii) Buyer's exploratory activities on the Property prior to the Closing, if any; or (iii) any breach by Buyer of any of its covenants or obligations contained in this Agreement.

(b) Notwithstanding the foregoing, (i) the Seller Indemnified Parties shall not be entitled to indemnification from Buyer hereunder with respect to any breach of the representations and warranties contained in Article 5 unless and until the amount of Damages incurred by the Seller Indemnified Parties due to such breach exceeds \$50,000.00 in the aggregate, in which event Buyer shall only be responsible to the extent the Damages exceed \$50,000.00, and (ii) Buyer shall not have any liability hereunder for any consequential, incidental, punitive, exemplary or indirect damages or lost profits of any nature or kind, except to the extent resulting solely from fraud or intentional tortious misconduct on the part of Buyer.

7.4 Procedures and Prerequisites for Indemnification. Any claims for indemnification made pursuant to this Article 7 shall be governed by the following provisions:

(a) Any party who is obligated under this Agreement to indemnify (an "Indemnifying Party") shall have no obligation to indemnify an Indemnified Party (either a Buyer Indemnified Party or Seller Indemnified Party, as applicable) unless the Indemnified Party shall have delivered to the Indemnifying Party a valid notice of claim (a "Claim Notice"); provided, however, that any Claim Notice arising out of a breach of a representation or

warranty pursuant to Section 7.2(a)(i) or 7.3(a)(i) must be received by the Indemnifying Party on or prior to the second anniversary of the Closing Date. Any Claim Notice shall set forth the basis for the claim and, if applicable, the name of the person or persons that have brought the demand, action, suit or proceeding, the grounds for and the cost or the reasonably estimated cost of an adverse outcome of such demand, action, suit or proceeding, the basis upon which the Indemnified Party contends that an adverse determination of such demand, action, suit or proceeding would entitle the Indemnified Party to indemnity pursuant to Section 7.2 or 7.3, and any other information reasonably available that would enable the Indemnifying Party to evaluate its contention. Any Claim Notice shall be given by an Indemnified Party to an Indemnifying Party reasonably promptly, but any failure to do so shall not relieve the applicable Indemnifying Party from any liability which it may have to such Indemnified Party under Section 7.2 or 7.3, except as otherwise provided in this Section 7.4(a) or unless such failure would prejudice materially the rights of the Indemnifying Party. If any Seller Indemnified Party or any Buyer Indemnified Party shall give a valid Claim Notice prior to the second anniversary of the Closing Date with respect to a claim for breach of representation or warranty pursuant to Section 7.2(a)(i) or 7.3(a)(i), respectively, then the survival period with respect to the matter or matters described in such Claim Notice shall be tolled, or the indemnity period shall be extended, until all such matters have been finally resolved and any remedial action required in connection therewith shall have been effected. Except as provided with respect to the entitlement to indemnification for breach of a representation or warranty pursuant to Section 7.2(a)(i) or 7.3(a)(i), the other obligations of the Companies and the Sellers pursuant to Section 7.2 and of Buyer pursuant to Section 7.3 shall entitle Buyer and the Companies and the Sellers, respectively, to indemnification during the time periods as otherwise provided by law.

(b) The Indemnified Party shall have the right, at its sole cost and expense; to participate in the defense of any demand, action, suit or proceeding for which indemnification is sought. If upon receipt of a Claim Notice the Indemnifying Party concurs that the demand, action, suit or proceeding that is the subject of the Claim Notice would, if determined adversely to the interests of such Indemnified Party, entitle such Indemnified Party to indemnity pursuant to the provisions of Section 7.2 or 7.3, the Indemnifying Party shall have the right to assume and thereafter conduct the defense thereof with counsel reasonably acceptable to the Indemnified Party and shall have the sole right to settle or otherwise dispose of such matter in any manner it deems appropriate; provided, however, that (i) any such settlement or disposition shall impose no obligation whatsoever on the Indemnified Party which is not wholly discharged by the Indemnifying Party, and (ii) the Indemnifying Party shall be capable of fully performing its obligations pursuant to such settlement or disposition, including the financial capacity to pay when due all sums it is obligated to pay pursuant to such settlement or disposition.

(c) The Indemnified Party shall make, at its sole cost and expense,



personnel and records available to the Indemnifying Party for the defense of demands, actions, suits and proceedings, as may be reasonably requested by the Indemnifying Party and shall take such reasonable actions as may be necessary to mitigate its Damages, which cost of mitigation shall be covered by this Article 7.

(d) In the event that, after receipt of a valid Claim Notice as provided for above, the Indemnifying Party shall not assume the defense of the demand, action, suit or proceeding that is the subject of the proper Claim Notice and such demand, action, suit or proceeding results in Damages to which an Indemnified Party is entitled to indemnity pursuant to the provisions of Sections 7.2 or 7.3, the Indemnified Party shall be entitled to the reasonable fees of its attorneys, advisors, or consultants as part of the Damages for which it is otherwise entitled to indemnity under this Article 7.

(e) To the extent of any payment by the Indemnifying Party of any amount in accordance with the provisions of this Article 7, such Indemnifying Party shall be subrogated to all rights which the Indemnified Party shall have against any third parties for the matter so indemnified against, upon the full satisfaction by it of its indemnity and payment obligations with respect to such matter.

7.5 Exclusivity. Except for (a) any rights or remedies contained in or derived from the Surface Use Agreement or the other Exhibits to this Agreement delivered at Closing, (b) any rights or remedies arising solely out of any fraud or intentional tortious misconduct on the part of any party hereto or (c) any right of contribution or indemnification existing under any statute resulting from the existence on the Closing Date of any Environmental Condition affecting the Timber Property, the indemnities against Damages set forth in this Article 7 are the exclusive remedies of the parties, in derogation of any statutory, equitable, common law or other remedies, with respect to each other relating to or arising out of the subject matters identified in Section 7.2(a)(i) and Section 7.3(a)(i).

## **ARTICLE 8 TERMINATION**

8.1 Termination of Agreement. The parties may terminate this Agreement as provided below:

(a) The Companies, the Sellers and Buyer may terminate this Agreement by mutual written consent at any time.

(b) Any party may terminate this Agreement if the conditions to such party's obligations to consummate the transactions contemplated by this Agreement are not satisfied by the latest date for the Closing permitted under this Agreement.

8.2 Effect of Termination. In the event the Companies or the Sellers, on the one hand, or Buyer, on the other, breaches, defaults or fails or refuses to comply with, satisfy or perform any of the covenants, agreements, conditions or obligations to be performed by the Companies or the Sellers or Buyer, respectively, under the terms and provisions of this Agreement, the other party hereto shall be entitled to all remedies at law and in equity, including, without limitation, actions for damages and/or specific performance of this Agreement.

## ARTICLE 9 TITLE AND ENVIRONMENTAL

9.1 Title Insurance. The Companies and the Sellers shall obtain and deliver to Buyer prior to Closing the commitment (hereinafter referred to as the "Title Commitment") of First American Title Insurance Corporation, or another nationally recognized title insurance company mutually acceptable to the Companies and the Sellers and Buyer (the "Title Company") to issue one or more owner's policies of title insurance insuring good and marketable title to the Timber Interests, said Title Commitment to, (a) be issued on ALTA Owner's Form B-1992 (as modified to delete the creditor's rights exception), and (b) be issued in the total amount of the Purchase Price. The general exceptions contained in the Title Commitment and subsequent title policy shall be as set forth on Schedule 9.1 and shall not include any other exceptions. The Title Commitment and subsequent title policy shall (i) insure, as appurtenant rights, the surface rights and easements created in previous deeds, and the joint use agreements, surface use agreements and co-tenancy agreements, if any, affecting the Timber Property, and affirmatively insure that the Timber Interests and such rights and easements are perpetual in duration, (ii) specifically identify the document creating such rights and easements, (iii) insure how title to the surface estate of the Timber Property is vested if vested in a party other than any of the Companies or any of the Sellers, (iv) affirmatively insure that the property described by all Inconveyances, Outconveyances and Excluded Property is the same property identified on the Maps as the Timber Lands, and (v) specifically identify all Timber Interests in which Buyer is acquiring less than a 100% interest, and Buyer's percentage interest in such Timber Interests. Buyer shall pay all title premiums (including any premium for reinsurance), and the Companies and the Sellers shall pay all other amounts (including, title examination fees and related expenses) payable in connection with the issuance of such title insurance policies.

9.2 Adjustments to Base Purchase Price for Environmental Conditions and Title Defects. In addition to but without duplicating any adjustments to the Base Purchase Price to be made pursuant to Section 6.3 above, the Base Purchase Price shall be further adjusted based on the provisions of this Section 9.2:

(a) Buyer may, at its election and sole cost and expense, engage a recognized third party environmental consultant to conduct an environmental investigation of the Timber Property (the "Environmental Investigation") to determine whether any portion of the Timber Property is affected by an Environmental Condition, as hereinafter defined. Said Environmental Investigation shall be completed prior to Closing. Buyer shall advise the Companies and the Sellers of any Environmental Condition identified by the Environmental Investigation, and shall provide the Companies and the Sellers with copies of the relevant portions of the Environmental Investigation relating to any Environmental Conditions. Any portion or parcel of the Timber Property (i) that is affected by an Environmental Condition, (ii) as to which the Companies and the Sellers have not delivered a Title Commitment in accordance with Section 9.1 hereof, or (iii) to which Buyer does not have insured, legal access, shall be deemed to have a "Defect" for purposes of this Agreement.

(b) As to any portion or parcel of the Timber Property affected by a Defect (a "Defect Parcel"), which Defect the Companies and the Sellers are unable or unwilling to cure prior to Closing, Buyer shall have the option at Closing of (i) waiving the Defect and accepting title to the Timber Interests contained within the Defect Parcel with no adjustment to the Base Purchase Price therefor, or (ii) excluding the Timber Interests contained within the portion of the Defect Parcel affected by such Defect (the "Deleted Parcel") from the Timber Interests to be conveyed to Buyer hereunder, and adjusting the Base Purchase Price by an amount equal to \$173.00 multiplied by the number of acres contained within the Deleted Parcel. If the portion of the Timber Property affected by a Defect comprises less than all of a discrete parcel of property with an adequate, insurable legal description, Buyer shall determine (subject to the Companies' and the Sellers' right of reasonable approval as to shape or configuration) the exact boundaries and dimensions of the portion of the Timber Property and Timber Interests to be excluded, and the parties shall endeavor to mutually agree on how the affected portion of the Timber Property shall be described in order to produce a Deleted Parcel with an insurable legal description. If such description requires a survey, the Companies and the Sellers and Buyer shall share equally any third party surveying costs; provided, however, the Companies and the Sellers shall use their reasonable best efforts to prepare such survey(s). Notwithstanding the foregoing, Buyer may not have surveyed out and excluded from the Timber Property any portion of a discrete parcel of Timber Property which consists of less than 100 acres without the Companies' and the Sellers' consent.

(c) The Companies agree to grant to Sellers without cost access easements over and across the Deleted Parcels upon reasonable terms and over reasonable routes as may be necessary for Buyer's access to the Timber Property.

(d) Notwithstanding anything herein to the contrary, if Buyer becomes aware of any defects and notifies the Companies and the Sellers of the same before Closing, the Companies and the Sellers agree to use reasonable efforts to cure said Defects; provided,

however, that the Companies and the Sellers shall not be obligated to spend more than \$100,000 in the aggregate to cure said Defects.

## ARTICLE 10 MISCELLANEOUS

10.1 Definitions. As used in this Agreement, "Affiliate" shall mean any person or entity that directly or indirectly controls, is controlled by, or is under common control with the specified party. The term "Person" or "Persons", as used in this Agreement, shall mean an individual, corporation, a limited or general partnership, an association, a joint venture, a limited liability company or any other entity or organization, including a governmental or political subdivision or an agent or instrumentality thereof.

10.2 Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and will be deemed to have been sufficiently given if delivered personally, by confirmed facsimile transmission, or by prepaid, nationally recognized overnight courier, or sent by first class mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

To Buyer:

Bluefield Timber LLC  
c/o Wagner Forest Management, Ltd., Manager  
150 Orford Road  
Lyme, NH 03768  
Attn: Thomas J. Colgan  
Tel: (603) 795-2002  
Fax: (603) 795-4631

With a copy to:

Mark G. Pottorff, Esq.  
Smith, Gambrell & Russell, LLP  
1230 Peachtree Street, N.E.  
Suite 3100  
Atlanta, Georgia 30309  
Tel: (404) 815-3597  
Fax: (404) 685-6897

- and -

To the Companies and the Sellers:

Pocahontas Land Corporation, et al.  
800 Princeton Avenue  
P. O. Box 1517  
Bluefield, West Virginia 24701  
Attention: President  
Tel: (304) 324-2401  
Fax: (304) 324-2443

With a copy to:

Charles Q. Gage, Esq.  
Jackson & Kelly PLLC  
500 Lee Street, East, Suite 1600  
P. O. Box 553  
Charleston, West Virginia 25326  
Tel: (304) 340-1112  
Fax: (304) 340-1130

or to such other address or facsimile number as either party may have furnished to the other in writing in accordance herewith. The date of any communication hereunder shall be deemed to be the earlier of (i) the date of receipt if delivered personally or by courier, (ii) the date of transmission if transmitted by facsimile, or (iii) three business days after the communication is sent if given by mail.

10.3 Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

10.4 Expenses. The parties agree that, in all events, each will pay all of its own expenses incurred in connection with the negotiation and preparation of this Agreement.

10.5 Further Assurances. The Companies and the Sellers and Buyer each hereby agree to execute and deliver all of the agreements, documents and instruments required to be executed and delivered by them in this Agreement and to execute and deliver such additional instruments and documents and to take such additional actions as may reasonably be required from time to time in order to effectuate the transactions contemplated by this Agreement, whether prior to, at, or after the Closing. Without limiting the generality of the foregoing, the Companies and the Sellers shall deliver to Buyer at Closing (a) owner's affidavits in sufficient form to allow the Title Company to issue its title insurance policies in accordance with the provisions hereof; and (b) non-foreign affidavits.

10.6 No Brokers. The Companies and the Sellers and Buyer each represent and warrant that they have not engaged or used the services of a broker, and each of the Companies and the Sellers and Buyer agree that they shall hold each other harmless in respect to any claim for brokerage or other commissions pertaining to the transactions contemplated hereby, based on any agreements claimed to have been made by any such party with any third party. The Companies and the Sellers have engaged Merrill Lynch & Co. who shall be compensated solely by the Companies and Buyer has engaged Wagner Forest Management, Ltd. who shall be compensated solely by Buyer.

10.7 Headings. The headings contained in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

10.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of West Virginia.

#### 10.9 Construction.

(a) Buyer and the Companies and the Sellers have participated jointly in the negotiation and drafting of this Agreement and all other documents executed in connection herewith and pursuant hereto. In the event an ambiguity or question of intent or interpretation arises, this Agreement and all such other documents shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement or such other documents.

(b) The word "including" shall mean including without limitation. The words "hereof," "herein," "hereunder" and "hereto" refer to this Agreement as a whole, including the Exhibits and Schedules and not to any particular provision of this Agreement unless expressly indicated. Exhibit, Schedule or Section references are to the Exhibits, Schedules or Sections of this Agreement unless otherwise specified. Unless the context otherwise clearly requires, references to the plural include the singular and the singular the plural. Capitalized terms shall have the specific meaning provided for by this Agreement. The disclosure of information in any Exhibit, Schedule or Section shall constitute disclosure in all Exhibits, Schedules or Sections.

10.10 Severability of Provisions. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and be enforceable to the fullest extent permitted by law.

10.11 Entire Agreement. This Agreement and the Exhibits and Schedules hereto constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, representations and understandings of the parties with respect thereto. No amendment to or modification of this Agreement shall be valid or effective unless agreed to in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be valid or binding unless agreed to in writing by the party granting the waiver.

10.12 Survival. All provisions and covenants of this Agreement hereof (other than the representations and warranties of the parties contained in Articles 4 and 5, respectively, which shall survive in accordance with Section 7.1) shall survive the execution, delivery of this Agreement and the consummation of the transactions contemplated herein, without limitation.

10.13 No Joint Venture. Nothing herein contained or hereby implied shall be construed as creating or constituting, by implication or otherwise, any relationship of partnership, joint venture, agency or of employer/employee between any Company or any Seller on the one hand and Buyer on the other hand.

10.14 No Third Party Beneficiaries. This Agreement shall inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, Buyer may not assign this Agreement without the Companies' and the Sellers' express written consent, which consent shall not be unreasonably withheld. Except as otherwise expressly provided herein, this Agreement shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

10.15 Confidentiality. The parties hereto agree not to make any disclosure regarding the transactions contemplated hereby prior to Closing and agree that the terms and conditions of the transactions contemplated hereby are strictly confidential and will not be disclosed by them to any third-party prior to Closing without the prior written consent of all of the parties hereto, except as required by law. Furthermore, Buyer agrees that the terms and conditions of the documents identified on the Exhibits and Schedules to this Agreement shall not be disclosed to any third party unless such documents are already in the public domain or are required to be disclosed pursuant to legal process. Notwithstanding the foregoing, the parties may make such disclosure to their affiliates, employees, lenders, counsel, accountants, title insurance companies, cruise consultants and other independent providers of services to such party in connection with this Agreement, in each case who have a need to know such information and who have agreed to keep such information confidential.

10.16 Hart-Scott Rodino. The parties each have independently determined that the transactions contemplated by this Agreement do not necessitate notice filings by the parties pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C.A. § 18(a), as amended, and all regulations promulgated thereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COMPANIES:

POCAHONTAS LAND CORPORATION

By: 

Daniel D. Smith, President

POCAHONTAS DEVELOPMENT  
CORPORATION

By: 

Daniel D. Smith, President

SOUTHERN REGION INDUSTRIAL REALTY,  
INC.

By: 

Daniel D. Smith, Vice President

SELLERS:

PLC TIMBER, LLC

By: Pocahontas Land Corporation, Manager

By: 

Daniel D. Smith, President

PDC TIMBER, LLC

By: Pocahontas Development Corporation, Manager

By: 

Daniel D. Smith, President

SRIR TIMBER, LLC

By: Southern Region Industrial Realty, Inc., Manager

By: 

Daniel D. Smith, Vice President



BUYER:

BLUEFIELD TIMBER LLC

By: Wagner Forest Management, Ltd., Manager

By: Thomas J. Colgan  
Thomas J. Colgan, President

CO415063.10

Pocahontas Surface Interests LLC, et al.  
v. Appalachian Forests A, LLC, et al.

Exhibit 2  
to Plaintiffs' Response in Opposition to  
Defendants' Motion to Refer to Business Court Division

Timber Deed – Pocahontas Land Corporation  
to PLC Timber, LLC

16. 2  
No. 1

TIMBER DEED

THIS TIMBER DEED ("Deed") is made and entered into this 29<sup>th</sup> day of September 2000, by and between POCAHONTAS LAND CORPORATION, a Virginia corporation (the "Grantor"); and PLC TIMBER, LLC a Delaware limited liability company, whose address is 800 Princeton Avenue, P. O. Box 1517, Bluefield, West Virginia 24701 (the "Grantee").

RECITALS:

Grantor owns interests in certain property in Mercer, McDowell, Wyoming, Raleigh, Boone, Logan, Mingo and Fayette Counties, West Virginia. The boundaries and acreages of such property (the "Property") are more generally shown on the maps (the "Maps") attached hereto (9 Sheets).

The Maps divide the Property among (i) "Timber Lands" identified on the Maps by the color green except for the Maps pertaining to jointly-owned lands, and in those instances such lands are identified by striping; (ii) the "Mineral Resource Properties" identified on the Maps by the color grey; (iii) the lands excluded from timber conveyance (the "Excluded Property") identified on the Maps by the color yellow (except in some instances where less than 10 acres, but all such Excluded Property is described on Attachment 1D attached hereto); and (iv) the "Lands of Others" identified on the Maps, as such.

Attachment 1A attached hereto identifies the documents by which Grantor acquired or reserved its interests in the Timber Lands (the "Inconveyances"); Attachment 1B attached hereto identifies the documents by which Grantor (or its predecessors) has outconveyed an interest in the property acquired by the documents identified on Attachment 1A (the "Outconveyances"); Attachment 1C attached hereto identifies certain matters affecting the Timber Lands (the "Existing Agreements"); and Attachment 1D attached hereto identifies the Excluded Property.

As used in this Deed, "Timber Property" means the Timber Lands, less and except the Excluded Property. As used in this Deed, "Timber Interests" means all timber, including all species of timber now standing, growing or lying or hereafter standing, growing or lying, on the Timber Property, together with the perpetual right and easement to plant, grow, cultivate, maintain, protect, cut, remove and harvest all such timber on the Timber Property, the right to retain the proceeds derived from harvesting the same and the right and easement to use so much of the surface of the Timber Property as is reasonably necessary in connection therewith.

10/11/00, WY 25-22

04 - POCAHONTAS LAND CORP. No 1 (Boone County)

The rights hereunder are subject to that certain Surface Use Agreement of even date herewith by and among Pocahontas Land Corporation (together with certain other parties named therein and collectively referred to therein and herein as the "Companies") and Bluefield Timber LLC ("Bluefield") (as the same may be amended from time to time, the "Surface Use Agreement"), which Surface Use Agreement is incorporated herein by this reference. Bluefield will be Grantee's immediate successor in interest to the Timber Interests.

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

That for and in consideration of the sum of \$10.00, cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Grantor does hereby BARGAIN, GRANT, SELL and CONVEY unto Grantee, its successors and assigns, the Timber Interests. Subject to the lien of real estate taxes for the current and subsequent years, Grantor WARRANTS SPECIALLY the Timber Interests, for the benefit of Grantee and its successors and assigns.

This conveyance is made EXPRESSLY SUBJECT to the following EXCEPTIONS, RESERVATIONS, CONDITIONS and COVENANTS which shall be deemed to be covenants running with the Timber Property, and shall inure to the benefit of and be binding on the parties hereto, their respective designees, successors and assigns and any person or entity claiming by, through or under it or them pursuant to rights granted before or after the date hereof:

1. Grantor makes no guarantees as to the quality or quantity of the timber being conveyed.

2. Grantor expressly RETAINS AND RESERVES, as the dominant estate in the Timber Property, all interests, rights and privileges in and to all of the Timber Property (other than the Timber Interests), including without limitation all of the surface, coal, coal bed methane, oil, gas and all other minerals and substances, as well as the right to grant all easements, licenses and rights-of-way for roads, bridges, pipelines, electric, telephone or other lines and permits and licenses for hunting or other uses of the Timber Property and together with the right to use the Timber Property for the mining, drilling for, extraction, removal, processing, shipping and storage of all of the coal, coal bed methane, oil, gas and all other minerals and substances in, upon or under the Timber Property, by any means or methods, whether now known or hereafter developed, subject however to the terms of the Surface Use Agreement. Grantor also reserves the right to remove subjacent and lateral support from the surface of the Timber Property, from any timber thereon and from any improvements which may be placed thereon in connection with timber operations and the right to mine or excavate within 300 feet of any existing or future structure located on the Timber Property, all without liability for any damages resulting from or arising out of mining operations on the Timber Property except as otherwise set forth in the Surface Use Agreement. Coal and substances

mixed with coal and extraction rights with respect thereto shall be deemed to be the dominant estate within the Timber Property, subject to the terms of the Surface Use Agreement.

3. All rights granted herein to Grantee are SUBJECT AND SUBORDINATE to the rights of third parties arising under the matters set forth and described on Attachment 1C attached hereto.

4. In accordance with the terms and conditions of the Surface Use Agreement, (i) Bluefield has granted to the Companies a right of first offer on the Timber Interests, or on any portion of said Timber Interests; and (ii) the Companies have granted to Bluefield a right of first refusal to purchase any right, title and interest of the Companies in and to the surface of the Timber Property owned by any of them. The Companies' right of first offer and Bluefield's right of first refusal shall terminate on the date which is 10 years following the date of this Deed. If any provision in this Deed is in conflict with any provision of the Surface Use Agreement, the Surface Use Agreement takes priority and the terms of the Surface Use Agreement survive this Deed.

Grantee expressly acknowledges its acceptance of the terms of this Deed, and hereby agrees to be bound hereby.

TO HAVE AND TO HOLD the Timber Interests to Grantee, its successors and assigns, forever, subject to the exceptions, reservations, conditions and covenants aforesaid.

Notwithstanding anything in this Deed to the contrary, it is the intent of the Grantor to convey, and this Deed shall be construed to convey to Grantee, all timber and related rights owned by Grantor in the counties listed in this Deed, except for any such rights related to the Excluded Property.

WITNESS the following signatures and seals the day and year first above written:

POCAHONTAS LAND CORPORATION

By: Daniel D. Smith

Daniel D. Smith, President

PLC TIMBER, LLC

By: Pocahontas Land Corporation, Manager

By: Daniel D. Smith


Daniel D. Smith, President

CO429387

STATE OF WEST VIRGINIA;

COUNTY OF KANAWHA; to-wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2000, by Daniel D. Smith, the President of POCAHONTAS LAND CORPORATION, on behalf of the corporation.

  
Notary Public

My commission expires:

July 2, 2002

STATE OF WEST VIRGINIA;

COUNTY OF KANAWHA; to-wit:

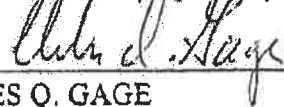
The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2000, by Daniel D. Smith, the President of Pocahontas Land Corporation Manager on behalf of PLC TIMBER, LLC, a limited liability company.

  
Notary Public

My commission expires:

July 2, 2002

This instrument was prepared by:

  
CHARLES Q. GAGE  
Jackson & Kelly PLLC  
1600 Laidley Tower  
P. O. Box 553  
Charleston, West Virginia 25322  
(304) 340-1000

Attachment 1A

Inconveyances

SCHEDULE 1-A  
GROUP 8 - LOUP CREEK-KOPPERSTON  
INCONVEYANCES

(Total) 11

GRANTOR	GRANTEE	INSTRUMENT	DATE	DISTRICT	COUNTY	BOOK	PAGE	NOTE (for informational purposes only)
Loup Creek Company	Pocahontas Land Corporation	Confirmatory Deed	Jun 30, 1965	Crook	Boone	110	516	All property (real & personal) situate in Wyoming, Raleigh, Boone, and Logan Counties
Loup Creek Company	Pocahontas Land Corporation	Confirmatory Deed	Jun 30, 1965	Crook	Wyoming Boone Logan Raleigh	220	463	All property (real & personal) situate in Wyoming, Raleigh, Boone, and Logan Counties
Wyoming County Board of Education	Pocahontas Land Corporation	Quitclaim Deed	Feb 18, 1970	Oceana	Wyoming	250	51	0.61 Acres, more or less, and 0.05 Acres, more or less, Dingess Fork of Huff Creek
Loup Creek Co.	Pocahontas Land Company	Confirm. Deed	Jun 30, 1965		Fayette	262	231	All property (Wyoming, Boone, Logan, Fayette, Mercer and Raleigh)

11



Attachment 1B

Outconveyances

SCHEDULE 1-A  
GROUP 8 - LOUP CREEK-KOPPERSTON  
OUTCONVEYANCES

Group 11

GRANTOR	GRANTEE	INSTRUMENT	DATE	DISTRICT	COUNTY	BOOK	PAGE	NOTE (for informational purposes only)
Pocahontas Land Corporation	Wyoming County Board of Education	Deed		Oceana	Wyoming			0.33 Acre, more or less
Pocahontas Land Corporation	Trustees of Kopperston Freewill Baptist Church	Deed	Oct 24, 1997	Oceana	Wyoming			1.08 Acres, more or less near Kopperston
Pocahontas Land Corporation	George W. Floyd	Deed	Nov 9, 1986	Oceana	Wyoming			1.09 Acres, more or less
Pocahontas Coal & Coke Company	George W. Ford, Jr.	Deed	May 1, 1983	Oceana	Wyoming	56	623	1.40 Acres, more or less
Pocahontas Land Corporation	WV Department of Highways	Deed	Jun 27, 1973	Oceana	Wyoming	281	492	5.89 Acres, more or less, Ivy Knob of Guyandotte, Mt. Crane Fork
Pocahontas Land Corporation	George W. Ford, Jr.	Deed	May 1, 1983	Oceana	Wyoming	341	56	1.40 Acres, more or less, Clear Fork and Laurel Fork at Oceana
Pocahontas Land Corporation	Neaman Brown	Deed	Feb 18, 1986	Oceana	Wyoming	351	564	0.76 Acre, more or less, Long Lick Branch of Big Huff Creek
Pocahontas Land Corporation	Southern Emergency Medical Services	Deed	Nov 8, 1984	Oceana	Wyoming Boone	354	500	0.22 Acre, more or less (0.21-Boone County and 0.01- Wyoming County), Crane Fork of Clear Fork
Pocahontas Land Corporation	George W. Ford, Jr.	Deed	Oct 9, 1986	Oceana	Wyoming	356	424	1.09 Acre, more or less, Laurel Fork of Clear Fork, in the Town of Oceana
Pocahontas Land Corporation	Wyoming County Board of Education	Quitclaim Deed	Jan 3, 1994	Oceana	Wyoming	378	318	0.48 Acres and 0.85 Acre, more or less, at Kopperston, on waters of Toney Fork
Pocahontas Land Corporation	Eastern Associated Coal Corporation	Deed	Jan 22, 1996	Oceana	Wyoming	385	833	1.56 Acres, more or less, Road Branch of Huff Creek, near Oceana
Pocahontas Land Corporation	Kopperston Public Service District	Deed and D/E	May 1, 1996	Oceana	Wyoming	392	623	0.28 Acre and 0.22 Acre, more or less, and easement for 3 strips, Kopperston

SCHEDULE 1-A  
GROUP 8 - LOUP CREEK-KOPPERSTON  
OUTCONVEYANCES

GRANTOR	GRANTEE	INSTRUMENT	DATE	DISTRICT	COUNTY	BOOK	PAGE	NOTE (for informational purposes only)
Pocahontas Land Corporation	Trustees of Kopperston Freewill Baptist Church	Deed	Oct 24, 1997	Oceana	Wyoming	393	218	1.08 Acre, more or less, near Kopperston, Toney Fork of Clearfork.
Pocahontas Land Corporation	Kopperston Public Service District	Deed	Apr 1, 1998	Oceana	Wyoming	395	542	0.01 Acre, more or less, Cow Creek of Clearfork
Pocahontas Land Corporation	Southern Emergency Medical Services	Deed	Nov 8, 1984	Crook	Boone	227	276	0.22 Acres, more or less, Pond Fork, Clear Fork, Little Coal River

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Attachment 1C

EXISTING AGREEMENTS AND EXCEPTIONS

1. As to Virginia and Kentucky, property taxes for the calendar year 2000, not yet due and payable. And as to West Virginia, property taxes for the second half of calendar year 2000, not yet due and payable.
2. Boundary line disputes, overlaps, encroachments and other similar matters not of record which would be disclosed by an accurate survey and inspection of the Timber Property.
3. Recorded and unrecorded rights of way for public or private roads and for railroads and easements for public utility lines. None of the holders or grantees of such rights of way or easements have rights of first refusal or options to purchase all or any portion of the Timber Interests.
4. Rights of parties in possession, as tenants only, under the following types of leases: (a) coal leases, (b) oil and gas leases, and (c) farm, special purpose and trailer leases. None of such parties in possession have rights of first refusal or options to purchase all or any portion of the Timber Interests.
5. Right of public, United States of America, State of West Virginia, and riparian owners in and to the beds and streams of any waterways and drainage areas.
6. Mineral interests and mineral leases.
7. Timber Lease Agreement among the Companies, International Lumber, Inc. and International Industries, Inc. dated July 1, 1988 (the "Original Lease"), as amended by that certain "Renewal and Supplemental Timber Lease Agreement," dated July 1, 1993 (the "Renewal Agreement"), and as further amended by that certain "Consent to Assignment, Assignment and Amendment of Timber Lease Agreement," made as of the 1<sup>st</sup> day of January, 2000 and as further amended by that certain Estoppel Certificate and Timber Lease Amendment dated the 29<sup>th</sup> day of September, 2000.
8. See Attachment 1C1 attached hereto.

Attachment 1C1

TIMBER CONTRACTS - PLC

**WEST VIRGINIA**

**BOONE COUNTY**

**GILBERT-PLC LUMBER COMPANY**

3/3/99 Letter through 3/02/01 (WV-001-BON-99)  
3/4/99 Letter through 03/03/01 (WV-003-BON-99)  
4/13/99 Letter through 4/12/01 (WV-002-BON-99)  
2/1/00 Letter through 1/31/01 (WV-004-BON-00)

**CLAY COUNTY**

**GILBERT-PLC LUMBER COMPANY**

6/16/97 Letter through 6/16/00 (626.19 ac)  
7/25/99 Letter through 7/24/01 (WV-001-CLAY-99)  
4/24/00 Letter through 3/31/02 (WV-002-CLAY-00)

**FAYETTE COUNTY**

**CRANBERRY LUMBER**

9/9/99 Letter through 9/8/01 (WV-004-FAY-99)  
3/1/00 Letter through 2/28/01 (WV-007-FAY-00)  
9/14/00 Letter through 9/13/01 (WV-010-FAY-00) Out for Execution (9/25/00)  
9/15/00 Right of Entry - 984 acres (WV-011-FAY-00)

**GILBERT-PLC LUMBER, INC.**

3/5/99 Letter through 3/2/01 (WV-001-FAY-99)  
7/25/99 Letter through 7/24/01 (WV-003-FAY-99)  
7/25/99 Letter through 7/24/01 (WV-002-FAY-99)  
11/29/99 Letter through 11/28/01 (WV-005-FAY-99)  
1/19/00 Letter through 1/18/02 (WV-006-FAY-00)  
1/19/00 Letter through 1/18/02 (WV-008-FAY-00)

**GRIST LUMBER, INC.**

4/20/00 Letter through 4/19/01 (WV-009-FAY-00)

KANAWHA COUNTY

**GILBERT-PLC LUMBER COMPANY**

1/23/95 Letter re stumpage for timber cut from Blue Creek Property  
6/16/97 Letter through 6/16/00 (626.19 ac)  
6/18/97 Letter through 6/18/00 (885.77 ac.)  
11/5/98 Letter through 11/4/00 (WV-008-KAN-99)  
2/5/99 Letter through 02/04/01 (WV-005-KAN-99)  
4/13/99 Letter through 4/13/99 (WV-004-KAN-99)  
4/15/99 Letter through 4/14/01 (WV-003-KAN-99)  
7/25/99 Letter through 7/24/01 (WV-009-KAN-99)  
7/30/99 Letter through 7/29/01 (WV-010-KAN-99)  
9/5/99 Letter through 9/4/01 (WV-011-KAN-99)  
1/19/00 Letter through 1/18/02 (WV-012-KAN-00)  
1/19/00 Letter through 1/18/02 (WV-014-KAN-00)  
1/19/00 Letter through 1/18/02 (WV-013-KAN-00)  
4/17/00 Letter through 4/16/01 (WV-015-KAN-00)

LOGAN COUNTY

**GILBERT LUMBER COMPANY, INC.**

11/5/97 Letter through 11/5/00 (315 ac.)  
5/3/99 Letter through 5/2/02 (WV-002-LOG-99)  
10/11/99 Letter through 10/10/01 (WV-016-WYO-99)

McDOWELL COUNTY

**BALL CONSTRUCTION COMPANY**

9/15/99 Letter through 9/14/00 (WV-015-WYO-99)  
9/6/00 Right of Entry – 4 acres (WV-017-MCD-00)

**GILBERT LUMBER COMPANY, INC.**

12/15/98 Letter through 12/14/00 (WV-006-MCD)  
6/1/99 Letter through 5/31/01 (WV-007-MCD-99)  
10/6/99 Letter through 10/5/00 (WV-008-MCD-99)  
12/1/99 Letter through 11/30/01 (WV-009-MCD-99)  
1/20/00 Letter through 1/19/01 (WV-010-MCD-00)  
3/15/00 Letter through 3/14/01 (WV-012-MCD-00)  
3/1/00 Letter through 2/28/01 (WV-011-MCD-00)  
5/1/00 Letter through 4/3/01 (WV-013-MCD-00)  
7/15/00 Letter through 7/14/01 (WV-014-MCD-00)  
8/28/00 Letter through 8/27/01 (WV-016-MCD-00)

**McDOWELL COUNTY ECONOMIC DEVELOPMENT**

5/5/00 Right of Entry 14.5 ac. 6/15/00 Letter through 6/14/01 (WV-015-MCD-00) Out for Execution (9/21/00)

**MERCER COUNTY**

**BALL CONSTRUCTION COMPANY**

9/15/99 Letter through 9/14/00 (WV-003-MER-99)  
11/1/99 Letter through 10/31/00 (WV-005-MER-99)  
2/1/00 Letter through 1/31/01 (WV-006-MER-00)

**ROBERTS LOGGING**

9/23/99 Letter through 9/22/00 (WV-004-MER-99)

**MINGO COUNTY**

**GILBERT LUMBER COMPANY, INC.**

2/4/99 Letter with additions dated 11/5/99 and 5/15/00 through 2/3/02 (WV-002-MIN-99)  
2/19/99 Letter through 2/18/01 (WV-003-MIN-99)  
6/18/99 Letter through 6/14/01 (WV-004-MIN-99)  
12/10/99 Letter through 12/09/01 with addition dated 5/4/00 (WV-005-MIN-99)  
3/1/00 Letter through 2/28/02 (WV-006-MIN-00)  
9/11/00 Letter through 8/31/01 (WV-007-MIN-00)

**RALEIGH COUNTY**

**GILBERT-PLC LUMBER COMPANY**

8/15/00 Letter through 8/14/01 (WV-001-RAL-00)

**WYOMING COUNTY**

**BALL CONSTRUCTION COMPANY**

9/15/99 Letter through 9/14/00 (WV-015-WYO-99)

**GILBERT LUMBER COMPANY, INC.**

2/1/98 Letter – Additional Acreage and Renewal by Letter 10/16/98  
through 1/31/01 (WV-001-WYO and WV-001A-WYO)  
9/10/98 Letter through 9/9/00 (WV-003-WYO)  
1/20/99 Letter through 1/19/01 (WV-009-WYO-99)  
1/21/99 Letter through 1/20/01 (WV-010-WYO-99)  
3/2/99 Letter through 03/01/01 (WV-011-WYO-99)  
4/1/99 Letter through 3/31/01 (WV-013-WYO-99)  
8/16/99 Letter through 8/15/01 (WV-014-WYO-99)  
10/11/99 Letter through 10/10/01 (WV-016-WYO-99)  
11/15/99 Letter through 11/14/01 with addition dated 4/7/00 (WV-017-WYO-99)  
12/1/99 Letter through 11/30/00 (WV-018-WYO-99)

12/15/99 Letter through 12/14/00 (WV-022-WYO-99)  
1/15/00 Letter through 1/14/02 (WV-019-WYO-00)  
1/25/00 Letter through 1/24/01 (WV-020-WYO-00)

**PENN EVERGREEN LOG, INC.**

2/4/00 Letter through 2/3/01 (WV-021-WYO-00)  
7/15/00 Letter through 7/14/01 (WV-023-WYO-00) Out for Execution (9/25/00)

**TIMBER CONTRACTS - PDC**

**KENTUCKY**

**HARLAN COUNTY**

**FUSON LOGGING COMPANY, INC.**

1/2/99 Renewal Letter (original letter dated 1/2/96) through 1/1/01  
6/7/99 Letter through 6/6/01 (KY-029-HAR-99)

**GILBERT LUMBER COMPANY, INC.**

1/20/00 Letter through 1/20/00 (KY-021-HAR-00)

**GILBERT-NS LUMBER, LLC**

10/23/97 Letter through 10/22/00 (350 ac.)  
4/1/98 Letter through 4/1/01 (KY-008-HAR) with addition dated 7/23/98 through 4/1/01  
(KY-012-HAR)  
6/5/98 Letter through 6/5/00 (KY-011-HAR)  
7/7/98 Letter, through 7/6/00 (KY-017-HAR)  
7/23/98 Letter through 7/22/01 (KY-013-HAR)  
7/28/98 Letter through 7/27/00 (KY-014-HAR)  
9/23/98 Letter through 9/22/00 (KY-019-HAR)  
9/24/98 Letter through 9/23/00 (KY-020-HAR)  
10/30/98 Letter through 10/29/00 with addition dated 1/20/00 (KY-021-HAR)  
12/8/98 Letter through 12/07/00 with addition dated 4/6/00 (KY-023-HAR)  
4/7/99 Letter through 4/6/01 (KY-028-HAR-99)  
6/28/99 Letter through 6/27/01 with addition dated 9/20/99 through 9/19/00 (KY-030-HAR-99)  
8/27/99 Letter through 8/26/02 (KY-031-HAR-99)  
9/10/99 Letter through 9/9/01 (KY-032-HAR-99)  
2/3/00 Letter through 2/02/02 (KY-034-HAR-00)  
2/28/00 Letter through 2/27/01 with addition dated 7/13/00 (KY-033-HAR-00)  
3/21/00 Letter through 3/20/02 (KY-036-HAR-00)  
3/21/00 Letter through 3/20/02 (KY-037-HAR-00)  
5/22/00 Letter through 5/21/02 (KY-038-HAR-00)  
6/28/00 Letter through 6/27/02 (KY-039-HAR-00)  
9/8/00 Right of Entry - 1150 ac. (KY-041-HAR-00)



**PINE MOUNTAIN LUMBER, LLC**

7/28/98 Letter through 7/27/01 (KY-015-HAR)

7/28/98 Letter through 7/27/00 (KY-016-HAR)

**LETCHER COUNTY**

**FUSON LOGGING COMPANY, INC.**

11/22/99 Letter through 11/21/01 (KY-011-LET-99)

**GILBERT-NS LUMBER, LLC**

5/5/99 Letter through 5/4/02 (KY-004-LET-99)

6/28/99 Letter through 6/27/00 (KY-006-LET-99)

7/1/99 Letter through 6/30/02 with addition dated 1/27/00 (KY-007-LET-99)

7/16/99 Letter through 5/4/02 with addition dated 5/5/99 (KY-004-LET-99)

9/10/99 Letter through 9/9/00 (KY-008-LET-99)

1/14/00 Letter through 1/13/02 (KY-012-LET-00)

3/21/00 Letter through 3/20/01 Pending Addition dated 9/11/00 (KY-013-LET-00) Out for Execution

9/18/00

**PINE MOUNTAIN LUMBER, LLC**

10/1/98 Letter through 9/30/00 (KY-003-LET)

9/14/99 Letter through 9/13/00 (KY-009-LET-99)

1/18/00 Letter through 6/6/01 (KY-002-LET)

6/16/00 Letter through 6/15/01 (KY-014-LET-00)

**MARTIN COUNTY**

**BIG SANDY HARDWOODS, INC.**

8/10/99 Letter through 8/9/01 (KY-005-MAR-99)

12/10/99 Letter through 12/09/00 (KY-006-MAR-99)

**H&B LOGGING**

4/1/00 Letter through 3/31/01 (KY-009-MAR-00)

**HARMON, BURLSON**

11/15/98 Letter through 11/14/00 (KY-003-MAR)

**LAR-RAY, INC.**

3/1/00 Letter through 2/28/01 (KY-008-MAR-00)

8/21/00 Letter through 8/20/01 (KY-010-MAR-00) PENDING – OUT FOR EXECUTION 9/22/00

**MOORE'S LOGGING COMPANY**

12/1/99 Right of Entry Letter to be dated 1/1/00 Pending (KY-007-MAR-00)

PIKE COUNTY

**H & B LOGGING**

10/15/99 Letter through 10/14/00 (KY-005-PIKE-99)

5/24/99 Right of Entry - 187 acres, Pike County

TIMBER CONTRACTS - PLC

VIRGINIA

WISE COUNTY

**GILBERT-NS LUMBER, LLC**

1/25/99 Letter through 1/24/01 (VA-002-WISE-99)

TIMBER CONTRACTS - SRJR

VIRGINIA

BUCHANAN COUNTY

**GILBERT LUMBER CO., INC.**

4/26/00 Right of entry (VA-003-BUC-00)

Attachment 1D

Excluded Property

Attachment 1D

**EXCLUDED PROPERTY  
POCAHONTAS LAND CORPORATION  
(Timber Deed No. 1)**

**ANDERSON, MICHAEL H. AND SANDRA F.**

**0.52 of an acre**

0.52 of an acre, more or less, being situated near Chattaroy, in Tug River Magisterial District of Mingo County, West Virginia, on the waters of Litton Hollow. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge "Tract No. 5-M-2, 2,711.81 acres surface only – mineral returned separately, BUFFALO CREEK."

**SCOTT, RODNEY D. and LADONNA JEAN**

**0.70 of an acre**

0.70 of an acre, more or less, being situated near Chattaroy, in Tug River Magisterial District of Mingo County, West Virginia, on the waters of Cain Fork, about 1,000 feet north of its intersection with Buffalo Creek. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 5-M-2, 2,711.81 acres surface only – mineral returned separately, BUFFALO CREEK.

**WOODS, DANIEL K. and CECILIA J.**

**0.60 of an acre**

0.60 of an acre, more or less, being situated near Chattaroy, in Tug River Magisterial District of Mingo County, West Virginia, on the waters of Litton Hollow. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 5-M-2, 2,711.81 acres surface only – mineral returned separately, BUFFALO CREEK.

**THE CENTER OF LIVING, GROWING AND GARDENING**

**65.00 acres**

65.00 acres, more or less, being situated near Egeria, in Barkers Ridge Magisterial District of Wyoming County, West Virginia, on the waters of Bluff Fork of Devils Fork. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 1-R-13 & 14, 1,024.86 acres fee less oil and gas, 1,411.69 acres mineral less oil and gas, 1.88 acres mineral less No. 3 seam of coal and oil and gas, POCA LAND CORP – HEADWATERS OF BARKERS CR & MILAM BRANCH.

**BUD-ALPOCA VOLUNTEER FIRE DEPT.**

**0.80 of an acre**

0.80 of an acre, more or less, situated at Alpoca, in Barkers Ridge Magisterial District of Wyoming County, West Virginia, on the waters of Barkers Creek. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 51-R-1 & 2, 3.44 acres fee less oil and gas, 7.54 acres mineral less oil and gas, ALPHA – WTS BARKERS CR.

**DILLON, WANDA H.**

**1.00 acre**

1.00 acre, more or less, situated near Bramwell, in Rock Magisterial District of Mercer County, West Virginia, on the waters of Simmons Creek of Bluestone River. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 4-N-1 & 2, 763.01 acres fee less oil and gas, 690.81 acres mineral less oil and gas, CASWELL CR - BLUESTONE.

**PATTERSON, ROBERT R. and PAULA S.**

**7.50 acres**

7.50 acres, more or less, situated near Bramwell, in Rock Magisterial District of Mercer County, West Virginia, on the waters of Simmons Creek of Bluestone River. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 4-N-1 & 2, 763.01 acres fee less oil and gas, 690.81 acres mineral less oil and gas, CASWELL CR - BLUESTONE.

**ADAMS, PAT**

**2.00 acres**

2.00 acres, more or less, being situated near Pineville, in Center Magisterial District of Wyoming County, West Virginia, on the waters of Guyandotte River. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: as Tract No. 63-U-1 & 2, 75.72 acres fee less oil and gas, 37.35 acres mineral less oil and gas, GUYANDOT - WTS OF GUYANDOT RIVER NORTH OF CENTER LINE OF SAME.

**URPS METAL COMPANY**

**3.30 acres**

3.30 acres, more or less, situated near Davy, McDowell County, West Virginia, and lies within lands of Pocahontas Land Corporation in Tax Block Charge: as Twin Br. Lands, 4,252.38 acres fee less oil and gas, 222.90 acres mineral less oil and gas, POCA LAND CORP - WTS TUG & TRIB.

**MITCHELL, DANIEL**

**4.00 acres**

4.00 acres, more or less, situated at Wilcoe, near Gary, West Virginia, on the waters of Tug Fork. Said area lies within lands of Pocahontas Land Corporation as included in Tax Block Charge: Tract No. 31-A-1 & 2, 13.71 acres fee less oil and gas, 81.20 acres mineral less oil and gas, UNITED STATES - TUG FORK, and for said Adkin Magisterial District, for the tax year 2001, and is generally charged as part of Tract No. 31-B-1 & 2, 26,895.16 acres fee less oil and gas, 494.79 acres fee less the Pocahontas No. 4 seam of coal and oil and gas, 1.21 acres mineral less the Pocahontas No. 4 seam of coal and oil and gas, 1,537.07 acres mineral less oil and gas, UNITED STATES - TUG FK - LITTLE FK N FK TUG FORK.

**TWISTED GUN GAP GOLF COURSE**

**698.27 acres**

A tract of land situated in Stafford Magisterial District of Mingo County, West Virginia, on the waters of Ben Creek and Left Fork of same and is shown in yellow color on Sheet No. 7 of Map No. 5884-A and is generally described as follows:

**Beginning** at a point on the divisional boundary line between lands of Pocahontas Land Corporation designated as RLC Tract No. 210, and lands of others, being on the right-hand side of Left Fork of Ben Creek about 2,300 feet north of a no name branch and about 2,300 feet south of Chestnut Log Hollow of said Left Fork, said beginning point having West Virginia State Plane CoOrdinates (south zone) of North: 218,813.2 and East 1,688,783.0; thence extending into the boundary of said Tract No. 210, N.4°14'W. 212.0 feet; N.00°20'E. 835.0 feet; thence leaving the boundary of said tract No. 210 and extending into the boundary of Pocahontas Land Corporation Tract No. 59, N.26°02'E. 334.0 feet; N.31°23'E. 805.0 feet; N.57°54'E., leaving the boundary of said tract No. 59 and extending into lands designated as tract No. 60, running 1,032.0 feet; S.59°54'E. 601.0 feet; N.78°13'E., crossing a hollow, running 820.0 feet; S.88°01'E. 1,288.0 feet to a point being a common corner in the boundary between said tract No. 60 and lands being designated as Tract No. 65; thence running along part of the boundary of said Tract No. 60 and with part of the boundary of said tract No. 65, S.57°40'E. 185.0 feet; thence S.81°25'E. 378.0

feet; thence leaving the boundary of said Tract No. 60 and extending into and through the boundary of said Tract No. 65, S.10°11'E. 1,084.0 feet; S.22°33'E. 210.0 feet to a point being a common corner between said Tract No. 65 and lands designated as Tract No. 66; thence running along part of the boundary of said Tract No. 65 and with part of the boundary of said Tract No. 66, S.64°21'E. 118.0 feet; thence S.51°25'E. 321.0 feet; S.61°22'E. 86.0 feet; S.54°18'E. 304.0 feet; S.79°38'E. 84.0 feet; S.37°42'E. 348.0 feet; S.27°18'E. 101.0 feet; thence leaving the boundary of said Tract No. 66 and extending into and through the boundary of said Tract No. 66, S.31°58'W. 341.0 feet; S.10°58'W. 102.0 feet; S.9°35'E. 257.0 feet; S.23°37'W. 242.0 feet; S.38°56'W. 95.0 feet; S.43°23'W. 289.0 feet to a point being a common corner in the boundary between said Tract No. 66 and said Tract No. 65; thence running along part of the boundary of said Tract No. 66 and with part of the boundary of said Tract No. 65, S.42°44'E. 168.0 feet; thence leaving the boundary of said Tract No. 66 and extending into the boundary of said Tract No. 65 S.58°03'E. 488.0 feet; S.47°33'E. 128.0 feet; S.11°25'W. 96.0 feet; S.1°55'W. 390.0 feet to a point being in or near Low Gap Branch of main Ben Creek; thence crossing same, S.8°04'E. 263.0 feet; S.29°46'E. 280.0 feet; thence leaving the boundary of said tract No. 65 and extending into the boundary of lands designated as Tract No. 116, S.7°19'W. 342.0 feet; S.20°04'W. 739.0 feet; S.39°32'E. 429.0 feet; thence leaving the boundary of said Tract No. 116 and extending into the boundary of lands designated as Tract No. 67, S.19°06'W. 94.0 feet; S.53°52'W. 484.0 feet; S.45°15'W. 1,743.0 feet; S.76°18'W. 932.0 feet; N.78°03'W. 697.0 feet to a point being in the common boundary between said Tract No. 67 and mineral lands of Pocahontas Land Corporation designated as Tract No. 70; thence running along part of the boundary of said Tract No. 70 and with part of the boundary of said Tract No. 67, N.19°54'E. 202.0 feet; N.12°44'E. 738.0 feet to a point being a common corner in the boundaries of said Tract No. 67, said Tract No. 70, and aforesaid Tract No. 116; thence leaving the boundary of said Tract No. 67, continuing along part of the boundary of said mineral Tract No. 70 and with part of the boundary of said Tract No. 116, N.22°07'W. 497.0 feet to a point being a common corner in the boundary between said Tract No. 70 and Tract No. 116, and lands of others; thence leaving the boundary of said mineral Tract No. 70 and running along part of the boundary of said lands of others and continuing with part of the boundary of said Tract No. 116, N.30°31'W. 2,620.0 feet to a point being a common corner in the boundary between said Tract No. 116, said lands of others, and aforesaid Tract No. 60; thence leaving the boundary of said Tract No. 116, continuing along part of the boundary of said lands of others and running with part of the boundary of said Tract No. 60, N.10°28'W. 1,636.0 feet to a point in the boundary between said Tract No. 60 and mineral lands of Pocahontas Land Corporation designated as part of Tract No. 210; thence running along part of said mineral Tract No. 210 and continuing with part of the boundary of said Tract No. 60, N.10°39'W. 541.0 feet to a point being a common corner in the boundary between said Tract No. 60, said mineral Tract No. 210 and aforesaid Tract No. 59; thence leaving the boundary of said Tract No. 60, continuing along part of the mineral Tract No. 210 and running with part of the boundary of said Tract No. 59, N.49°01'W. 691.0 feet; thence leaving the boundary of said Tract No. 59 and running with the divisional line between surface lands of Pocahontas Land Corporation being designated as aforesaid Tract No. 210 and said mineral lands designated as part of Tract No. 210, S.36°12'W. 339.0 feet to a point being a common corner in the boundary between said mineral lands and said surface lands designated as Tract No. 210, and said lands of others; thence leaving the boundary of said mineral lands and running along part of the boundary of said lands of others, S.43°20'W. 159.0 feet; S.46°41'W. 48.0 feet; S.58°20'W. 174.0 feet; S.49°46'W. 290.0 feet to the beginning, containing 698.27 acres, more or less.

The above described boundary is taken from mapping of Pocahontas Land Corporation on a West Virginia State Plane CoOrdinate base. Bearings and distances given were electronically extracted for mapping and description purposes only and are not to be construed as to be representative of an actual on-ground survey.

The surface of 698.27 acres, more or less, is included in the tracts returned for taxes by Pocahontas Land Corporation on the Land Book of Mingo County, for Stafford Magisterial District, for the tax year 2001, and is generally charged as part of Tract No. 59, 1,254.26 acres fee less oil and gas, 92.53 acres mineral less oil and gas, 209.08 acres surface only, LEFT FORK OF BEN CR; part of Tract No. 60, 1,338.41 acres fee less oil and gas, RIGHT FORK OF BEN CREEK; part of Tract No. 65, 692.16 acres fee less oil and gas, 3.90 acres mineral less oil and gas, RIGHT FORK OF BEN CREEK; part of Tract No. 66, 50.01 acres fee less oil and gas, 25.54 acres mineral being 1/5 undivided interest in surface, RIGHT FORK OF BEN CREEK; part of Tract No. 67, 926.63 acres fee less oil and gas, 967.88 acres mineral less oil and gas, RIGHT FORK OF BEN CREEK; part of Tract No. 116, 183.35 acres fee less oil and gas, RIGHT FORK OF BEN CREEK; and part of Tract No. 210, 18.49 acres fee less oil and gas, 33.59 acres mineral less oil and gas, 16.88 acres surface only, LEFT FORK OF BEN CR.

#### **LANSBURGH SURFACE EXCLUSION AREAS**

##### **AREA NO. 1**

**594.43 acres**

A tract of land situated in Sandy River Magisterial District of McDowell County, West Virginia, being situated on the southerly side of Slaunch Fork of Panther Creek on the waters of Larkin and Low Gap Branches of said Slaunch Fork and is shown in yellow color on Sheet No. 5 of Map No. 5884-A. The surface of 594.43 acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of McDowell County, for Sandy River Magisterial District, for the tax year 2001, and is generally charged as Tract No. 1-W-1 & 2 & 4, 1,874.72 acres fee less oil and gas, 1,962.53 acres mineral less oil and gas, 60.50 acres surface only, PLC - S SIDE SLAUNCH FK PANTHER CR - MILL BR UPPER WATERSHED SLAUNCH FK.

##### **AREA NO. 2**

**42.00 acres**

A tract of land situated in Sandy River Magisterial District of McDowell County, West Virginia, being situated on the northerly side of State Line Ridge on the waters of Right-hand Fork of Slaunch Fork and is shown in yellow color on Sheet No. 5 of Map No. 5884-A. The surface of 42.00 acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of McDowell County, for Sandy River Magisterial District, for the tax year 2001, and is generally charged as Tract No. 1-W-1 & 2 & 4, 1,874.72 acres fee less oil and gas, 1,962.53 acres mineral less oil and gas, 60.50 acres surface only, PLC - S SIDE SLAUNCH FK PANTHER CR - MILL BR UPPER WATERSHED SLAUNCH FK.

##### **AREA NO. 3**

**1,298.79 acres**

A tract of land situated in Sandy River Magisterial District of McDowell County, West Virginia, being situated on the southerly side of Slaunch Fork and Taylor Fork of same and encompassing the headwaters of Right-hand Fork of said Slaunch Fork and is shown in yellow color on Sheet No. 5 of Map No. 5884-A. The surface of 1,298.79 acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of

McDowell County, for Sandy River Magisterial District, for the tax year 2001, and is generally charged as Tract No. 1-W-1 & 2 & 4, 1,874.72 acres fee less oil and gas, 1,962.53 acres mineral less oil and gas, 60.50 acres surface only, PLC - S SIDE SLAUNCH FK PANTHER CR - MILL BR UPPER WATERSHED SLAUNCH FK.

**AREA NO. 4**

**288.43 acres**

**(Alpine Development Company - Blue Boy Tipple area)**

A tract of land situated at Beartown in Sandy River Magisterial District of McDowell County, West Virginia, on the waters of Dry Fork and Beartown Branch of same. Said tract of land is comprised of two parcels owned by Pocahontas Land Corporation and are designated as follows: New Lansburgh Tract No. 109 containing 164.50 acres, more or less, and New Lansburgh Tract No. 110 containing 123.93 acres, more or less. Said lands are shown in yellow color on Sheet No. 5 of Map No. 5884-A. (NOTE: The area given for Tract No. 109 includes 15.00 acres, more or less, being railway right-of-way of Norfolk Southern Railway Company.) The surface of 288.43 acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of McDowell County, for Sandy River Magisterial District, for the tax year 2001, and is generally charged as Tract No. 16-W-5 & 14, 278.63 acres fee less oil and gas, ISLAND CREEK - DRY FK AND BEARTOWN BR DRY FK.

**SHREWSBURY, TERRY**

**1.00 acre**

1.00 acre, more or less, being situated near Clarks Gap, in Barkers Ridge Magisterial District of Wyoming County, West Virginia. The surface of 1.00 acre, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of Wyoming County, for Barkers Ridge Magisterial District, for the tax year 2001, and is generally charged as Tract No. 30-R-1 & 2, 1,602.07 acres fee less oil and gas, 90.98 acres mineral less oil and gas, AMERICAN - HD PINNACLE CR.

**RICHTNER, C.E.**

**2.00 acres**

2.00 acres, more or less, being situated near Pineville, in Center Magisterial District of Wyoming County, West Virginia, on the waters of Bearhole Fork. The surface of 2.00 acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of Wyoming County, for Center Magisterial District, for the tax year 2001, and is generally charged as Tract No. 63-T-1 & 2, 5,649.73 acres fee less oil and gas, 240.73 acres mineral less oil and gas, 75.27 acres mineral less the No. 6 seam of coal and seams above less oil and gas, GUYANDOT - WTS GUYANDOT RIV N OF CENTER OF GUYANDOT RIV & W OF CABIN CRK.

**HAMRICK, JUDY**

**5.93 acres**

5.93 acres, more or less, being situated near Cinderella Mountain, in Tug River Magisterial District of Mingo County, West Virginia, on the waters of Buffalo Creek. Said area lies within Tax Block Charge for Mingo County, for Tug River Magisterial District, for the tax year 2001, and is generally charged as Tract No. 5-M-2, 2,711.81 acres surface only - mineral returned separately, BUFFALO CREEK.

**LUSK, JOSEPH P.**

**15.00 acres**

15.00 acres, more or less, situated near Tralee in Barkers Ridge Magisterial District of Wyoming County, West Virginia, on the waters of Gooney Otter Creek. The surface of 15.00



acres, more or less, is included in the tract returned for taxes by Pocahontas Land Corporation on the Land Book of Wyoming County, for Barkers Ridge Magisterial District, for the tax year 2001, and is generally charged as Tract No. 82-R-1 & 2. 3.422.05 acres fee less oil and gas. 384.01 acres mineral less oil and gas, DEERFIELD – BARKERS & PINNACLE CREEKS.

**BEAVER LANDS SURFACE EXCLUSION**

**86.39 acres**

86.39 acres, more or less, situated at Affinity, in Town Magisterial District of Raleigh County, West Virginia, on the waters of Soak Creek of Piney River, bounded on the south and the east by the Winding Gulf Branch of Norfolk Southern Railway and on the north by West Virginia public roads Route Nos. 12/9 and 29. Said area is within Tax Block Charge: Tract No. BEAVER PAR. 1 – TR. 4 186.95 acres surface only POCA LAND CORP. – SOAK CREEK.

**ANAWALT LAKE RECREATION AREA**

**1,692.07 acres**

Description, by reference to map, of 1,692.07 acres, more or less, of land in which Pocahontas Land Corporation retained the right for a period of five (5) years to harvest all timber as set forth in deed dated March 16, 2000, recorded in the Office of the Clerk of the County Commission of McDowell County, West Virginia, in Deed Book No. 463, page 385, from said Pocahontas Land Corporation to the State of West Virginia, Bureau of Commerce, Division of Natural Resources, Public Land Corporation, on behalf of and for the use and benefit of the Wildlife Resources Section. Situated near Anawalt, in Adkin Magisterial District of said McDowell County, West Virginia, on the waters of North Fork of Tug Fork and Millseat Branch of same, as shown in light green color with yellow border on Sheet No. 2 of said attached map.

Tract numbers given are for identification purposes and are of the same series as those shown on said attached map. The identification information is relevant to the tax account charged to Pocahontas Land Corporation for the specific tract shown and is blocked accordingly to its geographical location within a particular county and magisterial district. Land Book charge numbers and the corresponding acreage is comprised of one or more tracts of land which were included in various deeds of record from individuals to Pocahontas Land Corporation or a predecessor thereof. Said individual tracts have been combined to form a geographical unit that comprises the Land Book charge area.

Said 1,692.07 acres, more or less, are made up of different tracts of land tabulated by various tax charges within the following magisterial district and which for convenience of designation are as follows (the areas given are tax account acreages as returned for assessment by district, and are not to be construed as a warranty of acreage):

In Adkin Magisterial District

<u>Traet Number</u>	<u>Traet Identification</u>	<u>Area in Acres</u>
3-B-1 & 2	MILL CREEK - HDWTS N FK TUG FK 0.10 OF AN AC. BEING PART OF 100.04 AC. SURF. CONV. TO STATE OF WV PUBLIC LAND CORP. ANAWALT LAKE 10-06-92 DB 422/165; 69.61 AC. SURF. CONV. TO MEGA MIN. DB 434/226 PTD ID - 27-01-0355-0001-0000-0000	406.25
31-B-5 & 6	UNITED STATES - N FK TUG FK 0.50 OF AN AC. SURF. CONV. TO JAMES M. CASTLE 5/26/93; 99.94 AC. BEING PART OF 100.04 AC. SURF. CONV. TO STATE OF WV  PUBLIC LAND CORP ANAWALT LAKE 10-6-92 DB 422/165 PTD ID - 27-01-0335-0001-0000-0000	1,285.82
Total		1,692.07

Declaration of Value

The undersigned hereby declares that the transfer effected by the document to which this declaration is appended is in the nature of a transfer without consideration between a principal and straw party within the meaning of section 11-22-1(4) of the West Virginia Code and, thus, is not subject to the real estate transfer privilege tax. The sole purpose of the transfer is for the Grantee hereunder to immediately transfer the real estate to Bluefield Timber LLC.

This deed conveys real estate located in more than one county in West Virginia; the actual cash value of all the real estate located in West Virginia conveyed by this document is \$48,294,209.00. A deed conveying the real estate from grantee hereunder to Bluefield Timber LLC is being recorded immediately after this deed, and documentary stamps showing payment of all of the excise tax on all of the said real estate are attached to an executed counterpart of that deed recorded in Mingo County.

Bluefield Timber LLC  
By Wagner Forest Management, Ltd.,  
its Manager

By: Thomas J. Colgan  
Name: Thomas J. Colgan  
Title: President

STATE OF WEST VIRGINIA;

COUNTY OF KANAWHA; to-wit:

The foregoing declaration was acknowledged before me this 29<sup>th</sup> day of September, 2000, by Thomas J. Colgan, the President of Wagner Forest Management, Ltd., Manager on behalf of BLUEFIELD TIMBER LLC, a limited liability company.

[Signature]  
Notary Public

My commission expires: July 2, 2002

Pocahontas Surface Interests LLC, et al.  
v. Appalachian Forests A, LLC, et al.

Exhibit 3  
to Plaintiffs' Response in Opposition to  
Defendants' Motion to Refer to Business Court Division

Seller Timber Deed – PLC Timber, LLC  
To Bluefield Timber LLC

No. 1

**SELLER TIMBER DEED**

THIS TIMBER DEED ("Deed") is made and entered into this 29<sup>th</sup> day of September, 2000, by and between PLC TIMBER, LLC, a Delaware limited liability company (the "Grantor"); and BLUEFIELD TIMBER LLC, a Delaware limited liability company whose address is c/o Wagner Forest Management, Ltd., Manager, 150 Orford Road, Lyme, NH 03768 (the "Grantee").

**RECITALS:**

Reference is made to that certain Timber Deed (the "Prior Deed") of even date herewith from Pocahontas Land Corporation to Grantor, such Prior Deed to be placed of record immediately prior to recordation of this Deed in Mercer, McDowell, Wyoming, Raleigh, Boone, Logan, Mingo and Fayette Counties, West Virginia.

The Prior Deed conveyed to Grantor certain "Timber Interests" (as defined in the Prior Deed). By this Deed, Grantor desires to convey to Grantee the Timber Interests conveyed to Grantor by the Prior Deed.

**WITNESSETH:**

That for and in consideration of \$10.00, cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, Grantor does hereby BARGAIN, GRANT, SELL and CONVEY unto Grantee, its successors and assigns, the Timber Interests, all subject to all of the exceptions, reservations, conditions and covenants in the Prior Deed.

Subject to the lien of real estate taxes for the current and subsequent years, Grantor WARRANTS SPECIALLY the Timber Interests acquired by it by the Prior Deed.

Grantee assumes all obligations of Grantor, if any, contained in the Prior Deed. Grantee expressly acknowledges its acceptance of the terms of this Deed, and hereby agrees to be bound hereby.

TO HAVE AND TO HOLD the Timber Interests to Grantee, its successors and assigns, forever, subject to the exceptions, reservations, conditions and covenants aforesaid.

**Declaration of Consideration.** This Deed conveys real estate located in more than one county in West Virginia; the total consideration paid for the real estate located in West Virginia conveyed by this Deed is \$48,294,209.00; and documentary stamps showing payment of all the excise tax on all of said real estate are attached to an executed counterpart of this Deed recorded in Mingo County, West Virginia.

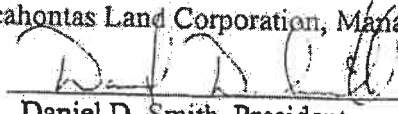
DENNIS N. PROCTOR  
P.O. BOX 553  
CHATEAU, OH 45822

4130 - Seller Timber Deed to Bluefield Timber LLC

Grantor:

PLC TIMBER, LLC

By: Pocahontas Land Corporation, Manager

By:   
Daniel D. Smith, President

Grantee:

BLUEFIELD TIMBER LLC

By: Wagner Forest Management, Ltd., Manager


By:   
Thomas J. Colgan, President

CO429798

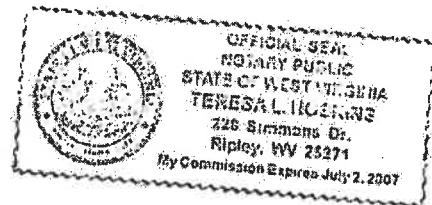
STATE OF WEST VIRGINIA;

COUNTY OF KANAWHA; to-wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2000, by Daniel D. Smith, the President of Pocahontas Land Corporation Manager on behalf of PLC TIMBER, LLC, a limited liability company.

  
Notary Public


My commission expires: July 2, 2007



STATE OF WEST VIRGINIA;

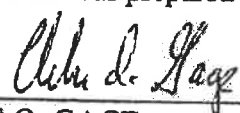
COUNTY OF KANAWHA; to-wit:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2000, by Thomas J. Colgan, the President of Wagner Forest Management, Ltd., the manager of BLUEFIELD TIMBER LLC, a Delaware limited liability company, on behalf of the limited liability company.

  
Notary Public

My commission expires: July 2, 2007

This instrument was prepared by:

  
CHARLES Q. GAGE  
Jackson & Kelly PLLC  
1600 Laidley Tower  
P. O. Box 553  
Charleston, West Virginia 25322  
(304) 340-1000

STATE OF WEST VIRGINIA, BOONE COUNTY COMMISSIONER'S OFFICE  
THE FOREGOING INSTRUMENT, TOGETHER WITH THE ATTACHED CERTIFICATE  
BEING PUBLICLY RECORDED  
WAS THIS 2nd DAY OF Oct 2000 AT 2:46 P.M.  
ADMITTED TO RECORD BY ME  
TESTE Darryl W. Williams CLERK  
B. Kelley G. Hays SECURITY  
FEE 4.50 INST 0054

Pocahontas Surface Interests LLC, et al.  
v. Appalachian Forests A, LLC, et al.

Exhibit 4  
to Plaintiffs' Response in Opposition to  
Defendants' Motion to Refer to Business Court Division

Surface Use Agreement



## SURFACE USE AGREEMENT

THIS SURFACE USE AGREEMENT (the "Agreement") is made and entered into this 29<sup>th</sup> day of September, 2000, by and among POCAHONTAS LAND CORPORATION, a Virginia corporation ("PLC"), POCAHONTAS DEVELOPMENT CORPORATION, a Kentucky corporation ("PDC") and SOUTHERN REGION INDUSTRIAL REALTY, INC., a Georgia corporation ("SRIR") (PLC, PDC and SRIR being hereinafter referred to individually as a "Company" and collectively as the "Companies"), and BLUEFIELD TIMBER LLC, a Delaware limited liability company (the "Buyer").

### RECITALS:

Pursuant to a Purchase Agreement dated September 29, 2000 (the "Purchase Agreement") among the Companies, PLC Timber, LLC, a West Virginia limited liability company, PDC Timber, LLC, a West Virginia limited liability company and SRIR Timber, LLC, a West Virginia limited liability company (such LLCs hereinafter referred to individually as a "Seller" and collectively as the "Sellers") and Buyer, each of the Companies executed and delivered to its counterpart Seller timber deeds of even date herewith (collectively, the "Company Timber Deeds"), and each Seller executed and delivered to Buyer, timber deeds of even date herewith (collectively, the "Seller Timber Deeds", and together with the Company Timber Deeds, the "Timber Deeds"). Pursuant to the Company Timber Deeds, each of the Companies conveyed to its counterpart Seller, and pursuant to the Seller Timber Deeds, each Seller, in turn, conveyed to Buyer, the "Timber Interests" in the "Timber Property", each as defined in the Purchase Agreement and the Timber Deeds.

Pursuant to the Purchase Agreement, it was agreed that this Agreement would be executed and delivered by the parties hereto.

### WITNESSETH:

That for good and valuable consideration, and as a material inducement to the parties to execute and deliver the Purchase Agreement and the Timber Deeds, the receipt and sufficiency of all of which are hereby acknowledged, the parties agree as follows:

1. Incorporation by Reference. The provisions of the Purchase Agreement and the Timber Deeds are incorporated herein by reference and are material to the terms and provisions of this Agreement. Should there be any inconsistency among the terms and conditions of this Agreement, the Purchase Agreement or the Timber Deeds, such inconsistency shall be resolved by reference to such Agreements in the following order: first, the Purchase Agreement; second, this Agreement; and third, the Timber Deeds. The parties acknowledge that one or more of the Timber Deeds conveyed to Buyer Timber Interests where no Company and no Seller retained any other estate or interest in the Timber Property

this Agreement does not apply to those Timber Interests because no Company and no Seller has the right to conduct any Surface Activity on those portions of the Timber Property.

2. Certain Definitions. In addition to other terms specifically defined in this Agreement, the following terms when used in this Agreement shall have the meaning set forth below:

"Affiliate" shall mean any person or entity that directly or indirectly owns or controls, or is under common ownership or control with, the specified party.

"Applicable Laws" includes all federal, state and local statutes, laws, ordinances, codes, rules, regulations, programs, permits, guidance, orders and decrees.

"Existing Agreements" shall mean those documents identified on Attachment 1C to the Timber Deeds.

"Surface Interest" shall mean each of the Companies' right, title and interest in and to the surface of the Timber Property, if any.

"Timber Interests" shall mean the interests in the Timber Property conveyed to Buyer pursuant to the Timber Deeds.

3. Notice of Surface Activity.

(a) For purposes hereof, "Surface Activity" shall mean any activity on the surface of the Timber Property which requires that the surface be materially cleared of trees growing thereon or any other mining or related activity conducted on the Timber Property which could materially and adversely affect (i) the Timber Interests or (ii) Buyer's ability to use the Timber Property for commercial timber operations or forest management. Surface Activity does not include, and there is excluded from this Agreement, activity on the surface of the Timber Property pursuant to the Existing Agreements, except as expressly provided in Section 9 hereof.

(b) Each Company shall give notice in writing (the "Notice") to Buyer of such Company's intention to commence Surface Activity on any portion of the Timber Property prior to beginning such Surface Activity. The Company shall not be required to give a Notice with respect to Surface Activity conducted on Timber Property pursuant to an Existing Agreement but the Company shall promptly provide to Buyer any notice received by a Company pursuant to any Existing Agreement which involves Surface Activity as defined in (a) above, and, to the extent a Company did not receive any written or oral notice of such Surface Activity, such Company shall notify Buyer of such Surface Activity or such potential Surface Activity as soon as possible after such Company becomes aware of such Surface

Activity or potential Surface Activity. The Notice will provide Buyer the opportunity to remove the timber from the designated portion of the Timber Property, under, upon and subject to the following terms, conditions and provisions:

(i) If a Company wishes to begin Surface Activity on any Timber Property greater than 60 acres, such Company shall give Buyer at least six months advance Notice, specifying the area to be used, the intended use thereof and the date such use is to commence.

(ii) If a Company wishes to begin Surface Activity on any Timber Property having an area of 60 acres or less, such Company shall give Buyer at least 60 days advance Notice, specifying the area to be used, the intended use thereof and the date such use is to commence; provided that not more than 500 acres may be the subject of Notices given under this Section 3(b)(ii) in any 12 consecutive calendar months.

(iii) Upon its receipt of a Notice, Buyer will have the length of the applicable notice period specified herein to arrange for the cutting and removal of timber from the designated portion of the Timber Property. To the extent Buyer fails to cut and remove timber from such designated portion of the Timber Property within such applicable notice period (or within such other period as may be mutually agreed), the Company may arrange for the cutting and removal of the remaining timber within such designated portion of the Timber Property as needed to accommodate the intended use. If a Company sells any of such timber, it shall pay to Buyer the proceeds received by such Company from such sale, net of any costs and expenses incurred by such Company in cutting, removing and otherwise selling such timber.

(iv) If a Company reasonably requires the use of Timber Property due to exigent circumstances which makes compliance with the Notice provisions set forth herein impossible or impractical, such Company shall nonetheless give Buyer as much advance written notice as reasonably possible under the circumstances, and Buyer shall then use commercially reasonable efforts to remove the timber from the designated portion of the Timber Property prior to the date designated for the commencement of the Surface Activity. However, if Buyer is not able to remove such timber prior to the actual commencement of the Surface Activity, the Company shall be allowed nonetheless to commence such Surface Activity, but shall compensate Buyer for the market value of the lost timber as may be mutually agreed or as determined by an independent timber appraiser selected by Buyer and subject to Company's reasonable approval (the "Appraiser").

(v) If a Company commences Surface Activity without giving a Notice required hereunder and if there is a resulting loss of timber, such Company shall compensate Buyer in an amount equal to three times the market value of the lost timber as may be mutually agreed or as determined by the Appraiser.

(c) If the Companies engage in Surface Activity on more than 15,000 acres of the Timber Property, they shall pay Buyer \$80.00 for each acre of Timber Property in excess of 15,000 which is affected by said Surface Activity. If the Companies engage in Surface Activity on more than 50,000 acres of the Timber Property, they shall pay Buyer \$160.00 for each acre of Timber Property in excess of 50,000 acres which is affected by said Surface Activity. Said \$80.00 payment and said \$160.00 payment shall be adjusted beginning on January 1, 2002 and on each January 1 thereafter based upon changes which occur in the Consumer Price Index, All Urban Consumers, All Items (U.S. City Average), as compiled and published by the Bureau of Labor Statistics, United States Department of Labor, the standard reference base period for which is 1982-84 = 100. Said Index for January 1, 2001 shall be taken as the base factor for the purpose of computing thereafter adjustments to such payments. Adjustments shall be calculated and effective each January 1 by dividing the new Index (numerator) by the base factor (denominator) and by multiplying the resulting figure by either \$80.00 or \$160.00, as the case may be.

(d) Each party agrees to confer with any other party upon reasonable notice to discuss the plans or proposals for use of the Timber Property or any portion thereof during the ensuing 12-month period which may result in Surface Activity. No party shall be required to meet more frequently than on a quarterly basis.

(e) The foregoing provisions contain the sole and exclusive obligations of, and remedy against, any Company for any damages to the timber on the Timber Property, whether actual, consequential, incidental, punitive, exemplary or indirect or for lost profits or otherwise, arising out of any Surface Activity, except to the extent resulting solely from fraud or intentional tortious misconduct on the part of a party.

4. Sale or Lease of Timber Interests by Buyer. If Buyer solicits or receives a bona fide offer from a third party which is not an Affiliate of Buyer to purchase or lease any portion of its Timber Interests which Buyer is willing to accept (excluding offers for the purchase or lease and removal within a period not to exceed five years of standing timber growing on the Timber Property and also excluding offers for the purchase or lease of any Timber Interests where a Company does not own the Surface Interest in the Timber Property), the Company who owns the Surface Interest in the Timber Property to which such Timber Interests apply shall have the right of first offer to purchase or lease such Timber Interests, as the case may be, at the price and upon the terms contained in the third-party offer. Such Company must exercise such right of first offer within 30 days following such Company's receipt of a notice from Buyer detailing the terms of any such third-party offer. The right of first offer granted herein to the Companies shall terminate on the date which is 10 years following the date of this Agreement.

5. Sale of Surface Interests by any Company.

(a) Each Company shall have the right, at its sole discretion, to sell any Surface Interest in any portion of the Timber Property; provided, however, if any Company solicits or receives a bona fide offer from a third-party which is not an Affiliate of such Company to purchase any such Surface Interest, which offer such Company is willing to accept, Buyer shall have the right of first refusal to purchase such interest at the price and upon the terms contained in the third-party offer. Buyer must exercise its right of first refusal with respect to such interest within 30 days following Buyer's receipt of notice from such Company detailing the terms of any such third-party offer. The right of first refusal granted to Buyer shall not apply to a sale of all or substantially all of any Company's combined interest in the mineral, surface and other interest in the Timber Property but any such sale shall be conditioned on the purchaser assuming such Company's obligations hereunder. Buyer's right of first refusal shall terminate on the date which is 10 years following the date of this Agreement.

(b) Where a Company owns the Surface Interests in the Timber Property, the parties shall cooperate with each other to identify opportunities for the sale of such Timber Property (including the Timber Interests therein) for uses other than the growing and harvesting of timber. In connection with the sale of any such Timber Property, the parties shall mutually cooperate to negotiate and execute all such documents as may be required to effect such sale; and upon the sale of any such Timber Property (including the Timber Interests therein after harvest by Buyer of the existing timber thereon, the proceeds from which shall belong solely to Buyer), the proceeds of such sale shall be divided 50% to the owner of the Surface Interest in such Timber Property and 50% to the owner of the Timber Interest in such Timber Property.

(c) Buyer acknowledges that a Company from time to time may have the need or requirement to sell or lease a portion of the surface of the Timber Property to third parties in exchange for the sale or lease to such Company of property of comparable value, in order to accommodate such Company's activities on remaining portions of its property. In such instances, Buyer agrees that it will negotiate in good faith with such Company, at times on very short notice, regarding the conveyance by Buyer to such Company (or to the proposed purchaser) of the Timber Interests applicable to such Timber Property, in exchange for receipt by Buyer of conveyance of timber (and rights appurtenant thereto) substantially comparable to the Timber Interests on other property within the Counties where the Timber Property is located; provided that no such sale or lease may materially and adversely affect the remaining Timber Interests or Buyer's ability to use the remaining Timber Property for commercial timber operations or forest management; and provided further that no single transaction pursuant to this Section 5(c) shall exceed 50 acres of Timber Property. The Companies agree to pay all reasonable costs and expenses incurred by Buyer in connection with such exchange transaction, including without limitation reasonable due diligence costs and attorneys' fees;

and the Companies shall also be responsible for obtaining any consents, approvals or rights required from third parties in connection with any such exchange transaction.

(d) In addition to the foregoing, upon reasonable request delivered by Buyer to the Companies no earlier than the 15th anniversary of the date of this Agreement and not later than the 20th anniversary of the date of this Agreement, the Companies and Buyer shall negotiate in good faith terms and conditions, including without limitation price, environmental matters and other standard provisions, for the sale by the Companies to Buyer of the Companies' Surface Interest in only those portions of the Timber Property on or with respect to which the Companies have determined in their sole discretion and judgment that there are no further mineral production or development opportunities.

6. Roads. The Companies authorize Buyer, to the extent of the Companies' right to do so, to use any necessary rights-of-way on the Timber Property, including without limitation the non-exclusive right to use any existing roads or roads hereafter constructed by the Companies that are convenient for the cutting and removal of the timber from the Timber Property, provided (i) that any such use by Buyer shall not unreasonably interfere with any use of such roads by any Company, (ii) Buyer shall not use any rights-of-way or roads now existing or hereafter constructed on the Timber Property by any Company which are now or hereafter subject to any permits issued pursuant to Applicable Laws without such Company's prior written consent (which consent shall not be unreasonably withheld), and (iii) Buyer shall promptly repair any damage to any rights-of-way or roads resulting from the use thereof by Buyer. As to any existing road which a Company desires to close or not maintain and Buyer desires to use, such Company will use good faith efforts to transfer all responsibility for such road to Buyer if at Buyer's cost. Buyer shall have the right, at Buyer's sole cost and expense, to construct roads on the Timber Property as may be reasonably necessary to conduct commercial timber operations or forest management activities; provided, however, that Buyer shall not construct a road on any portion of the Timber Property now or hereafter subject to any permits issued pursuant to Applicable Laws without the applicable Company's prior written consent (which consent shall not be unreasonably withheld). If any roads on the Timber Property are jointly used by any Company and by Buyer, then each user shall share in the cost of maintenance of such road in a fair and equitable manner (*i.e.*, ton-mile, truck-mile or other appropriate mutually agreeable measure).

7. Additional Covenants.

(a) Buyer shall not cut, damage or destroy any property boundary trees or corner markers .

(b) Buyer shall not damage any exterior fences or gates, or any triangulation monuments or marks that appear on any U.S.G.S. topo sheets covering the Timber Property or which are immediately adjacent to the Timber Property, or other structures, and

agrees that any such damage will be promptly repaired by Buyer, at Buyer's sole cost. In addition, if any triangulation monuments or marks are damaged, Buyer shall immediately notify the appropriate Company and the appropriate governmental agency of such damage.

(c) Buyer shall at all times fully comply with all Applicable Laws applicable to its activities on or associated with the Timber Property, including without limitation all guidelines set forth in the *Best Management Practices Manual*, or similar publication, as prescribed by the applicable department of forestry in the state or commonwealth in which the affected Timber Property is located and including any Applicable Laws regulating, relating to or imposing liabilities or standards of conduct concerning any environmental matter (collectively, "Applicable Environmental Laws"). In addition to the foregoing, Buyer agrees never to dispose of any waste (excluding timber waste materials left in the normal course of timber harvesting), hazardous or not, on the Timber Property, and Buyer agrees not to use the Timber Property in any manner which may or would require a hazardous waste treatment, storage or disposal facility permit from federal or state agencies. Furthermore, Buyer agrees not to bring onto or use on the Timber Property any hazardous substance, hazardous material or petroleum product ("Material"), except as needed to conduct Buyer's operations (including the use of herbicides or pesticides) and the use of which shall be in accordance with manufacturer's specifications. In the event a release of Material occurs on the Timber Property which has been caused by or arises out of operations of Buyer or operations of Buyer's agents, contractors or invitees, as the term "release" is defined by Applicable Environmental Laws, Buyer shall give notice of such release to the other parties hereto and shall undertake immediate response and remedial actions to insure that such release has been cleaned up in accordance with Applicable Environmental Laws. Buyer shall give written notice of the foregoing restrictions to any lessee, operator, contractor or other party who conducts activities on the Timber Property under authority from Buyer.

(d) Buyer shall promptly remove from the Timber Property any debris or trash resulting from its activities on the Timber Property.

(e) Buyer shall report and pay all taxes when due applicable to the Timber Interests. The parties intend for Buyer to pay and be fully responsible for all severance and other taxes imposed on account of the ownership or harvesting of the timber on the Timber Property from and after the date hereof. The Companies shall report and pay all taxes when due applicable to any other estate (including surface and mineral) in the Timber Property owned by it.

(f) The Companies shall at all times fully comply with all Applicable Laws applicable to their activities on or associated with the Timber Property, including without limitation all such Applicable Laws relating to minerals and mining and related activities, and including Applicable Environmental Laws. In the event a release of Material occurs on the Timber Property which has been caused by or arises out of operations of any

Company or operations of any Company's agents, contractors or invitees, as the term "release" is defined by Applicable Environmental Laws, such Company shall give notice of such release to the other parties hereto and shall undertake immediate response and remedial actions to insure that such release has been cleaned up in accordance with Applicable Environmental Laws.

(g) Except as otherwise expressly provided herein, and subject to the provisions of this Agreement, the Timber Deeds and the Existing Agreements, the Companies shall not exercise any rights it may have in or to the Timber Property in any manner which would materially interfere with, hinder or increase the cost of Buyer's exercise of the rights granted to Buyer in the Timber Deeds. The Companies agree that any new lease, easement or contract which may adversely affect the Timber Interests shall be made subject to this Agreement.

#### 8. Mutual Indemnification.

(a) Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other parties hereto and their respective Affiliates and its or their respective owners, directors, officers, employees and agents (collectively, the "Indemnified Parties") from (i) any and all claims, damages, liabilities and obligations in any way arising out of, connected with or related to the nonfulfillment of any obligation, covenant, representation or warranty of this Agreement by the Indemnifying Party, (ii) any reclamation or environmental liability or violations in any way arising out of, connected with or related to the Indemnifying Party's activities or those of its lessees, operators or contractors on the Timber Property pursuant to authorization from the Indemnifying Party after the date hereof, and (iii) any and all claims, actions, suits, proceedings, demands, assessments, judgments, costs and legal and other expenses incident to any of the foregoing, specifically including without limitation any and all claims for personal injury, including death, and property damage (including without limitation property owned by third parties) and for salaries and wages and employee or former employee medical, retirement and other benefits, and any claim arising under any Applicable Laws, together with all costs, fees and expenses (including without limitation court costs and reasonable attorneys' fees) connected with any of the above.

(b) Any of the Indemnified Parties shall give notice to the Indemnifying Party promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense, and provided further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this



Agreement unless and to the extent such failure to give notice shall materially adversely prejudice the Indemnifying Party from defending any such claim. The Indemnifying Party, in the defense of any such claim or litigation, shall not, except with the consent of the Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability in respect to such claim or litigation. The Indemnified Party shall furnish such information regarding itself or the claim in question as the Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(c) Neither party shall have any liability to the other party for any consequential, incidental, punitive, exemplary or indirect damages or lost profits of any nature or kind of the other party, except to the extent resulting solely from fraud or intentional tortious misconduct on the part of a party.

9. Existing Agreements. The rights and obligations of the parties hereto are subject and subordinate to the rights, if any, of third parties under the Existing Agreements. Any time hereafter when an Existing Agreement is modified, supplemented, amended, extended or renewed, the provisions of this Agreement shall be incorporated into such Existing Agreement, to ensure that the Timber Interest are not adversely affected.

10. Disputes; Consent to Jurisdiction.

(a) Any controversy or dispute concerning a question of fact, claim or demand arising under this Agreement shall first be discussed in good faith by a representative of each party and if such discussion does not result in a mutually satisfactory resolution, then shall be submitted to mediation for resolution. If mediation does not result in mutually satisfactory resolution of such matter, then either party may pursue any remedy available to it under applicable law, subject to the provisions of this Agreement.

(b) Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the United States District Court for the Federal District in which a majority of the affected Timber Property is located ("Federal Court"), or if such court does not have jurisdiction, the Circuit Court of the County and State in which a majority of the affected Timber Property is located ("State Court") for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the parties hereto further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth in this Agreement shall be effective service of process for any action, suit or proceeding in such State with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the

transactions contemplated hereby in (i) the Federal Court of (ii) the State Court, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such claim, suit or proceeding brought in any such court has been brought in an inconvenient forum. The parties further irrevocably and unconditionally waive, to the fullest extent permitted by law, trial by jury in any legal action or proceeding related to this Agreement and for any counterclaim therein.

11. Condemnation. In the event that the Surface Interest and the Timber Interest in the Timber Property, or any part thereof, is taken by condemnation or eminent domain proceedings (collectively, the "Condemnation Proceeding"), and if the compensation and awards resulting therefrom (collectively, the "Condemnation Awards") which may be paid for the interests so taken are not divided or separately allocated between the Surface Interest and the Timber Interest, then in such event the Condemnation Awards shall be divided between the owner of the affected Surface Interest and the owner of the affected Timber Interest in the manner specified in Section 5(b) hereof.

12. Notices. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and will be deemed to have been sufficiently given if delivered personally, by confirmed facsimile transmission, or by prepaid, nationally recognized overnight courier, or sent by first class mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

To Companies:

Pocahontas Land Corporation  
800 Princeton Avenue  
P. O. Box 1517  
Bluefield, West Virginia 24701  
Attention: President  
Tel: (304) 324-2401  
Fax: (304) 324-2443

-and-

To Buyer:

Bluefield Timber LLC  
c/o Wagner Forest Management, Ltd., Manager  
P. O. Box 160  
150 Orford Road  
Lyme, New Hampshire 03768  
Attn: Thomas J. Colgan, President  
Tel: 603-795-2002  
Fax: 603-795-4631

or to such other address or facsimile number as either party may have furnished to the other in writing in accordance herewith. The date of any communication hereunder shall be deemed to be the earlier of (i) the date of receipt if delivered personally or by courier, (ii) the date of transmission if transmitted by facsimile, or (iii) three business days after the communication is sent if given by mail.

13. Execution in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

14. Further Assurances. The Companies and Buyer each hereby agree to execute and deliver such additional instruments and documents and to take such additional actions as may reasonably be required from time to time in order to effectuate the rights and obligations under this Agreement.

15. Headings. The headings contained in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof.

16. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of West Virginia.

17. Construction.

(a) Buyer and the Companies have participated jointly in the negotiation and drafting of this Agreement and all other documents executed in connection herewith and pursuant hereto. In the event an ambiguity or question of intent or interpretation arises, this Agreement and all such other documents shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement or such other documents.

(b) The word "including" shall mean including without limitation. The words "hereof," "herein," "hereunder" and "hereto" refer to this Agreement as a whole, and not to any particular provision of this Agreement unless expressly indicated. Section references are to the Sections of this Agreement unless otherwise specified. Unless the context otherwise clearly requires, references to the plural include the singular and the singular the plural. Capitalized terms shall have the specific meaning provided for by this Agreement.

18. Severability of Provisions. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and be enforceable to the fullest extent permitted by law.

19. Entire Agreement. This Agreement, the Purchase Agreement and the Timber Deeds constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior agreements, representations and understandings of the parties with respect thereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be valid or binding unless agreed to in writing by the party granting the waiver.

20. Relationship Between the Parties. Nothing herein contained or hereby implied shall be construed as creating or constituting, by implication or otherwise, any relationship of partnership, joint venture, agency or of employer and employee between any Company on the one hand and Buyer on the other hand.


21. Recordation. This Agreement shall not be recorded unless recordation is mutually agreed to by all parties hereto.

22. Binding Effect. This Agreement shall inure to the benefit of the parties hereto and shall be binding on the parties and their respective designees, successors and assigns. Any sale, lease of, or other grant related to, any part of the Timber Property or the Timber Interests shall require the purchaser, lessee or grantee to assume all obligations hereunder with respect to the interest in the Timber Property or the Timber Interests so acquired.

WITNESS the following signatures and seals the day and year first above written.

COMPANIES:

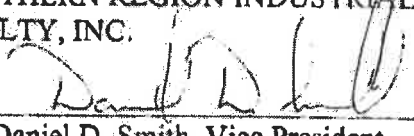
POCAHONTAS LAND CORPORATION

By:   
Daniel D. Smith, President

POCAHONTAS DEVELOPMENT  
CORPORATION

By:   
Daniel D. Smith, President

SOUTHERN REGION INDUSTRIAL  
REALTY, INC.

By:   
Daniel D. Smith, Vice President

BUYER:

BLUEFIELD TIMBER LLC

By Wagner Forest Management, Ltd.,  
Manager

By:   
Thomas J. Colgan, President