

## TIMBER SALE CONTRACT

### STATE OF NORTH CAROLINA

### COUNTY OF BRUNSWICK

**THIS TIMBER SALE CONTRACT** (Contract) is made the 18th day of July, 2022 (Effective Date) between Canal Wood, L.L.C. (Buyer) and Brunswick County, P.O. Box 249, Bolivia, NC 28422 (Seller). WoodsRun Consulting Forestry, PA is the Seller's Agent (Consultant) and shall manage this timber sale.

**WHEREAS**, Seller desires to grant to Buyer, and Buyer desires to acquire from Seller, the right and obligation to cut the timber described in this Contract; and

**WHEREAS**, the parties intend to create a bilateral contract for the sale of timber and not an option to purchase timber.

**THEREFORE**, the parties agree as follows:

1. **Duration of Contract:** The duration of this Contract shall be eighteen (18) months from the Effective Date set forth above.
2. **Performance Bond:** Buyer agrees to post a \$2,000.00 performance bond with WoodsRun Consulting Forestry, PA, Escrow Account at the signing of this Contract. The bond shall be forfeited in part or in whole upon the basis of a final logging inspection by Consultant. The amount of the bond in no way limits Buyer's liability for damages. Buyer forfeits this bond if it does not harvest the timber by the expiration date of this Contract.
3. **Advanced Deposit:** Buyer agrees to pay a 20% advance deposit to WoodsRun Consulting Forestry, PA, Escrow Account at the signing of this Contract.
4. **Description of Timber:** All merchantable pine and hardwood trees are to be cut and removed from the clearcut timber sale area in West Brunswick Regional Office Tract, Stand 41, as shown on the attached timber sale map (Timber Sale Area). Also, Stands 42 and 412 will be selectively thinned down to approximately 25 good quality sawtimber trees per acre. The hardwood trees larger than 8 inches diameter are to be left for aesthetic purposes.
5. **Damages:** If Buyer cuts or unnecessarily damages trees not included in this sale, Buyer shall pay for those trees at double the stumpage rates based on the Consultant's stumpage price estimates and cruised volumes. If the Buyer cuts and leaves merchantable timber in the Timber Sale Area, the Buyer shall pay for those trees at double

the stumpage rates based on the Consultant's stumpage price estimates and cruised volumes. Buyer is prohibited from cutting any orange painted sale lines or boundary trees.

6. **Notice:** Buyer agrees to notify WoodsRun Consulting Forestry, PA twenty-four (24) hours before beginning of logging operations. A pre-harvest conference is required before the logging operations can start. Seller reserves the right for Consultant to view harvesting operations to verify compliance with the terms of this Contract. Buyer agrees to promptly report the completion of cutting on the property and to remove all equipment from the Timber Sale Area within thirty (30) days after completion of harvesting.

7. **Payment**

- i) Buyer shall pay Seller the following prices for all timber harvested:

Pine Pulpwood	@	\$ <u>9.00</u>	per ton
Pine Chip-n-saw	@	\$ <u>27.00</u>	per ton
Pine Sawtimber	@	\$ <u>27.00</u>	per ton
Hardwood Pulpwood	@	\$ <u>6.00</u>	per ton

- ii) Payment is to be made weekly. Along with payment, Buyer shall furnish Seller a statement showing the volume of wood by weight and type removed from the property.
- iii) Buyer shall mail settlement checks payable to WoodsRun Consulting Forestry Escrow Account. Buyer shall send payments, stumpage statements, and the Daily Load Sheets each week to the following address: WoodsRun Consulting Forestry, PO Box 626, Elizabethtown, NC 28337.
- iv) After the Consultant verifies the settlement, the net weekly settlements, less commissions to WoodsRun Consulting Forestry, will be paid to the Seller from the WoodsRun Consulting Forestry Escrow Account.
- v) Prompt payment is the essence of this Contract. Should the Buyer fail to make prompt payment, Seller has the right to terminate the Contract.
8. **Sale Lines:** There are two (2) cemeteries on this property, and they have fifty (50) foot orange painted buffers around them. No truck traffic, logging debris, or cutting of trees beyond this painted line. Stand 45 is bottomland hardwood and drains, and has been painted out of this sale with orange paint. There are also fifty (50) foot buffers around the fencing of Stands 492 and 491. These buffers are there to protect the fence.
9. **Access:** No logging truck traffic is allowed within Stands 41, 42, and 412. For the purpose of cutting, removing and transporting the said timber, Buyer shall have the right of ingress, egress and regress through, across, over and upon the Timber Sale Area. Seller

will take whatever action is necessary to provide Buyer with good and sufficient access to the Timber Sale Area, will prevent any plowing, ditching, or construction of fences across the farm roads, paths, or access areas on the Property, and will prevent any other act whatsoever that would interfere with the cutting and removing of said timber and pulpwood.

10. **Roads:** Buyer shall properly maintain roads or paths used for the logging, including any roads constructed for use in the harvest operations, and shall either leave roads in as good of condition as they were when logging began or pay the actual costs of restoration. Do not drive logging trucks down the road within Stand 42, as this road is the Right-of-Way of a Fiber Optic Cable. This woods road is to be kept clear of logging debris. Skidders and Feller Bunchers can cross over this Right-of-Way.
11. **Decking:** All decking and skidding must take place within the Timber Sale Area. Buyer has the right to construct a reasonable number of skid trails provided that the location and extent are approved in advance by Consultant. Buyer shall use existing trails when reasonably possible.
12. **Best Management Practices & Forest Practice Guideline:** Buyer agrees to harvest the timber in accordance with North Carolina Forest Practices Guidelines related to Water Quality and the NC Forestry Best Management Practices Manual so that the Forestry exemption under the N.C. Sedimentation Pollution Control Act of 1973 remains in effect.
13. **Right to Halt Logging:** Buyer, its agents, employees, and assigns, shall minimize soil damage which may result from operating logging machinery during wet ground conditions. Seller reserves the right to suspend logging operations if, in Consultant's sole opinion, conducting said logging operations during periods of wet weather and/or high soil moisture will result in excessive damage to the soils and roads of the property.
14. **Trash and Debris:** No debris of any type shall be left on the property except for natural trees and brush that originated on the land. No trees, limbs, brush or other debris shall be left across property boundaries, or in any fields, streams or ditches on the property. Buyer shall refrain from depositing any petroleum or hazardous wastes on the premises. Buyer or its agents shall at all times keep trash contained within garbage bags or cans. No trash, including, but not limited to cans, bottles, paper, plastic, and towels, on shall be left on the ground at anytime. At the completion of timber harvesting, Buyer or its agents shall be responsible for removal of all trash from the cutting area, including, but not limited to oil cans, paper, tires, plastic, or glass bottles or other debris, placed on the cutting area by Buyer or its agents. No trash shall be buried on this site.
15. **Government Restrictions:** If any condition exists on the property on or before the Effective Date, which restricts Buyer's ability to harvest and remove the timber due to any government rule, ordinance, law or regulation, or any threatened action from a federal, state, or local governmental agency: (1) If this is a per unit sale, the restricted timber shall

be excluded from the sale; and (2) if this is a lump sum sale, Seller shall, within thirty (30) days after written request, reimburse Buyer for the timber located within the restricted area at the fair market value of the timber on the date of purchase.

16. **Fire Hazards:** Buyer and its employees shall at all times exercise reasonable care to minimize and reduce the hazard of fire by the use of good forestry practices. No open fires shall be allowed on this site.
17. **Fences:** Buyer and its agents shall not damage any fences on the property and shall restore any damaged fences at Buyer's expense to the condition they were in prior to logging.
18. **Damage to Improvements.** Buyer shall pay the actual cost for repair of damages caused by its agents employees, and assigns' logging operations to gates, fences, ditches, bridges, roads, cattle guards, culverts, crops, or other improvements on the premises, except for roads, which are the responsibility of the Seller.
19. **Damage to Property Markers.** Any property corners or monuments that are altered, removed or damaged shall be replaced by a licensed surveyor at Buyer's expense.
20. **Letter of Release.** Buyer shall furnish a letter of release within ten (10) days of completion of logging should the harvesting operation be completed prior to the expiration of the Contract.
21. **Indemnity:** Buyer shall indemnify and hold Seller harmless from any and all liability and any and all loss, including attorney's fees and other related and reasonable expenses incurred, arising from the operations, activities or loss caused by acts or omissions of Buyer's employees, contractors, subcontractors, or employees of contractors or subcontractors, and any invitees, and whether such liability or loss be to an adjoining landowner or to said employees, contractors, subcontractors, employees of contractors or subcontractors, or licensees of Buyer or to any others for property damage, personal injury, death or otherwise.
22. **Insurance:** Buyer agrees to furnish a Certificate of Insurance that meets the Brunswick County Minimum Insurance Coverage Requirements attached hereto.
23. **Safety Regulations:** Buyer shall abide by all occupational safety and health (OSHA) requirements and all other applicable state or federal laws.
24. **Exclusion of Warranties:** Buyer and Seller exclude the implied warranties of merchantability and fitness for a particular purpose from this transaction.
25. **Express Warranty of Good & Clean Title: Express Warranty of Good & Clean Title:** Seller warrants that he conveys good and rightful title and that the timber is free from any

security interest or other lien or encumbrance in which Seller, at the time of contracting, has knowledge. The remedies for breach of this section are the same as remedies for breach of N.C. Gen. Stat. § 25-2-312.

26. **Express Warranty of Merchantability:** Seller warrants that the timber conforms to the description in this Contract and knows of no defects that would keep it from being sold as the products specified in the timber sales notice. The remedies for breach of this section are the same as the remedies for breach of N.C. Gen. Stat. § 25-2-314.
27. **Default:** Should Buyer violate any of the terms and conditions of this Contract and fail to remedy the situation to the satisfaction of the Consultant after notice and demand for remedy, Seller may declare this Contract to be in default and, at the Seller's option, (1) compel specific performance of this Contract; (2) suspend harvest operations until default has been remedied, or (3) cancel the Contract and seek other forms of relief available by law and/or equity.
28. **Assignment:** Buyer may not assign this Contract in whole or in part without consent of Seller secured in advance, and in the event of any such assignment Buyer will not be relieved of its duties hereunder unless such release is specifically given by Consultant in writing. Any attempt by Buyer to assign this Contract will relieve Seller of all obligations under this Contract. Buyer may contract or subcontract the cutting, logging, hauling, and removal of the timber without the written consent of the Seller's agent, but by doing so will not be relieved of any obligation under this Contract. Buyer may not sell or assign any rights to any other person or entity to cut, saw, or remove any of the timber as firewood.
29. **Entire Agreement:** This Contract signed by both parties constitutes a final written expression of all the terms of their agreement and is a complete and exclusive statement of those terms.
30. **No Oral Modification:** This Contract may be modified or rescinded only by a writing signed by both parties.
31. **Waiver:** Waiver by either Buyer or Seller of breach by the other party of any provision of this Contract is not a waiver of future compliance with the provision, and the provision remains in full force.
32. **Construction of Contract:** Buyer and Seller agree that no provision of this Contract shall be construed against or in favor of Buyer or Seller by virtue of authorship of this Contract.
33. **Governing Law:** This Contract shall be governed by applicable federal law and by the laws of the State of North Carolina without regard for its choice of law provisions.
34. **Dispute Resolution and Consent to Jurisdiction:** If any controversy or claim arises out of or relates to this Contract, the parties shall attempt pre-suit mediation prior to the

initiation of any lawsuit. Any action or proceeding related to this Contract shall be instituted and prosecuted in the Courts of the County of Brunswick and each party hereby waives any claim or defense relating to such jurisdiction and venue. The parties agree that neither may initiate binding arbitration.

35. **E-VERIFY:** Buyer shall comply with the requirements of Article 2 of Chapter 64 of the General Statutes. Further, if Buyer utilizes a subcontractor, Buyer shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the General Statutes.
36. **Divestment from Companies that Boycott Israel:** Buyer hereby certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. § 147-86.81.
37. **Debarment:** Buyer hereby certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this Contract by any governmental department or agency. Buyer must notify Seller within thirty (30) days if debarred by any governmental entity during this Contract.
38. **Non-Discrimination in Employment:** Buyer shall not discriminate against any employee or applicant for employment because of race, ethnicity, gender, gender identity, sexual orientation, age, religion, national origin, disability, color, ancestry, citizenship, genetic information, political affiliation or military/veteran status, or any other status protected by federal, state or local law or other unlawful form of discrimination. Buyer shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment. In the event Buyer is determined by the final order of an appropriate agency or court of competent jurisdiction to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be cancelled, terminated or suspended in whole or in part by Seller, and Buyer may be declared ineligible for further agreements with Seller.
39. **Governmental Immunity:** Buyer, to the extent applicable, does not waive its governmental immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.
40. **Signatures:** This Contract, together with any amendments or modifications, may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be considered one and the same agreement. This Contract may also be executed electronically. By signing electronically, the parties indicate their intent to comply with the Electronic Commerce in Government Act (N.C.G.S § 66-58.1 et seq.) and the Uniform Electronic Transactions Act (N.C.G.S § 66-311 et seq.). Delivery of an executed counterpart of this Contract by either electronic means or by facsimile shall be as effective as a manually executed counterpart.

ATTEST:

**BRUNSWICK COUNTY**

\_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Chairman, Board of Commissioners

[SEAL]

**CANAL WOOD, L.L.C.**

By: Kim Clemons

Printed Name: Kim Clemons

Title: Area Manager

Date: 7/11/2022

“This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.”

\_\_\_\_\_  
Aaron C. Smith, Director of Fiscal Operations  
Brunswick County, North Carolina

APPROVED AS TO FORM

\_\_\_\_\_  
Robert V. Shaver, Jr., County Attorney /  
Bryan W. Batton, Assistant County Attorney  
Brunswick County, NC