

T.A. Deitz 0390

THIS AGREEMENT, Made this January 1, 1998, by and between MIDVALE COLLIERY COMPANY (Midvale), a West Virginia corporation, and BANK ONE, WEST VIRGINIA, N. A., a national banking association, as sole remaining trustee under the last will and testament of T. A. Deitz, deceased, (Deitz), Midvale and Deitz hereinafter referred to collectively as "Vendors", and CLONCH INDUSTRIES, INC., a West Virginia corporation, sometimes referred to as the "Purchaser";

W I T N E S S E T H:

That for and in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid to the Vendors by the Purchaser, the receipt whereof is hereby acknowledged, and of the sums of money to be paid the Vendors by the Purchaser as hereinafter set forth, and of the promises and covenants of the Purchaser hereinafter set out, the Vendors do hereby grant unto the Purchaser, subject to the terms, covenants, conditions, reservations, and exceptions hereinafter contained, the exclusive right to cut and remove all timber standing or fallen which measures eighteen (18) inches or more in diameter, outside the bark, measured one (1) foot above the ground on the upper side of the tree, on three parcels totalling approximately 4618 acres, more or less, located in Falls District of Fayette County, West Virginia, which parcels are generally outlined in red on a map identified as Exhibit A attached hereto as a part hereof. The boundary of the tract which is composed of the three parcels is more particularly described in the metes and bounds description attached hereto as Exhibit B. The part of the timber on the said parcels of land which the Purchaser is given the right to cut and remove is sometimes referred to as the "said timber".

The right to cut and remove the said timber shall be subject to the following covenants, conditions, reservations, and exceptions, to-wit:

1. TERM:

Subject to rights of termination provided elsewhere in this Agreement, this Agreement shall have a term beginning upon the execution thereof and ending on December 31, 2028. Upon any termination, all timber remaining, whether cut or not, shall thereafter be the absolute property of Vendors.

2. PRICE:

A. It is understood and agreed by and between the parties hereto that the stumpage prices to be paid by the Purchaser to the Vendors for all timber cut on the said parcels, as well as fallen trees removed therefrom, will be based on species as follows:

BASE STUMPAGE PRICES

Species	Common & Btr. Logs/MBF
Ash	\$235
Beech	\$100
Birch	\$100
Hickory	\$100
Northern Red Oak	\$350
Black Oak/Scarlet Oak	\$215
White Oak/Chestnut Oak	\$135
Hard Maple	\$150
Soft Maple	\$120
Basswood	\$110
Yellow Poplar/Cucumber	\$170
Walnut	\$390
Black Cherry	\$350

MISCELLANEOUS

Culls/Other Species/Other grades	\$40
Pulpwood	\$2/Ton

B. The base stumpage prices for common and better logs shall be adjusted each year effective the first day of May, beginning with May 1, 1999. The Hardwood Market Report ("HMR") published weekly by Hardwood Market Report LP; Memphis, Tennessee, shall be the basis for the annual adjustments. The first HMR published during the month of April 1998 shall be the base ("base HMR") for adjustment. Each succeeding year during the term of this agreement the first HMR published during the month of April shall be compared to the "base HMR". The percentage change in the 4/4 #1C price (appalachian hardwoods) for each species shall be applied to the base stumpage price for that species to determine the adjusted stumpage price. When there is more than one chart per species the chart labeled plain (not kiln dried) shall be used. If a species does not have a chart, a chart that comes closest to the species shall be utilized. For example, the red oak chart shall be used for black oak/scarlet oak if a separate chart is not available. The base stumpage price shall be utilized for all timber cut until the first adjustment is made on May 1, 1999. Thereafter the most recent adjusted stumpage prices shall be used until the prices are again adjusted. If the HMR is discontinued or altered, or if any one

of the parties hereto are of the opinion that it is not adequately reflecting the hardwood market, then the parties shall negotiate an adjusted stumpage price during the month of April to be effective the first day of the following month.

C. The base stumpage price for culls/other species/other grades ("other") shall be reviewed at the same time the annual adjusted stumpage prices are determined. It is the intention of the parties to adjust the "other" price and the pulpwood price as necessary to maintain a market price over the term of this agreement. The ratio of the "other" price to the weighted average stumpage price for named species for the previous year shall be used as a guide for review. For example, if the average price for the year 1998 is \$160 per thousand, then the "other" price of \$40 per thousand would be 25% of the average yield. If in some later year that percentage changed by five (5) or more percentage points then an adjustment should be considered.

D. Purchaser shall have the right, but not the obligation, to remove logs of species or grades other than those listed above and pay Vendors the culls/other species/other grade price per 1,000 board feet, Doyle Rule, or to sell said species as well as small diameter material of other species as pulpwood at the agreed upon rate; provided, however, that nothing in this section shall be deemed to authorize cutting of trees smaller than eighteen inches in diameter measured one foot above the ground on the upper side of the tree.

"Common and better logs" shall be defined as those developing from the species listed above that are eight (8) feet and longer, twelve (12) inches and larger in diameter at the small end, and have at least one (1) side clear of defects. Due and fair allowance shall be made during scaling for dote, rot, shake, crook, sweep, or other unsoundness.

E. Stumpage prices for timber removed from the Deitz tract shall be credited to Deitz, and stumpage prices for timber removed from the two Midvale parcels shall be credited to Midvale.

3. ANNUAL MINIMUM RENTAL:

A. The Purchaser shall pay an annual minimum rental for the rights herein granted in the amount of fifty-five thousand dollars (\$55,000) on or before the first day of May for each year this agreement is in effect, thirty thousand dollars (\$30,000) of which shall be credited to the account of Midvale and twenty-five thousand dollars (\$25,000) of which shall be credited to the account of Deitz.

B. In any year in which the weighted average stumpage price payable as herein provided for exceeds the weighted average stumpage price in the base year of 1998 by fifty percent (50%) or more, the annual minimum rental due to Midvale and Deitz on May 1 of that year shall be adjusted by using the same percentage of increase. Once adjusted, the year used as the basis for adjustment shall become the new base year and if the average stumpage prices exceed that base by fifty percent (50%) another adjustment shall be made and so forth for the term of this agreement. The annual minimum rental shall not be subject to reduction.

C. In any year the Purchaser shall be allowed a credit against stumpage price due to Midvale in the amount of the annual minimums actually paid to Midvale and a credit against stumpage price due to Deitz in the amount of annual minimums actually paid to Deitz. In any year in which the Purchaser cuts and removes a minimum of 350,000 board feet of timber and does not consume all the credits available from the payment of minimum annual rentals the deficiency shall be carried forward as a credit. Any excess of stumpage prices paid over the annual minimum due shall not reduce any future annual minimum. Any credit remaining at the termination of this agreement shall be cancelled.

4. WHEELAGE:

The Purchaser shall have the right and privilege to haul or transport logs from lands other than those owned by the Vendors over and across the said parcels. Purchaser shall pay to Vendors for such use a wheelage rental of Five Dollars (\$5.00) per thousand board feet. Wheelage rental shall be allocated between Midvale and Deitz in the same ratio as provided for minimum rentals. The amount of board feet on which wheelage rental shall be due shall be computed by an accurate system of measurement and accounting and shall be payable at the same time and place as stumpage is payable.

5. RATE OF ANNUAL HARVEST:

It is understood and agreed between the parties that the goal of the parties is to harvest timber at an annual rate that can be sustained in perpetuity. To achieve this goal an annual amount of timber to be harvested (harvest rate) shall be set. The harvest rate shall initially be set at a minimum of 350,000 board feet and a maximum of 500,000 board feet per year. The Vendors shall have the right to adjust the harvest rate at any time by giving the Purchaser thirty (30) days written notice of its intention so to do. To facilitate the review of the harvest rate, the Purchaser at its expense shall have a report prepared by a forester acceptable to Vendors

and submitted to the Vendors before any timber is harvested under this agreement. Such report shall determine the amount and location of harvestable (operable) timber by acre. An acre of harvestable timber shall be defined as a forest acre with a minimum of 2,500 board feet of timber that measures eighteen inches or more in diameter, outside the bark, measured one (1) foot above the ground on the upper side of the tree. A similar report shall be provided by the Purchaser to the Vendors as often as requested by the Vendors, but no more frequently than once each year.

6. UTILIZATION OF LOGS:

Purchaser shall have the right to cut all marketable trees which are accessible from a reasonable logging standpoint, which at the time of cutting measure eighteen (18) inches and larger in diameter, over the bark, at a distance of one foot measured vertically from the ground, and which will produce at least one sound clear log twelve (12) feet long. Once cut, Purchaser will utilize all logs of the grade "Common and Better" and may include in the volume removed up to fifteen (15%) percent of log footage that grades below common.

Below common grade logs may also be utilized as pulpwood.

7. DIAMETER VARIANCE:

Purchaser shall have the right to cut and remove timber of less than the eighteen (18) inches in diameter where fire damage has occurred and the bark is open and interior of tree is exposed. Purchaser shall be required to cut or girdle other fire damaged or cull trees which have no salvage value so as to improve the residual stand of timber.

8. TIMBER SETTLEMENT:

Purchaser shall account for and make settlement for all timber removed from the said parcels monthly, by the 15th of the following month, at the rate set out in paragraph two (2) above.

9. RECORDS:

The Purchaser shall (i) keep accurate records of all timber removed from the said parcels; (ii) keep such other records as shall in the opinion of the Vendors be necessary to determine the total amount of lumber in the timber cut and/or removed from the said parcels; (iii) keep the aforesaid records in a suitable, substantially bound, printed record book, with duplicate sheets; (iv) furnish a copy of each of said sheets by the 15th of each month to the Vendors at the following address, until otherwise notified, to-wit: Midvale Colliery Company, P. O. Box

443, Charleston, West Virginia 25322-0443; and (v) retain the other copy of each of the said sheets in the said record book in its office. The Vendors shall have the right to have its representative check the measurement of all logs delivered to a mill on the said parcels and all logs removed from the said parcels.

10. TIMBER STAND:

The Purchaser shall cut trees that are broken by the logging operation. The cutting instructions herein are intended to create a timber stand of small and medium saw timber, pole, and sapling size trees of good form, free of defects and competition from malformed and cull trees.

11. ACCESS TO RECORDS:

The Purchaser shall permit the Vendors and its agents and other persons in its behalf to examine at any time all the records and books of the Purchaser which pertain to the timber cut and/or removed in the exercise of the rights herein granted; and they shall have access at any and all reasonable times to all such records and books, and to the offices where the same are kept, for the purpose of inspecting, auditing and making copies of the said records and books.

12. FOREST FIRES:

The Purchaser shall exercise at all times reasonable care to avoid the starting or spread of fire on the said parcels of land, and shall keep open such roads or paths as it may construct or make use of, so as to give access for the purpose of fighting fires, and shall cooperate with adjoining landowners and the State of West Virginia and take all other reasonable steps necessary to extinguish fires on the said parcels of land.

13. PLANS OF OPERATION:

The Purchaser shall use such methods and follow such plans of operation as are in accordance with principles of good forestry, with due regard to preserving the maximum value of the said parcels of land as a marketable timber property. The Purchaser shall submit to the Vendors before any timber is cut under this agreement a five-year plan showing the area to be operated each year. The five-year plan shall be updated at least once every three years.

14. RIGHTS OF WAY:

A. The Purchaser shall have such rights of way over and upon the said parcels of land as may be necessary for cutting and removing the said timber, and shall repair any

existing roads on said parcels which may be damaged by its usage. The exercise of the said rights of way by the Purchaser shall interfere as little as possible with the use of said parcels of land by the Vendors or its assigns in the operation of coal mines, and the production of coal by underground mining, strip mining or auger mining, and the removal of the said coal, or in the production or transportation of oil or gas; and in no event shall the Purchaser unreasonably interfere with the said use of the said parcels by the Vendors.

B. The Vendors have acquired a timber right of way across the property of Imperial Colliery Company, a copy of which has been provided to the Purchaser. The Vendors hereby give to the Purchaser the right to use the said right of way during the life of this Agreement. In using the said right of way, the Purchaser will not exceed the rights granted to the Vendors and will give to Imperial the notices therein required and will otherwise comply with the obligations of Vendors under the right of way. The Vendors shall first pay any wheelage charges due under the right of way agreement and the Purchaser shall reimburse the Vendors within thirty (30) days after presentation of an invoice for any amounts so paid. The Purchaser shall use the right of way only during dry weather and shall take such other precautions as are necessary to cause as little damage as possible to the roadways. Purchaser shall repair at its expense any damage done to the right of way. Upon any termination of the right of way, the right of Purchaser under this paragraph shall terminate.

15. PREVIOUS GRANTS:

The Vendors expressly make this grant subject to all lease agreements, all rights of way and easements which may have heretofore been granted in, on, over, through, or across the said parcels of land for oil and gas lines, electric transmission lines, coal leases, or other purposes. In addition, Purchaser agrees that the coal and oil and gas estates, including future transfers of interests in such estates, shall be dominant and paramount in relation to the rights granted to Purchaser hereunder.

16. RESERVATIONS:

The Vendors expressly except and reserve the right to make such use of the surface of the said parcels of land as may be necessary or convenient in the operation of coal mines, in the production of coal by underground mining, strip mining, or auger mining, and the removal of the said coal, and in the production or transportation of oil or gas on or from the said parcels of land.

17. MILL SITES:

Subject to the exceptions and reservations contained herein, the Purchaser shall have the right to use so much of the surface of the said parcels of land as may be necessary for the timber harvesting operations of the Purchaser on said parcels of land. The location of sites for mills, lumber yards, and buildings shall be approved in writing by the Vendors in advance of use. Any such facilities installed on said parcels shall be installed in accordance with all applicable statutes, regulations and permits, including but not limited to those relating to protection of the environment. When the purchaser has completed the removal of the timber hereby granted, or when this Agreement terminates, Purchaser shall immediately remove from said parcels of land, (i) all machinery, equipment, and other personal property owned by it, and (ii) all buildings and structures erected by it. At the time of such removal, Purchaser shall accomplish, at its expense, such remediation and reclamation of the site as may be necessary to comply with any applicable laws, regulations and permits and to return the land to good and safe condition. Purchaser shall indemnify, defend and save harmless Vendors and each of them from and against any and all claims by governmental or private parties arising out of activities by Purchaser on said parcels.

18. ASSIGNMENT:

The Purchaser shall not assign, convey, encumber or otherwise transfer any property or rights granted hereby without the written consent of the Vendors thereto first being had and obtained. A transfer thereof by operation of law, or by decree of any court, without such consent shall be construed to be a violation of this covenant. However, nothing herein contained shall prohibit the Purchaser from employing or contracting with, a third party, to conduct timber operations under this agreement. But the use of such third party shall not affect the obligations of Purchaser hereunder.

19. WAIVER:

No waiver of any breach or default committed or suffered by the Purchaser shall operate or be construed to constitute a waiver by the Vendors of any subsequent or different breach or default.

20. INTEREST:

No interest in the parcels of land hereinabove described is granted or conveyed by this instrument other than the right to cut and remove the said timber within the time and upon the conditions herein prescribed.

21. ENVIRONMENTAL ISSUES:

Vendors shall have no liability to Purchaser in the event Purchaser's timber harvesting operations on said parcels are stopped or otherwise affected by the provisions of the Endangered Species Act of 1973, as amended, the Federal Water Pollution Act of 1948, as amended, any other statute relating to protection of the environment, or any regulation issued under any of such statutes.

22. WARRANTY:

The timber on the said parcels of land is sold without any representation or warranty, express or implied, on the part of the Vendors as to the merchantability or the quantity of timber contained thereon or the condition or quality of the said timber or its fitness for any particular purpose.

23. CORNER TREES:

All corner trees on the said parcels of land are excepted and reserved from this conveyance.

24. VENDORS' RIGHTS:

The Vendors and its assigns shall have the right to cut and remove the timber on the said parcels of land which is not granted and conveyed to the Purchaser hereby, while the operations of the Purchaser are in progress, and in connection therewith and/or for any other purpose the said Vendors and its assigns shall have the right to use concurrently with the Purchaser all roads, chutes, slides, structures, and other devices constructed by the Purchaser on the said parcels of land; it being understood, however, that the operations of the Purchaser shall have priority over such operations of the said Vendors or its assigns, that the said Vendors and its assigns shall not interfere with the Purchaser, and that the Purchaser shall not unreasonably hinder or delay the operations of the said Vendors or its assigns.

25. VENDOR'S LIEN AND SECURITY INTEREST:

The Vendors hereby reserve a vendor's lien on the timber and rights hereby granted, to secure the payment of the purchase money (and interest thereon) for such timber. Purchaser hereby grants to Vendors a lien and security interest, under the West Virginia Uniform Commercial Code and any other applicable state laws, in the timber after it has been cut, including logs and manufactured products, to secure the payment of the purchase money (and interest thereon) for such timber. Purchaser agrees to execute all financing statements, deeds of trust and fixture filings and such other documents as Vendors may deem necessary in order to create, perfect and maintain such lien and security interest.

26. COMMON LAW LIEN:

The Vendors shall also have a common law lien on the logs cut and on the lumber and other products manufactured from the timber hereby granted, to secure the payment of the said purchase money and interest thereon; and the Purchaser shall not do any act which will destroy the said common law lien, other than to sell the products manufactured from the said timber in the ordinary course of business.

27. TAXES:

Purchaser shall pay all property taxes, charges and assessments against the timber on said parcels, and after the timber has been cut, against all felled timber, logs and manufactured products, and against all equipment and improvements placed on said parcels by Purchaser.

28. INSPECTION BY VENDORS:

The Purchaser shall, at all reasonable times, permit the Vendors to inspect the operations of the Purchaser on the said parcels of land.

29. MARKETABLE TREES:

The Purchaser shall cut all marketable trees in all areas which are accessible from a reasonable logging standpoint, which at the time of cutting measure eighteen (18) inches or over in diameter, over the bark, at a distance of one (1) foot measured vertically from the ground on the upper side of the tree, and pay for all logs therein, as provided herein, and all logs in fallen trees, which are marketable logs, as defined herein. Accessibility from a reasonable logging standpoint shall be agreed upon by both parties. As used in this agreement, the term "marketable log" or marketable timber" means a log eight (8) feet or more in length and ten (10) inches or more in diameter at the small end, which contains at least eighteen (18) feet

board measure of lumber, determined by the Doyle log scale measure, and grades No. 2 common or better. The Purchaser shall pay for all logs as provided herein less than ten (10) inches in diameter at the small end which the Purchaser removes from the parcels.

30. COMPLIANCE WITH LAW, MANAGEMENT:

Purchaser shall comply with all laws, regulations and permits applicable to its operations on said parcels, including the handling and disposal of sawdust and other waste products from its operations. In addition, Purchaser shall conduct its operations with the utmost care, using best management practices in the timber harvest industry, so as to avoid damage to the land of Vendors and to avoid contamination of any stream or water course. Purchaser shall maintain all roads and skidways which it uses in good condition and shall avoid erosion of the soil. Purchaser shall dispose of sawdust and other waste products so that the same shall not unreasonably accumulate on the property. Purchaser shall indemnify, defend and save harmless Vendors and each of them from and against any and all claims by governmental or private parties resulting from Purchaser's failure to comply with any law, regulation or permit or failure to adhere to best management practices.

31. INDEMNIFICATION:

The Purchaser agrees to indemnify Vendors against, and to hold Vendors harmless from any and all claims, demands, damages, liabilities, losses, expenses, suits, and actions (including attorney's fees) for or on account of any injury, loss, or damage to any person or persons and to any property owned by any person or persons, which may arise (or which may be alleged to have arisen) out of or in connection with the work covered by this agreement, even though such injury, death, loss, or damage may be (or may be alleged to be) attributed in part to the negligence or other fault on the part of Vendors or employees or agents of Vendors. Purchaser specifically agrees to defend any and all suits or actions which may be brought against Vendors on account of any such injury, death, loss, or damage arising out of or in connection with operations under this agreement, and Purchaser shall reimburse Vendors for all sums which Vendors may pay or be compelled to pay in settlement of any claims hereunder.

32. VENDORS' RIGHT TO TERMINATE:

Vendors shall have the right to terminate this Agreement at any time by giving Purchaser thirty (30) days written notice of its intention so to do. If, upon such termination, Purchaser has unrecouped credits from the payment of minimum annual rentals, then Vendors shall, at their

election, either pay to Purchaser the amount of such credits, or extend the termination date for a number of months equal to the amount of such credits divided by \$10,000.

33. PURCHASER'S RIGHT TO TERMINATE:

If the Purchaser is in full compliance with the terms and provisions of this agreement, it shall have the right to terminate this agreement at any time by giving the Vendors thirty (30) days written notice of its intention so to do. If the Purchaser terminates this agreement under this provision, it shall not be entitled to any refund for minimum annual rentals paid but not recouped.

34. INSURANCE:

Prior to the commencement of any work hereunder, Purchaser shall at its expense, obtain and maintain for the duration of this agreement such insurance as will protect Vendors from any and all claims for personal injury, death, loss, or property damage, workers' compensation, or other claims arising from the performance of this agreement, including, but not limited to:

- A. Workers' Compensation Insurance to the extent required by the laws of the State of West Virginia; and
- B. Comprehensive public liability and property damage insurance protecting both Vendors and Purchaser, as to any claims arising from accidents or occurrences in or on the said parcels of land with combined single bodily injury liability and property damage limits of not less than \$1,000,000 for each accident or occurrence and aggregate liability limits of not less than \$5,000,000.
- C. Purchaser shall, prior to the start of operations hereunder, furnish to Vendors a certificate from a company satisfactory to Vendors evidencing the aforesaid insurance coverage.
- D. The liability assumed by the Purchaser under this agreement shall not be limited by the amounts of insurance required hereunder.

35. INDEPENDENT CONTRACTOR:

Anything herein to the contrary, notwithstanding, it is the intention of the parties hereto that Purchaser shall be an independent contractor with regard to any and all acts and operations performed and conducted by it under and pursuant to the terms hereof, and

neither Purchaser nor any of its employees shall be considered an employee of Vendors for any purposes hereunder.

36. DEFAULT:

If at any time default be made in the payment of the purchase money, or any part thereof, as the same shall become due and payable, or in case of default in the faithful performance and observance by the Purchaser of the covenants herein contained, if such default or failure continue for a period of fifteen (15) days after notice in writing thereof given to the Purchaser by the Vendors, or if the Purchaser shall become insolvent or be adjudicated a bankrupt, or if a receiver be appointed for the Purchaser or its property, or if the Purchaser make an assignment for the benefit of creditors, the Vendors shall be entitled to immediate possession, as a condition broken, of all of said timber and of all logs and manufactured products which are on the said parcels of land, and may thereupon enter and take possession of said timber, logs and manufactured products; and the Purchaser in such event shall surrender peaceable and quiet possession of all of the said timber, logs, and manufactured products.

37. FORFEITURE:

In the event default shall be made in the payment of the purchase money, or any part thereof, as the same shall become due and payable, or in case of default in the faithful performance and observance by the Purchaser of the covenants herein contained if such default or failure continue for a period of fifteen (15) days after notice in writing thereof given to the Purchaser by the Vendors, or upon the happening of any of the other events set out in paragraph 31 hereof, the Vendors may at its option declare this agreement forfeited and all rights of the Purchaser hereunder to be at an end.

38. RE-ENTRY:

In case of the forfeiture of this agreement by the Vendors and a re-entry on its part, in addition to its lien rights the Vendors shall immediately become vested with full title to all logs, felled, or bucked, and to all timber and manufactured products on the said parcels of land, subject however, to the right of the Purchaser to require the same to be sold in accordance with the laws of West Virginia and the proceeds of the sale thereof to be applied to the payment of the purchase money for the timber hereby granted; and in the event of such forfeiture and re-entry, upon the request in writing of the Purchaser, the Vendors will institute

a proper chancery suit to enforce the Vendors's lien hereinabove expressly reserved on the timber hereby granted.

39. PURCHASE MONEY:

Nothing herein contained, however, shall be construed to prevent the Vendors from exercising any rights or remedies for the collection of the said purchase money under the laws of the State of West Virginia.

40. EXCLUSION:

At the time this agreement is entered into, there is excluded from this agreement all areas within the said three parcels that are permitted for coal or oil and gas operations.

41. NOTICE:

Any notice hereunder may be given to the Purchaser by service in accordance with the statutes of West Virginia relating to the service of process, or by mailing a copy thereof by United States registered mail to it at P. O. Box 117, Belva, West Virginia 26656. Until a different method be specified in writing by the Vendors, any notice and payments due hereunder may be given to the Vendors by serving a copy thereof on Midvale Colliery Company in accordance with the statutes of West Virginia relating to the service of process, or by mailing a copy thereof by United States registered mail to P. O. Box 443, Charleston, West Virginia 25322-0443.

42. MIDVALE TO ACT AS AGENT:

The parties hereto acknowledge that Deitz has constituted Midvale as the Agent of Deitz for purposes of administration of this agreement. All notices or other communications relating to this agreement shall be sent to Midvale. All payments required of Purchaser hereunder, including but not limited to stumpage prices, minimum rentals and wheelage, shall be made to Midvale, and Midvale shall account to Deitz for monies due to Deitz.

43. TITLE OF RECORD:

Vendors make no warranty of title. The Vendors hereby grant such rights to the timber as they have from those deeds and titles that are of record in the Clerk's Office of the County Court of Fayette County, West Virginia, and if it should hereafter be decreed in a proper suit that the Vendors do not have good title to a part of the said timber, the Purchaser shall be entitled only to a refund of such amount as it may have paid to the Vendors for timber to

which the title is defective, and the Vendors shall have no other responsibility than to refund said amounts.

IN WITNESS WHEREOF, MIDVALE COLLIERY COMPANY and Bank One, West Virginia, N. A., as sole remaining trustee under the last will and testament of T. A. Deitz, deceased, have caused their names to be signed by their proper officers thereunto duly authorized, and CLONCH INDUSTRIES, INC. has caused its name to be signed hereto, all as of the day and year first above written. Executed in triplicate.

MIDVALE COLLIERY COMPANY

By *Donald G. Faulley*
Its *President*

BANK ONE, WEST VIRGINIA, N. A., as sole remaining trustee under the last will and testament of T. A. Deitz, deceased

By *[Signature]*
Its *Senior Vice President*

CLONCH INDUSTRIES, INC.

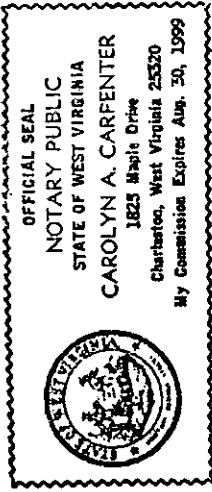
By *Joseph F. Clunch*
Its *President*

STATE OF WEST VIRGINIA)
COUNTY OF _____) To-Wit:

i, Carolyn Carpenter, a Notary Public in and for the County and State
aforesaid, do certify that Donald C. Pauley who signed the writing
above bearing date the 1st day of January, 1998, for MIDVALE COLLIERY
COMPANY, a corporation, has this day, before me in my said County, acknowledged the writing
to be the act and deed of said corporation.

Given under my hand this 27th day of March, 1998.

My commission expires August 30, 1999.



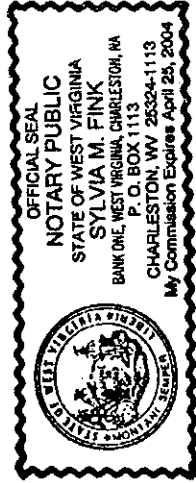
Carolyn Carpenter
Notary Public

STATE OF WEST VIRGINIA)
COUNTY OF Kanawha) To-Wit:

i, Sylvia M Fink, a Notary Public in and for the County and State
aforesaid, do certify that J. Scott Sperty who signed the writing
above bearing date the 31st day of March, 1998, for BANK ONE, WEST
VIRGINIA, N. A., a national banking association, as sole remaining trustee under the last will
and testament of T. A. Deitz, deceased, has this day, before me in my said County,
acknowledged the writing to be the act and deed of said association.

Given under my hand this 31st day of March, 1998.

My commission expires April 25, 2004.



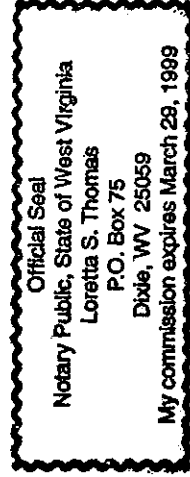
Sylvia M. Fink
Notary Public

STATE OF WEST VIRGINIA)
COUNTY OF) To-Wit:

I, Loretta S. Thomas, a Notary Public in and for the County and State
aforesaid, do certify that Hugh R. Clonch who signed the writing
above bearing date the 26 day of March, 1998, for CLONCH INDUSTRIES,
INC., a corporation, has this day, before me in my said County, acknowledged the writing to
be the act and deed of said corporation.

Given under my hand this 26 day of March, 1998.

My commission expires March 29, 1999.



Loretta S. Thomas
Notary Public

mdvalcjr

This Instrument Prepared By:
Donald C. Pauley
300 Capitol Street Suite 1401
Charleston, West Virginia 25301
(304) 346-3661

EXHIBIT A

To Agreement Dated January 1, 1998

Between

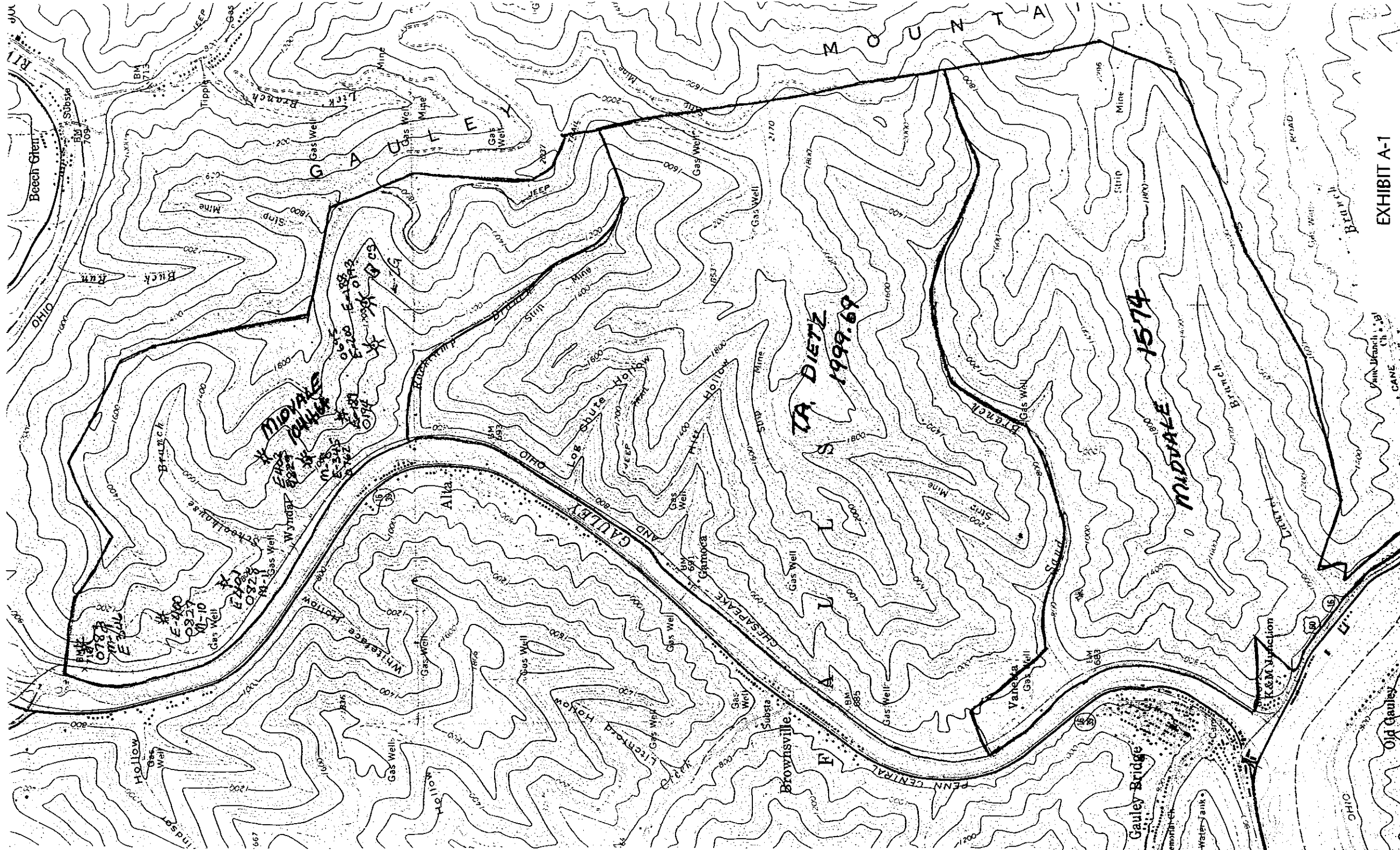
MIDVALE COLLIERY COMPANY ET AL.

And

CLONCH INDUSTRIES, INC.

Description of Parcels

Three parcels of 4618 acres more or less, located on the waters of Gauley and shown outlined in red on the map attached hereto and made a part hereof as Exhibit A-1.



MIDVALE
GAULEY

TA DIETZ
1999-69

1574
MIDVALE

EXHIBIT A-1

EXHIBIT B

Those certain tracts or boundaries of land situate on the east side of Gauley River in Falls District of Fayette County, West Virginia, generally known as the "Wyndal", "Gamoca" and "Vanetta" properties, and more particularly bounded and described (one boundary) as follows:

BEGINNING at a point (1) on the eastern bank of Gauley River opposite the mouth of "Twenty Mile Creek" which point was formerly marked by four beech trees, a red oak and a lynn as pointers, described (in 1889) as bearing South 28° East from John Mom's house and North 67° West from a school house, said pointers later (in 1930) are mentioned as having been destroyed during the construction of the Chesapeake and Ohio (C&O) Railway bridge and said point was then described as being 20 feet north of the abutment of said bridge, said beginning point also marks a corner of the property of the former Gauley Mountain Coal Company (now Imperial Colliery Company); thence as follows along the lines of various properties owned by the former Gauley Mountain Coal Company as follows: South 72° 28' East up the hill 1,485 feet to a stone (2) on a ridge below a ledge of rocks and with black oak, chestnut oak, and gum pointers, about 50 feet below the point of a cliff; thence South 39° East 726 feet to a large chestnut oak (3) on a point of a ridge; thence South 64° 30' East 617 feet to two hickories (4) on a point of a ridge; thence North 56° 30' East 1,369 feet to a stone (5) near the top of a ridge; two lynns, two poplars and two sugar tree pointers; thence North 89° East 660 feet to a large white oak (6) on top of the mountain; thence South 47° 35' East 1,105 feet to a small chestnut oak (7) on the side of the bold knob; thence South 75° 44' East 815 feet to two chestnut oaks (8) on the top of the mountain; thence South 24° 24' East 745 feet to a Spanish oak (9) on the top of the ridge; thence South 8° 24' East 3,092 feet to a white oak (10) on the top of the mountain; thence South 74° 50' East 2,367 feet to a chestnut oak (11) on the top of the mountain; thence South 18° 16' East 1,452 feet to two chestnut oaks and a locust (12) on the top of the mountain; thence South 3° 32' West 2,432 feet to a stone (13) in a flat on top of the mountain; thence South 27° East 495 feet to a stone (14) on the top of the mountain; thence South 67° East 612 feet to a stone (15) by a large pine stump on the top of the mountain; thence South 3° 13' East 1,856 feet to a stake (15A) marking a corner of the tract of approximately 1,065 acres conveyed to Vanetta Land Company by Deitz Colliery Company by deed dated June 30, 1930 (of record in the office of the Clerk of the County Court of Fayette County, West Virginia, in Deed Book 71, at page 291) and a corner of the tract sometimes known as the Charles Tyler 1,787 acre tract which is a portion of the properties aggregating approximately 2,200 acres owned by the Trustees of the Estate of T. A. Deitz and Midvale Colliery Company; thence continuing in the same direction (South 3° 13' East) along the division line between the lands of the T. A. Deitz Estate and the lands of the former Gauley Mountain Coal Company 5,720 feet to a stake in Sand Branch (15B) which marks the southeasterly corner of the property of the T. A. Deitz Estate and also marks the northeastern corner of the tract conveyed to Vanetta Land Company by Lynchburg Colliery Company by deed dated September 28, 1928 (recorded in said Clerk's Office in Deed Book 67, page 241) and continuing in the same direction (South 3° 13' East) along the division line between the Vanetta tract and the land of the former Gauley Mountain Coal Company 2,030 feet to two chestnut oaks (16) on the top of the mountain near the head of Bridge Fork of Rich Creek, at a point once described as marked by a large pine tree. The last three calls total 9,606 feet as here given and the line they comprise was shown on a survey by C. H. Settle dated December 1889 as "South 3° 13' East 581 poles (9,586½ feet) crossing the top of the mountain twice to two chestnut oaks"; thence South 38° 34' East 990 feet to a chestnut oak (17) with a letter "T" marked in bark on the north face, being on top of the mountain at the heads

of Bridge Fork of Rich Creek and Laurel Branch; thence South 31° 30' West 2,013 feet crossing Laurel Branch at 1,122 feet to a keyrock 918) between two cliffs on the ridge between Laurel Branch and Cane Branch; thence along the ridge South 66° 48' West 1,947 feet to a stone (19) on the ridge; these last four lines were resurveyed for the former Gauley Mountain Coal Company by its engineer Mr. W. V. Kincaid and from his survey were found to be as follows:

South 05° 07' East a distance of 9,554.20 feet;
South 36° 40' East a distance of 988.72 feet;
South 29° 42' West a distance of 1,990.86 feet;
South 65° 00' West a distance of 1,950.35 feet.

These compass bearings being based upon the azimuth used by Gauley Mountain Coal Company in its engineering work. Thence South 76° 20' West 1,386 feet to a stone (20) on the ridge; thence South 63° 30' West 528 feet to a stone (21) on the ridge; thence South 60° 36' West 429 feet to a stone (22) on the ridge; thence South 60° 39' West 1,419 feet to a sugar tree (23) on top of the ridge; thence South 77° 15' West 2,805 feet to a stone (24) on the point of the ridge; thence North 68° 44' West 1,310 feet to a stone (25) on the hill side near Laurel Branch; thence South 4° 48' East 571 feet to a stone (26) and pointers on the hill side facing New River; thence South 71° 45' West 181 feet to a white oak (27) on top of the river cliffs, corner to James Cole, and thence with Cole's line South 37° 20' East 1,693 feet to a stake (28) on top of a high cliff opposite the lower end of the narrow rock; thence South 46° 30' West 500 feet to the upper end of a large rock (29) in the edge of New River about 120 feet below the mouth of Cane Branch; thence down New River as it meanders and binding thereon North 42° 30' West 2,046 feet to a stake (30); thence North 55° West 1,419 feet to a stake (31); thence North 48° West 1,155 feet to a stone (32) at the edge of New River corner to the J. H. Miller lot; thence with the same North 35° East 132 feet crossing the C & O Railway to a stake (33) on the cliff corner to the McClaugherty lot; thence with same South 58° 30' East 325 feet to three pitch pines (34) on top of the cliffs; thence North 25° 30' East 1,237 feet to a walnut and chestnut oak (35) on top of the ridge; thence South 87° West 165 feet to two hickories (36) on the point; thence down the point South 72° 54' West 561 feet to a red oak and hickory (37) thence South 41° West 330 feet to a white oak (38) on the point; thence South 70° 30' West 445 feet to a stone (39) in a flat above the cliffs on Miller's line, corner to Hill and McClaugherty; thence with Hill's line North 32° East 478 feet to a stone (40) and pointers above an old road on the point next to Gauley River; thence North 18° West 280 feet to a stake (41) and sweet gum pointers on the bank of Gauley River; thence up Gauley River with its meanders and binding thereon 27,000 feet, more or less, to the point of beginning; containing in all approximately 4,800 acres, but there is reserved, however, (1) all of that portion of the above described property bordering on New River and lying to the southwest of the C & O Railway, that is to say lying between the Midland Trail (U. S. Route 60) and the low water mark of New River, (2) all of the right-of-way of the C & O Railway along Gauley River and along the Midland Trail (U. S. Route 60), (3) the so-called Vanetta School House lot, and (4) other reservations mentioned in the Prime Lease Documents.