

TIMBER DEED AND SALE CONTRACT

Inst # 2000-37204

STATE OF ALABAMA

SHELBY COUNTY

This CONTRACT is entered into on the 11<sup>th</sup> day of Oct, 2000, by and between AmSouth Bank as Personal Representative u/w/o/ Marguerite P. Cox, Deceased (SELLER) and Lomax Pulpwood, Inc.(BUYER).

Seller, for and in consideration of the payment to it of the sums of money herinafter stipulated and in further consideration of the covenants of Buyer hereinafter expressed to be kept and performed, Seller hereby grants, bargains, sells and conveys unto Buyer, when the trees are cut, all designated trees now standing on the following described real estate:

Contract sale area is located on \_\_\_SEE ATTACHED TIMBER DEED

together with the rights of ingress, egress and regress for Buyer, its agents, servants, contractors, employees, successors and assigns, over, across and along said lands, for the purpose of cutting and removing the designated trees. All right, title and interest in and to the designated trees sold hereunder shall remain in the Seller until cut and thereafter title shall be in Buyer.

The parties hereto agree as follows:

- 1. This conveyance is made in consideration of:

SEE ATTACHED TIMBER DEED

- 2. The trees designated by the Seller for cutting hereunder are described as follows:

SEE ATTACHED TIMBER DEED

3. All said timber shall be cut and removed by Buyer from the above described lands and the terms of this agreement satisfied on or before 18 months from closing date, unless sooner terminated by Seller pursuant to its rights of termination as set forth in this contract and after that time (or the last date of any extension as granted by Seller), Buyer shall have no further rights or interests in or with respect to any standing designated trees or any designated trees felled but not yet removed and paid for. Such dates may be extended only by instrument in writing executed and acknowledged by Seller or its representative.

4. Buyer shall (1) avoid unnecessary damage to the timber not being cut, which damage shall include but not be limited to breakage to the main stem, uprooting or any abrasion which results in damage to one-third or more of the circumference of the main stem which could have been avoided in the course of logging operations; and (2) avoid the cutting of any trees not designated to be cut; and (3) avoid the failure or refusal to cut trees designated to be cut hereunder. If Buyer fails to comply, the affected trees shall be marked by the Seller or its representative and seller shall have the right to enforce compliance by resort to the remedy of specific performance.

5. Buyer shall conduct all operations under this agreement in a workmanlike manner which specifically shall include but not be limited to:

A. Buyer agrees to comply with current Best Management Practices (BMP's) for Harvesting.

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B. Litter from the maintenance and repair of equipment, cans and containers, filters, tires, cables, etc, should be kept out of streams and should be hauled to legal dumping areas. No excessive trash shall be left in the woods.

C. Servicing of equipment involving fuel, lubricants, or coolants should be performed in places where these materials cannot enter streams. There is to be no disposal of petroleum products or coolants on the property.

D. Buyer, in all phases of construction and logging operations shall protect to the maximum extent all roads, bridges, trails, telephone and electric lines, ditches, fences, water and gas wells, and other improvements, and if any such improvements are damaged by Buyer's operations under this agreement, Buyer shall restore the improvement immediately to a condition satisfactory to Seller and without expense to Seller. Existing roads used by Buyer shall be left in the same or improved condition following the harvesting operations or before the termination of this contract, whichever is sooner. Buyer shall remove all tops and other logging debris from or in all ditches, roads and streams. Buyer is authorized to use roads, structures and improvements necessary in the operations hereunder, upon the lands described herein and upon other lands in the vicinity thereof, all at its own risk and provided that all such roads, structures and improvements shall be located, maintained and operated subject to the regulations of Seller and all applicable laws and regulations. Such roads, structures and improvements shall become the sole property of Sellers at the termination of this agreement. Seller makes no representation or warranties that any roads, bridges or other improvements on the above described property or any other property are safe or suitable for use by Buyer or those acting for or under Buyer, and all such parties may use any such roads, bridges or other improvements only at its' own risk. No new logging roads shall be cut or opened by Buyer without the prior approval of the Seller and its' representative.

6. Except as otherwise provided, representative of Seller will make periodic inspections of cutting and logging operations hereunder during the term of this contract, and Buyer agrees, promptly upon demand therefore, to correct any violations hereunder which such inspections may disclose. Buyer agrees to report promptly the completion of cutting of the above described lands, at which time Seller will have an inspection made and release Buyer from further obligations under this contract if no default hereunder then exists.

The parties shall be responsible for notifying each other of any change of address by similar notice and may by such means change the address to which such notice is given to them, respectively.

7. This agreement may be terminated by Seller at its election by written notice to Buyer upon the happening of any of the following events:

A. The failure of Buyer to make punctual payment in accordance with the provisions herein, and the continuation of such failure for a period of seven (7) days.

B. The breach or default by Buyer with respect to any of the terms and provisions of this Agreement other than those specifically referred to in subparagraph A of this paragraph provided that written notice of such breach or default shall have been given by Seller to Buyer and such breach or default shall not have been remedied or made good after thirty (30) days of such notice.

8. The Buyer shall use all reasonable precautions to prevent fire on the land and the spread of any fires that may break out thereon. If a forest fire breaks out, burns or threatens to burn on lands covered by this agreement or on other lands contiguous thereto, Buyer (harvesting crew) will notify the State Forestry Commission of the fire and shall have its crew at that time engaged in any cutting on said lands assist in the control or putting out of said fire.

9. Buyer agrees to protect Seller from and against all liens and claims of liens in any way arising out of any act or default upon Buyer's part.

10. Seller is not associated or in any manner connected with the actual performance of the contract on the part of Buyer, either as a partner, joint venturer, employer, principal or agent, or otherwise. Buyer is an independent contractor respecting the performance of this contract and is solely liable for all of its acts and all labor expenses in connection with its' performance of this contract. Seller shall however, have the right to inspect the operations of Buyer to insure that only those trees designated for cutting are being cut, that proper forestry practices and other terms of this contract are being observed: but the direction of any and all of Buyer's operations shall at all times be with the Buyer, and Seller shall have no right to instruct, deal with, supervise or suggest the manner of carrying on the work of Buyer's employees, agents, servants or subcontractors.

11. Seller shall not be liable for any claims for damages, death or injury which may arise from the exercise by Buyer of the rights herein granted or in any way growing out of cutting, logging or other operations by Buyer hereunder, whether under the Workmen's Compensation Act or otherwise and Buyer agrees to and does hereby indemnify, protect and hold harmless Seller against any and all claims, demands, damage, loss, cost or expense, suits, judgements and decrees instituted by any third party, and reasonable attorney's fees incurred by seller in defending the same arising from the exercise by Buyer, or its agents, servants, employees or contractors, of any of the rights herein granted or at any time or in any way growing out of operations hereunder by Buyer, or its agents, servants, employees or contractors, including, but not limited to any damages which may be caused to adjoining landowners or the property of adjoining landowners by fire, land line trespass or use of public or private roads. Buyer agrees, in its or his timber cutting operation on the premises, to adhere to and comply with all laws, rules and regulations of the county, state and federal government, and all agencies or commissions of such governments now or at anytime during the term of this contract applicable or having jurisdiction, and every similar agency or commission now or hereafter established. Buyer hereby expressly agrees to indemnify and hold harmless Seller from any and all liability damage, loss, cost or expense, including seller's reasonable attorney's fees whatsoever arising out of or connected with Buyer's failure to comply with any applicable laws, rules or regulations.

12. **Insurance Requirements:** Buyer shall provide and maintain liability insurance in the amounts specified herein below, and to furnish the Seller evidence of such insurance as follows:

**A. Workers' Compensation:** Workers' Compensation and Occupational Diseases Insurance, in accordance with the laws of the state in which the work is being performed and having an Employer's liability Limit of at least \$500,000.00.

**B. Automotive:** A combined single limit of \$500,000 for bodily injury and property damage, or \$500,000 per person, \$500,000 per occurrence for bodily injury and \$500,000 per occurrence for property damage. Coverage for ANY OWNED, HIRED AUTO, AND NON OWNED AUTO is required.

**C. General Liability:** A combined single limit of \$500,000 for bodily injury and property damage or \$500,000 per person, \$500,000 per occurrence for bodily injury for \$500,000 per occurrence for property damage.

Proof of insurance is required for the duration of this contract.

13. This contract and all the terms and provisions and covenants hereof and all the rights, title, powers and options herein contained shall be binding upon and shall inure to the benefit of and be exercised by the successors and assigns of the respective parties and the Grantees and successors in title of the Seller. This contract and the rights, benefits, powers and privileges hereunder may not be assigned or transferred by either party hereto, without the prior written consent of the other, which consent shall not be unreasonably withheld; but no such assignment or transfer by Buyer shall release Buyer from any of its obligations under this contract.

14. Should there at any time be a dispute between the parties hereto as to any question of fact arising hereunder and such dispute is not settled by mutual agreement, then such dispute shall be submitted to arbitration in Alabama in accordance with the then existing rules of

procedure of the American Arbitration Association (or successor organization). No party shall file any suit or prosecute any claim against any other party within the scope of the foregoing until there shall have been an award in arbitration and then only in the enforcement of such award. Nothing herein contained shall be deemed to require, permit or provide for the submission to arbitration of any question as to the validity, interpretation or enforceability of this contract.

In the event of any such arbitration, the arbitrators shall be registered foresters.

TO HAVE AND TO HOLD the same to the said Lomax Pulpwood Company, Inc., its agents, assigns, and successors, that we the seller are lawfully seized in fee simple of the timber herein conveyed; that it is free from all encumbrances, and that we have a good right to sell and convey the said property.

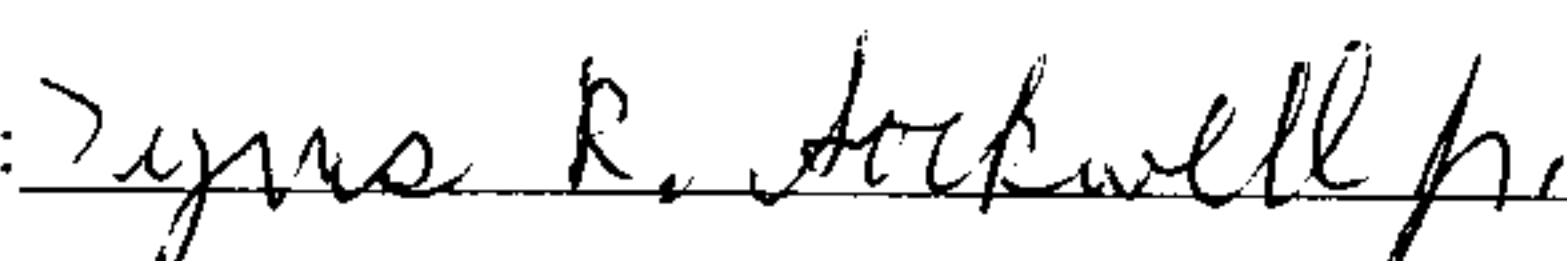
AmSouth Bank executes this contract solely in its capacity as Personal Representative U/W/O Marguerite P. Cox, Deceased and expressly limits its liability hereunder to the property now or hereafter held by it in such capacity. In no event shall AmSouth Bank have any liability whatsoever under this contract in its separate or corporate capacity.

IN WITNESS WHEREOF, the parties hereto have executed this Deed and Contract on the day and year first above written.

SELLER: AmSouth Bank as Personal Representative  
U/W/O Marguerite P. Cox, Deceased

ATTEST:  

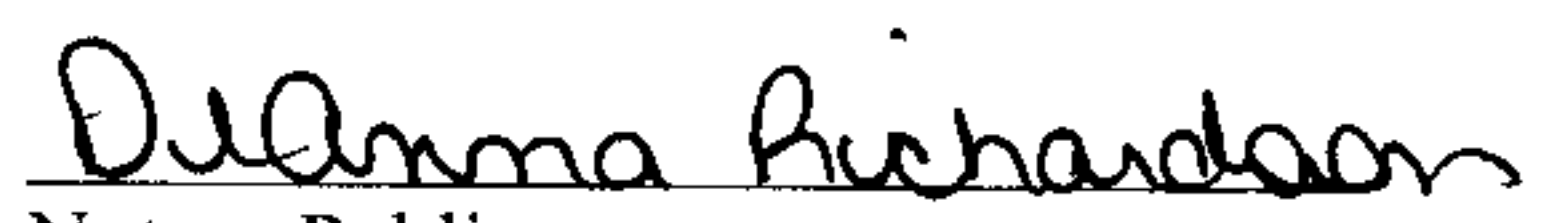

BY:   
Vice President

BUYER:  
BY:   
Pres. - Lomax Pulpwood & Lumber Co., Inc.

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Stephen H. Holland whose name as Vice President of AmSouth Bank as Personal Representative u/w/o Marguerite P. Cox, Deceased, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said conveyance, he as such officer and with full authority, executed the same voluntarily for and as the act of said Association, acting in its capacity as Trustee, as aforesaid.

Given under my hand and official seal this 13<sup>th</sup> day of October, 2000.

  
Notary Public  
My Commission Expires 4-28-2003

STATE OF ALABAMA

Shelby COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Tyrus R. Sautwell of Lomax Pulpwood Company, Inc. is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of Oct, 2000.

[Signature]  
Notary Public  
My Commission Expires 10-16-2004

# Exhibit A

SHELBY COUNTY  
STATE OF ALABAMA

This contract made and entered into this 21 day of September, 2000, between Theron and Jane Cox, whose address is 369 County Road 730, Clanton, AL 35046, and Teresa and Kyle Kirkwood, whose address is 4725 Overwood Circle, Birmingham, AL 35222, hereinafter termed SELLERS, and Lomax Pulpwood whose address is 4030 7th Street North, Clanton, AL 35045, hereinafter termed PURCHASER, witnesseth:

A. The SELLER has hereby sold to the PURCHASER the timber described below:

TRACT FIVE: All merchantable timber bounded by orange flagging and yellow paint, totaling approximately 84.0 acres, located in the north one-half of the northeast one-quarter, and that north fraction of the southwest one-quarter of the northeast one-quarter of Section 28, Township 24 North, Range 15 East, in Shelby County, Alabama.

B. The SELLER warrants and guarantees the title and the rights herein granted to the PURCHASER, and agrees to defend said title and rights against any and all claims, taxes, mortgages, or any other legitimate encumbrance, and from any hostile title at their expense.

C. The PURCHASER has hereby paid to the SELLER the sum of \$ 113,900<sup>00</sup>, as the purchase price of the timber herewith sold on the area of land described, and this cash payment with the covenants and agreements of the PURCHASER which are contained herein, are the consideration for the execution of this conveyance by the SELLER.

D. Said timber is sold subject to the following conditions and agreements which are a part of this conveyance:

1. Unless written extension of time is granted, all timber conveyed by this contract shall be cut and removed from the above described land area before March 21, 2002, which is eighteen (18) months following the closing of this contract. After this date, the title to the standing timber on the above described land area shall revert to the SELLER and all rights and privileges herein granted to the PURCHASER shall terminate.
2. The SELLER's representative, Douglass W. McConnell II, shall be notified at least five (5) working days prior to the beginning of logging operations. Periodic inspections of the operations will be made by said representative. Results of these inspections will be recorded and reports submitted to the PURCHASER and the SELLER.
3. PURCHASER shall keep all harvest activities within the boundaries of the sale areas. No material is to be felled across the sale boundaries. Any trees felled outside the sale areas shall promptly be pulled back into the harvest area by PURCHASER.
4. In the event trees are cut that are not designated to be cut, PURCHASER shall pay three times the determined stumpage value of said trees, plus the reasonable costs incurred in determining the illegally cut volumes.

# Exhibit B

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SHELBY COUNTY  
STATE OF ALABAMA

This contract made and entered into this 21 day of September, 2000, between Theron and Jane Cox, whose address is 369 County Road 730, Clanton, AL 35046, and Teresa and Kyle Kirkwood, whose address is 4725 Overwood Circle, Birmingham, AL 35222, hereinafter termed SELLERS, and Lomax Pulpwood whose address is 4030 7<sup>th</sup> Street North, Clanton, AL 35045 hereinafter termed PURCHASER, witnesseth:

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A. The SELLER has hereby sold to the PURCHASER the timber described below:

TRACT FOUR: All merchantable timber bounded by orange flagging and yellow paint, totaling approximately 120.0 acres, located in the south one-half of the northeast one-quarter and the southeast one-quarter of the northwest one-quarter, all in Section 17, Township 24 North, Range 15 East, in Shelby County, Alabama.

B. The SELLER warrants and guarantees the title and the rights herein granted to the PURCHASER, and agrees to defend said title and rights against any and all claims, taxes, mortgages, or any other legitimate encumbrance, and from any hostile title at their expense.

C. The PURCHASER has hereby paid to the SELLER the sum of \$ 159,800<sup>00</sup>, as the purchase price of the timber herewith sold on the area of land described, and this cash payment with the covenants and agreements of the PURCHASER which are contained herein, are the consideration for the execution of this conveyance by the SELLER.

D. Said timber is sold subject to the following conditions and agreements which are a part of this conveyance:

1. Unless written extension of time is granted, all timber conveyed by this contract shall be cut and removed from the above described land area before March 21, 2002, which is eighteen (18) months following the closing of this contract. After this date, the title to the standing timber on the above described land area shall revert to the SELLER and all rights and privileges herein granted to the PURCHASER shall terminate.
2. The SELLER's representative, Douglass W. McConnell II, shall be notified at least five (5) working days prior to the beginning of logging operations. Periodic inspections of the operations will be made by said representative. Results of these inspections will be recorded and reports submitted to the PURCHASER and the SELLER.
3. PURCHASER shall keep all harvest activities within the boundaries of the sale areas. No material is to be felled across the sale boundaries. Any trees felled outside the sale areas shall promptly be pulled back into the harvest area by PURCHASER.
4. In the event trees are cut that are not designated to be cut, PURCHASER shall pay three times the determined stumpage value of said trees, plus the reasonable costs incurred in determining the illegally cut volumes.

FOREST OWNER SERVICES

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10:49 AM CERTIFIED

9/16/00

SHELBY COUNTY JUDGE OF PROBATE  
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