

UNOFFICIAL OFFICE CONSOLIDATION  
GOVERNMENT OF THE PROVINCE OF ALBERTA

FORESTS ACT

FOREST MANAGEMENT AGREEMENT

O.C. 67/97, dated at EDMONTON

February 5, 1997

including amendments authorized by O.C. 29/2002

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MEMORANDUM OF AGREEMENT

**BETWEEN:**

**HER MAJESTY THE QUEEN** in the right of the Province of Alberta, as represented by the Minister of Environmental Protection, (hereinafter referred to as "the Minister"),

OF THE FIRST PART

and

**TOLKO INDUSTRIES LTD.** a body corporate, extra-provincially registered under the laws of Alberta, with its Alberta head office located near the Town of High Prairie, Alberta, (hereinafter referred to as "the Company"),

OF THE SECOND PART

**WHEREAS** the Company owns and operates a major oriented strand board facility (the "OSB facility") located near the Town of High Prairie, Alberta for the manufacturing of oriented strand board with a rated annual capacity of 475,000,000 square feet of oriented strand board measured on a 3/8 inch basis;

**WHEREAS** the Crown has entered into a letter agreement (the "letter agreement") with the Company dated April 29, 1994 pursuant to which the Crown detailed on what basis and in what volume it would make available to the Company Crown timber for use in the OSB facility;

**WHEREAS** the Minister gave to the Company deciduous timber allocation certificate DTA S910001 (the "DTA"), which certificate commenced on May 1, 1994 and, absent this Agreement, is to expire on April 30, 2014, unless renewed in accordance with the terms thereof;

**WHEREAS** the Minister, recognizing the Company's needs for a forest management agreement to warrant the continued operation of its OSB facility, wants to provide for a perpetual sustained yield of timber for such operation;

**WHEREAS** it has been mutually agreed by the parties hereto that it is a convenient time to enter into a forest management agreement in place of the DTA to supply a portion of the Company's timber needs for the operation of its OSB facility; and

**WHEREAS** the Minister desires to provide for sustainable development of all resources and provide for the fullest possible economic utilization of timber from the forest management area and stable employment in local communities by maximizing the value of the timber resource base while maintaining a forest environment of high quality.

**NOW THEREFORE THIS AGREEMENT WITNESSETH** that in consideration of the premises, terms, conditions, covenants, stipulations, agreements and provisions herein contained, the Minister and the Company hereby agree as follows:

#### **DEFINITIONS**

1. (1) In this Agreement
  - (a) "annual allowable cut" is the amount of timber that may be harvested in any one year as stipulated in the pertinent forest management plan approved by the Minister;
  - (b) "commencement date" has that meaning provided for in paragraph 2(1) of this Agreement;
  - (c) "Crown" means Her Majesty the Queen in right of Alberta;
  - (d) "cubic metre" shall have the same meaning as that prescribed by the Timber Management Regulation;
  - (e) "cut control period" means a period of five consecutive forest management operating years or as otherwise agreed to by the Minister and the Company;
  - (f) "DTA" means the deciduous timber allocation certificate referenced in the third recital at the outset of this Agreement;
  - (g) "Department" means the Department of Environmental Protection of Alberta;
  - (h) "dollar" means Canadian currency of the value of one Canadian dollar, or the equivalent value in any other currency;
  - (i) "forest management area" refers to the tract of forest land over which the Company has been given management rights for establishing, growing and harvesting trees on a perpetual sustained yield basis for a defined period of time and as specifically defined in paragraph 3;
  - (j) "letter agreement" means the letter agreement referenced in the second recital at the outset of this Agreement;
  - (k) "OSB facility" means the Company's oriented strand board facility located near the Town of High Prairie that is referenced in the first recital at the outset of this Agreement;
  - (l) "Periodic Allowable Cut" is the total of the annual allowable cuts approved for a five year cut control period;
  - (m) "Scaling Regulations" means Alberta Regulation 336/79 authorized by Ministerial Order 40/79 and any amendments thereto or substitutions therefor;

- (n) "Surface Materials Regulation" means Alberta Regulation 11/79 and any amendments thereto or substitutions therefor;
  - (o) "Timber Management Regulation" means Alberta Regulation 60/73 authorized under Order-in-Council 309/73 and any amendments thereto or substitutions therefor; and
  - (p) "Timber Regulation" means Alberta Regulation 268/78 and any amendments thereto or substitutions therefor.
- (2) Any reference in this Agreement to a statute or regulation of Alberta shall mean for the purpose of this Agreement, those Alberta statutes and regulations as may from time to time be amended or such Acts or regulations as may from time to time be substituted therefore, and the terms defined in the *Forests Act* or the *Public Lands Act* or the regulations made thereunder shall for the purposes of this Agreement have the meaning given to them by those Acts and regulations as each may be amended or substituted from time to time.
2. (1) This Agreement shall commence on the 13th day of May, 1997 (hereinafter referred to as the "commencement date") and shall expire on the 12th day of May, 2017 unless renewed under the provisions of subparagraph (3).
- (2) It is the intention of the parties hereto to continue the rights of the Company under paragraph 7 to grow and harvest timber on the forest management area for additional terms of up to twenty years each beyond the initial twenty year term of this Agreement if, pursuant to subparagraph (3), mutual agreement thereon can be reached by the Minister and the Company and such agreement is approved by the Lieutenant Governor in Council.
- (3) Subject to the approval of the Lieutenant Governor in Council and provided that the Company is not in default on the expiry date of this Agreement as to any of the terms, conditions, stipulations, covenants, agreements and provisions of this Agreement, the Company shall be entitled to a renewal of this Agreement whereby its rights under paragraph 7 to establish, grow and harvest timber are continued provided that:
- (a) mutually acceptable terms, conditions, stipulations, covenants, agreements and provisions including further renewal provisions or other requirements can be negotiated at the time of renewal; and
  - (b) the Company gives notice to the Minister within nine (9) years following the commencement date of this Agreement of its desire to negotiate a renewal.
- (4) Where the Company gives the notice described under subparagraph 3(b), the Company and the Minister shall carry out negotiation respecting the renewal of this Agreement.
- (5) The Company and the Minister may agree to commence negotiations for a renewal term at any time earlier than the date specified in subparagraph (3).

## FOREST MANAGEMENT AREA

3. The Minister and the Company hereby enter into this Agreement in respect of the forest management area comprising, subject to paragraphs 4, 5 and 6, public lands within the boundaries shown outlined on the map registered with the Department, a copy of which is annexed hereto as Appendix "A".
4. Out of the forest management area the following are excepted:
  - (a) areas which are the subject of any existing timber dispositions issued pursuant to the *Forests Act*, prior to the date of this Agreement or areas in respect of which a timber disposition under the *Forests Act* is pending prior to the date of this Agreement;
  - (b) lands which are the subject of a disposition issued pursuant to the *Public Lands Act* prior to the date of this Agreement or lands in respect of which a disposition under the *Public Lands Act* is pending prior to the date of this Agreement;
  - (c) lands which have been reserved under section 17(d) of the *Public Lands Act* or in respect of which a reservation is pending prior to the date of this Agreement;
  - (d) the beds and shores of all permanent and naturally occurring bodies of water and all naturally occurring rivers, streams, watercourses and lakes;
  - (e) lands contained within any Provincial Park, Forest Recreation area, Natural Area or Ecological Reserve prior to the date of this Agreement.
5. Whenever any of the productive or potentially productive land excepted under paragraph 4.(a), (b), (c) or (d) or subsequently withdrawn from the forest management area becomes available for disposition and where such land is intended to be returned to timber production by the Minister, the Minister shall return these lands back to the forest management area in a productive or potentially productive state.

## WITHDRAWALS

6. (1) The Minister may, at any time in his discretion, after consultation with the Company with respect to the effect any such withdrawal may have on the forest management area, either permanently or for a specified term, withdraw from the forest management area:
  - (a) any land which cannot be logged without causing substantial harm to the water table or to lakes, rivers, streams or other bodies of water, to the margins of water courses or to roads;
  - (b) any lands required for rights-of-way, water resource and agricultural development or for any other purposes deemed by the Minister to be required for the human or physical resource development of the Province;
  - (c) any lands required for commercial and industrial purposes;
  - (d) any lands not capable of producing timber.

- (2) A withdrawal shall take effect:
- (a) on the date the notice of withdrawal is given by the Minister to the Company, or
  - (b) where the notice given states that the withdrawal shall take effect at a future date, on the date stated in the notice.
- (3) In the event, from time to time, of any withdrawal or withdrawals of land from the forest management area by the Minister under subparagraph (1):
- (a) for disposition to users other than the Crown, the Company shall be entitled to reasonable compensation from the users for any loss of profit or other damage or loss suffered by the Company, including by way of example, but without limitation, damage to timber, improvements, regeneration, forest growth, or to its operations on the forest management area resulting from such withdrawal;
  - (b) for use by the Crown where the net aggregate productive area withdrawn on a cumulative basis does not exceed 2% of the original net productive area of the forest management area, the Minister shall, after consultation with the Company, determine the compensation and arrange for reimbursement to the Company for the actual loss or damage resulting from such withdrawal to any improvements created by the Company's efforts, but not for any loss of profit, inconvenience nor increased costs reasonably incurred by the Company in harvesting an equivalent volume of timber elsewhere;
  - (c) for use by the Crown wherein the net aggregate productive area withdrawn on a cumulative basis does exceed 2% of the original net productive area of the forest management area, the Minister shall, after consultation with the Company, determine the compensation in respect of such excess and arrange for reimbursement to the Company for any increased costs reasonably incurred by the Company in replacing the lost volume of timber and for any loss or damage suffered by the Company, including damage to timber, regeneration, forest growth, improvements, or to its operations on the forest management area.
- (4) Compensation under subparagraph (3)(b) and (c) may be monetary or by the addition of available public lands to the forest management area or a combination of both.
- (5) If the administration and control of any of the lands comprising the forest management area is transferred to the Crown in right of Canada, the Company shall be entitled to compensation under subparagraph (3) as if the lands were withdrawn for use by the Crown.
- (6) For the purpose of paragraph 6, the net productive area is that land within the forest management area that contributes to the annual allowable cut, and for the purpose of applying subparagraph 6(3)(b) and (c):
- (a) the original net productive area of the forest management area means the net productive area of the forest management area established and agreed upon by both parties effective, on the commencement date of this Agreement less the original net productive area of forest management unit P3 as identified in Appendix "A" as of March 5, 2002; and

- (b) the net aggregate productive area withdrawn shall be calculated taking into consideration all exceptions and additions to the net productive area and all withdrawals to the net productive area under subparagraph (1) for use by the Crown.
- (7) To the extent possible, wherever compensation is to be paid for loss of profit, damage or other loss, such loss or damage shall be determined in accordance with the Department's stand damage appraisal table and associated guidelines as amended or replaced from time to time. Any loss of profit or other damage or loss suffered by the Company which cannot be determined in accordance with the Department's stand damage appraisal table and associated guidelines, as amended or replaced from time to time, shall be determined independent of such tables and associated guidelines.

#### RIGHTS OVER THE LAND

7. (1) Subject to all the terms and conditions of this Agreement, the Minister grants to the Company the right, during the term of this Agreement, to enter upon the forest management area to establish, grow, harvest and remove deciduous timber thereon on a perpetual sustained yield basis, and for the purposes of the construction, operation and maintenance of camps, roads, wood concentration yards and other installations necessary and incidental to the Company's logging and silviculture operations.
- (2) The Company shall have the right to harvest coniferous timber on the forest management area from stands which are managed for deciduous production where coniferous timber has been approved for harvest under the approved annual operating plan.
- (3) All incidental coniferous trees harvested by the Company shall be felled, skidded, decked and made available in accordance with a mutually acceptable business arrangement between the Company and the party using the incidental volume.
- (4) For the purpose of interpreting the *Surface Rights Act*, the Company is an occupant of the public lands comprising the forest management area.
- (5) The Minister shall cause land dispositions required within the forest management area for work such as roads, bridges, camps, timber processing operations and other necessary works incidental to the Company's harvesting and silvicultural operations to be issued to the Company without any dues or rental charges being paid but such dispositions shall otherwise be subject to any pertinent regulations.
- (6) Notwithstanding subparagraph (5), the Company may obtain sand and gravel needed for its operations under this Agreement from any vacant public land on the forest management area pursuant to the Surface Materials Regulation, subject to the payment by the Company of all required fees and royalties. In no case, however, shall the Company have to pay fees or royalties for in situ right-of-way material located and used where it is found within the right-of-way.
8. (1) It is recognized by the Minister that the Company's use of the forest management area for establishing, growing, harvesting and removing timber is to be the primary use thereof and that it is to be protected therein in keeping with the principles of sustainable forest management. In keeping with public values and recognizing that certain portions of the forest management area may be designated for other resource values, the Minister reserves all land rights on the

forest management area not specifically given hereby, including by way of example, but without limiting the generality of the foregoing:

- (a) the right of others to travel, hunt, fish and otherwise use the said lands for recreational purposes, subject only to any necessary restrictions approved by the Minister for the purpose of prevention of accidents, fire control, protection of wildlife and seasonal protection of roads;
  - (b) the right to authorize any person to conduct any work in connection with or incidental to geological or geophysical exploration pursuant to the *Mines and Minerals Act*, or the Exploration Regulations; provided that, the Company shall be entitled to reasonable compensation, from the person or company which holds the authorization to conduct such exploration, for any loss or damage suffered by the Company and resulting from such exploration including, by way of example but without limitation, any damage to timber, forest growth, regeneration, improvements or to any of its operations on the forest management area; provided that the Company shall not be entitled to compensation for damage to timber or forest growth caused by such geological or geophysical exploration where the right to cut such timber has been granted to a third party under timber license or permit;
  - (c) the right to maintain or enhance forest resource values, including fish and wildlife resources;
  - (d) the right to authorize trapping and, after consultation with the Company, to authorize domestic stock grazing provided, however, that the growth performance of the managed species is not impaired and the regeneration will not be damaged by domestic stock grazing to the point where the overall stocking is reduced below the reforestation standard as set out in the Timber Management Regulation and provided the Company's rights to manage the area for timber production is not significantly impaired.
- (2) The Minister also reserves the following rights to the timber on the forest management area:
- (a) the right to issue licences and permits to the existing quota holders listed in Appendix "B" to maintain their operations but shall not increase the annual allowable cuts of those existing quota certificates beyond normal volume increases under the provisions which exist in the quota certificates and provided for by legislation, but shall not issue any new or additional quota certificates except as provided for in subparagraph (2)(c);
  - (b) the right to manage and reforest tree species on any lands which may be required to maintain the quota annual allowable cuts;
  - (c) after consultation with the Company, the right to issue coniferous timber permits or quota certificates and licences for that percentage of the annual allowable cut which, at the date of this Agreement, was the subject of a quota listed in Appendix "B" but which ceases to be the subject of a quota, whether listed in Appendix "B" or not;
  - (d) the right, after consulting with the Company, to issue deciduous timber permits from within the forest management area to provide timber for local use in construction and maintenance of public works by any local authority, municipality, county, the Crown in the right of Alberta or Canada and for

local residents provided, however, that the total volume of timber cut under authority of such permits does not exceed 2,000 cubic metres annually;

- (e) the right, after consulting with the Company, to issue timber dispositions from within the forest management area to maintain the existing miscellaneous timber use program.
  - (f) the right to issue an annual timber permit to meet the Minister's commitment under the Memorandum of Agreement between the Chief and Council of the Whitefish Lake First Nation and the Province of Alberta dated December 12, 1994.
- (3) The Minister and the Company agree to provide, each to the other, in confidence, such available information as the Minister or the Company may reasonably request concerning operations on the forest management area which are authorized under timber disposition. The Minister shall consult with the Company on an ongoing basis as may be required to minimize any conflict on the forest management area between the operations authorized under timber dispositions issued pursuant to subparagraph (2) and the operations of the Company.

## **FOREST MANAGEMENT**

### **A. GENERAL PROVISIONS**

9. On the forest management area the Company shall follow sound forestry practices, including landscape elements, in managing the land base for the purpose of achieving and maintaining a perpetual sustained timber yield from the productive forest land base without reducing the productivity of the land.
10. (1) Before the Company submits a plan referred to in subparagraphs (2), (3) and (4) to the Minister for his review and approval, the Company shall:
- (a) make the necessary arrangements required for and shall conduct public presentations and reviews of their proposed forest management plans; and
  - (b) provide the opportunity for third parties holding timber quota(s) and commercial timber permits(s) on the forest management area to participate, as specified in the forest management planning manual, in the formulation of the Company's proposed forest management plans to ensure that the long-term sustainable objectives and principles of forest management are maintained.
- (2) After these presentations and reviews with the public, quota holders and permittees, the Company shall incorporate in the forest management plan its response to the concerns raised by the public, quota holders and permittees respecting the proposed forest management plan and shall submit this plan to the minister within the time specified in subparagraphs (3), (4), or (5) as the case may be for the Minister's review and approval.
- (3) Not more than twelve months following the commencement date of this Agreement, the Company shall submit for the Minister's approval a preliminary forest management plan. Upon the Minister approving such preliminary forest management plan, the Minister shall cancel the DTA. For greater certainty, prior to approval of the preliminary forest management plan, the Company shall



continue to conduct harvesting of timber under the authority, and in accordance with the terms, of the DTA.

- (4) Not more than five years after the commencement date of this Agreement, the Company shall submit for the Minister's approval a detailed forest management plan.
  - (5) Not later than the tenth anniversary of the commencement date of this Agreement the Company shall submit for the Minister's approval a revised detailed forest management plan, and this revised plan when approved will replace that plan approved under subparagraph (4).
  - (6) The Company shall prepare the forest management plans referred to in subparagraphs (3), (4) and (5) in accordance with the forest management planning manual prepared by the Minister, as amended from time to time. The planning manual contains provisions respecting the contents and preparation of forest management plans, and forest operations prescriptions, including public involvement and decision making processes.
  - (7) The Minister may require the Company, after discussing any proposed changes with the Company, to alter any of the methods described in its forest management plans before approving such plans.
  - (8) The Minister agrees that so long as a plan, required by virtue of this paragraph 10, has been submitted by the Company within the time periods herein specified and provided that such plan complies with the requirements of this Agreement, unless the Minister has sent a notice under paragraph 12, the Company is hereby authorized to continue to carry on its operations pursuant to the existing approved plan, pending approval being granted by the Minister to the new plan submitted by the Company.
11. Subject to paragraphs 10(3) and 10(8), the Company may not commence or carry on any construction project or any operation on the forest management area until the relevant plans which are required to be submitted pursuant to this Agreement have been submitted by the Company and approved in writing by the Minister. The Company may not materially digress from the approved plans without the Minister's consent in writing, with the understanding that the Minister shall provide a full explanation whenever consent is withheld.
  12. When, in the opinion of the Minister, any plan approved by him becomes obsolete or inadequate, he may, by reasonable notice in writing, require the Company to submit a revised plan for his approval within a specified time, or within any extended time he may subsequently allow.
  13.
    - (1) The Company shall schedule in its management plans and annual operating plans for the Minister's approval areas available for harvesting by timber licensees and permittees.
    - (2) The Minister shall consult with the Company concerning proposed areas and methods of harvesting by timber licensees and permittees in the forest management area before designating the areas in which their operations may be carried on.
    - (3) The Company shall, through sustainable forest management planning, make reasonable efforts to integrate and coordinate the management and harvesting of

the forest resources with timber licensees and permittees operating within the forest management area.

14. (1) The Minister shall require timber licensees and permittees operating within the forest management area to conduct all harvesting operations in accordance with the Company's approved plans and to refrain from hindering or obstructing the lawful operations of the Company.
- (2) The Company shall have the right to negotiate the purchase of timber quota certificate or negotiate other arrangements with holders of certificates, licenses and permits in order to combine timber harvesting operations for maximum utilization of timber resources.
15. (1) The Company shall conduct such forest inventories of the forest management area as are necessary to prepare the plans required by this Agreement.
- (2) The Company shall maintain a reasonably complete and accurate forest inventory collected to Alberta Vegetation Inventory standards version 2.1 of the forest management area, or as otherwise mutually agreed, and shall update all depletions and reforestation.
- (3) The Company shall establish and implement a growth and yield program as part of the detailed management plan on lands within the forest management area.
- (4) The growth and yield program will include the establishment of a system of permanent sample plots which will be used to monitor the results of different silvicultural systems during the term of this Agreement so as to provide accurate information for the preparation of reliable coniferous and deciduous yield tables.
- (5) All information and data related to the forest management area that has been collected by the Company or the Minister relating to forest inventory, other resource uses, the inventory referred to in subparagraph (2), growth and yield data, reforestation results and operational and detail planning maps, shall be made available to the Minister, or the Company, whichever is the case, free of charge upon request and on a confidential basis if so requested.
16. (1) The Company shall conduct their timber harvesting and reforestation operations in accordance with the approved "Alberta Timber Harvest Planning and Operating Ground Rules" until such time as they are replaced by the established set of ground rules under subparagraph (2).
- (2) Within six months following the approval of the detailed management plan under paragraph 10(4), the Minister and the Company shall jointly develop a new set of ground rules consistent with the management plan objectives, for the preparation of operating plans and to guide harvesting and reforestation operations.
- (3) If a set a ground rules cannot be established by mutual agreement after good faith negotiations, the Minister may establish new ground rules but only with the approval of the Lieutenant Governor in Council.
- (4) At the initiative of any party the established or new ground rules shall be reviewed jointly by the Minister and the Company. These ground rules may be altered by mutual agreement of the Minister and the Company.

17. (1) The term of this Agreement shall be divided into four cut control periods each with a duration of five years. The annual allowable cut shall be recalculated when requested by either the Minister or the Company and not later than by the end of the second control period.
- (2) If the Company overcuts the Periodic Allowable Cut the Minister shall reduce the allowable cut during the subsequent cut control period by an amount equivalent to the entire overcut volume, except to the extent the overcut results from the salvage of dead, damaged, endangered, diseased, decadent or fire-killed timber.
- (3) Where production is lower than the Periodic Allowable Cut, the Company may submit a program satisfactory to the Minister making up the undercut volume in the subsequent cut control period.
18. (1) The Company shall forthwith upon the commencement of this Agreement establish a forest management operating year that shall commence and end on dates approved by the Minister.
- (2) The Company shall submit to the Minister an annual operating plan in accordance with the ground rules established under paragraph 16.
- (3) Each annual operating plan shall be prepared in accordance with the approved forest management plan and shall include an operating projection showing the proposed harvesting operation intended by the Company. Such operating projection shall be in accordance with and shall cover the period of time specified in the ground rules established under paragraph 16.
- (4) The Minister may approve such plans as are submitted, or may require the Company, after discussing any proposed changes with the Company, to alter any harvesting operations described in the plans, provided that the Minister shall not thereby alter the ground rules and acts promptly so as to avoid delay in the Company's operations.
- (5) When the annual operating plan does not provide for the salvage of dead, damaged, endangered, diseased, decadent or fire killed timber, the Minister may give notice to the Company that he requires provision for its salvage in such annual operating plan. The Company shall have thirty days from the date on which such notice is given to it by the Minister within which to amend the annual operating plan or to justify the exclusion of such timber from its annual operating plan. If the Company fails or elects not to do either of the foregoing within such period, the Company shall not be deemed to be in default and the Minister may dispose of such timber to any person by license or permit not exceeding one year in duration without compensating the Company and the volume of timber so disposed may be charged by the Minister as production against the forest management area.
19. The Company shall use every reasonable effort to purchase roundwood if required by the Company and if offered to the Company at prevailing market prices, provided that the roundwood possesses a standard of quality suitable in the opinion of the Company for use in facilities of the Company.
20. The Company shall utilize all merchantable timber on the forest management area which is cut in road construction and other incidental operations of the Company unless otherwise permitted in writing by the Minister.

21. The Company shall not hinder or obstruct the lawful timber operations of licensees and permittees.
22. (1) It is recognized that during their operations, the licensees and permittees may cause some incidental damage to timber. No claim shall be made by the Company against any licensee, permittee or the Minister for reasonably unavoidable incidental damage to timber.
- (2) The Minister shall ensure that all timber licences and permits issued on the forest management area after the commencement date of this Agreement shall include a provision preventing a claim against the Company for reasonably unavoidable incidental damage to timber.

#### **B. REFORESTATION**

23. (1) The Company shall reforest at its own expense all lands cut over by the Company under this Agreement and under the DTA to the required reforestation standard and shall describe its reforestation program in their management and operating plans.
- (2) In this Agreement the required reforestation standard means the reforestation standard under the Timber Management Regulation.
24. (1) As part of its operations under this Agreement the Company shall, at its sole expense, furnish all of the seedling trees and propagules required for its reforestation needs.
- (2) Seed, seedling trees and propagules used for reforestation programs under this Agreement shall be produced in accordance with the rules established by the Minister governing the source and type of tree seed and species used to reforest public land.
25. (1) The Company shall pay reforestation charges on all coniferous timber cut by the Company from stands which are managed for deciduous production at the rates set out in the Timber Management Regulation, into an accrual account to be maintained by the Company during the term of this Agreement.
- (2) To the limit of the accrual account, the Company shall withdraw funds from the accrual account under subparagraph (1) solely for use in progressively reforest to coniferous or mixedwood, lands in the forest management area identified within the approved detailed forest management plan and specifically in the Company's approved annual operating plans.
- (3) The Company shall annually, and otherwise as requested by the Minister, provide a complete and accurate record of the accrual account under subparagraph (1) and the reforestation work completed to date and the planned reforestation work to be completed in accordance with the Company's approved annual operating plans.
- (4) Without limiting the foregoing and for greater certainty, the Company shall have no liability to the Crown or to any other operator respecting reforestation of coniferous stands beyond the limit of the actual funds on deposit in the accrual account established under subparagraph (1).
26. The Company shall be solely responsible for reforesting to the required reforestation standard all productive and potentially productive lands burned by fire within the forest

management area, when the fire has been caused by the Company, its employees, agents or contractors.

27. (1) The Company may devise and implement more intensive silvicultural practices than those required under this Agreement. The Company and the Minister may enter into an agreement which will define the programs and conditions that, in the Minister's opinion, will establish a sustainable increase in the allowable cut approved by the Minister in the Company's management plans submitted under paragraph 10.
- (2) Where the Company implements the intensive silviculture program under the terms of such an agreement, and where the Minister and the Company agree on the amount of additional annual allowable cut which will result from the Company's silviculture efforts over and above those required under this Agreement and the *Forests Act*, then such additional annual allowable cut shall be offered by the Minister to the Company free of timber dues provided the Minister has been duly authorized to do so by regulation passed under section 4 of the *Forests Act*.
- (3) The additional annual allowable cuts resulting from the Company's intensive silvicultural efforts will only be offered to the Company after the Company has fully utilized the annual allowable cut approved in the Company's management plans.
- (4) The additional annual allowable cuts agreed upon by both parties under subparagraph 27(2) shall not be used for the purpose of calculating the Periodic Allowable Cuts for cut control purposes specified in paragraph 17.

#### C. FOREST PROTECTION

28. (1) The Minister shall provide and maintain an organization of people and equipment necessary for the protection of the forest from and suppression of forest fires on the forest management area and, except as herein otherwise provided, to pay the cost of fighting any forest fire that originates on the forest management area on the understanding that the Minister will not be liable for damages to the Company resulting from a failure to prevent, control or suppress any fire.
- (2) Notwithstanding subparagraph (1), the Company shall pay the cost of suppressing any forest fire that originates on the forest management area if the fire is caused by or arises out of any of the operations or activities conducted on the forest management area by the Company, its employees, agents or contractors; provided, however, that in no event shall the liability of the Company exceed the liability provided for in a separate Fire Control Agreement which may be negotiated and entered into by the Minister with the Company. Until such time as a Fire Control Agreement has been entered into, the Company agrees to have on hand in good working order such fire fighting equipment and shall train such employees in fire suppression as specified by the Minister in accordance with the *Forest and Prairie Protection Act* and the regulations thereunder. If the cause of any fire is disputed by the Company, the dispute shall be resolved by means of civil suit in the Courts of Alberta.
- (3) Notwithstanding anything contained in this Agreement, the Company shall not be liable for loss of or damage to Crown timber by fire that is caused by or arises out of any of the operations or activities conducted on the forest management area by the Company, its employees, agents or contractors.

- (4) In the event of an occurrence of insect damage of epidemic nature to forest growth or a disease epidemic affecting forest growth on the forest management area the parties hereto will cooperate in suppressing the epidemic.

#### **RECORDS AND SCALING**

29. (1) All scaling and measuring of timber weights and volumes shall be conducted in accordance with the Timber Regulation, the Scaling Regulation and the published instructions of the Department.
  - (2) The Company shall maintain in the form and in the manner approved by the Minister complete and accurate records of the operations it conducts on the forest management area.
  - (3) The Minister, or any person authorized by the Minister, may inspect the records maintained by the Company pursuant to subparagraph (2).
30. (1) Unless otherwise prescribed in the Timber Management Regulation, within thirty days of the termination of every calendar quarter, the Company shall submit in confidence to the Minister in writing, on a form prescribed by the Minister, a return reporting:
    - (a) the volume of timber cut by and for the Company;
    - (b) the volume of timber cut or destroyed by others for which the Company is entitled to compensation under this Agreement;
    - (c) the volumes of primary timber products manufactured and sold by and for the Company from its manufacturing facilities in Alberta; and
    - (d) the volume of timber and primary timber products purchased for use in its mills in Alberta, the names of all persons from whom timber and primary timber products were purchased, the geographic destination of timber and primary timber products sold by the Company from its operations in Alberta and the land from which the timber was cut.
  - (2) The Company shall remit to the Minister with its returns the amount of all dues payable for the volume of timber shown on such returns.

#### **CHARGES AND DUES**

31. (1) Once a year during the term of this Agreement, the Company shall pay to the Minister on or before a date specified by the Minister a holding and forest protection charge assessed in accordance with subparagraphs (2) and (3).
- (2) Initially, on the commencement date of this Agreement the charge in subparagraph (1) will be \$190,000.
- (3) Subsequent holding and forest protection charges shall be adjusted annually on the anniversary of the commencement date of this Agreement using the Annual Implicit Price Index for government current expenditure in goods and service, as published by Statistics Canada, in the following formula:

$$\text{Charge for Year of Payment} = \text{Charge for Previous Year} \times \frac{\text{Index for Year Prior to Year of Payment}}{\text{Index for Second Year Prior to Year of Payment}}$$

Example:

$$1998 \text{ Holding and Protection Charge} = \$190,000 \times \frac{1997 \text{ Index}}{1996 \text{ Index}}$$

In the event that the Annual Implicit Price Index is no longer published or in the event of a change in the method used to calculate the Index, the Minister and the Company shall mutually and reasonably agree on a comparable published index to be used in the above formula.

- (4) Notwithstanding subparagraph (3), the Lieutenant Governor in Council may by regulation establish the amounts of annual holding and protection charges to be paid by the Company. After the first cut control period, if the holding and protection charges are established by regulation then such holding and protection charges established by regulation shall replace those charges established under this paragraph provided those regulations are of general application (subject only to limitations imposed by contract).
32. (1) For all timber on the forest management area cut for or by the Company or for which the Company is entitled to compensation, the Company shall pay to the Minister timber dues at the rates established under the Timber Management Regulation.
- (2) The Company agrees to financially support such programs as enhance the management activities and level of understanding of the forest resources and forest products as the Company determines, in its sole discretion. The Company agrees that the minimum annual expenditure for such programs, in aggregate, will be an amount equal to \$0.25 per cubic metre based on all timber cut by or for the Company for the forest management area.
- (3) The Company shall annually and otherwise as requested by the Minister, provide a report that details the activities of the programs referred to in subparagraph (2).

#### FACILITY CONSTRUCTION AND OPERATION

33. The Company agrees to make reasonable efforts to comply with the Alberta Industrial Benefits Strategy. When requested by the Minister of Economic Development and Tourism the Company shall provide a report on its industrial benefits activities and achievements in support of the Alberta Industrial Benefits Strategy.
34. (1) If, at any time the OSB facility ceases to be in production and operation for a period of twelve consecutive months the Minister shall have the right to issue short term deciduous timber dispositions to third parties on the forest management area for up to 100% of the approved deciduous annual allowable cut until such time as the Company resumes production and operation of the plant.
- (2) Notwithstanding subparagraph (1) if the OSB Facility ceases to be in production and operation for a cumulative, but not necessarily consecutive, period of thirty-six months, the Minister shall have the right to cancel this Agreement.

- (3) The Company will notify the Minister, in writing, of any intended major reduction in production levels of its OSB facility at High Prairie, Alberta, and such notification will, to the extent possible, be submitted to the Minister at least six weeks prior to the intended reduction taking effect.

#### GENERAL PROVISIONS

35. (1) If the Company at any time is in default under any of the covenants, terms, conditions, provisions, agreements and stipulations in this Agreement, the Minister may give notice to the Company setting out the default complained of and requiring the Company to remedy the default within six months of the giving of notice.
- (2) The Lieutenant Governor in Council may from time to time extend the period during which the Company is required to remedy any default complained of in a notice given pursuant to subparagraph (1).
36. The Minister shall have the right to have the Company perform all the covenants, terms, conditions, stipulations, provisions and agreements and obligations upon it as contained in this entire Agreement or to sue the Company for damages for any breach or breaches thereof and the Minister shall also have the right to cancel this Agreement as set forth in paragraph 38 and the rights of the Minister to have the Company perform the Agreement and to sue for damages as aforesaid as well as the right of cancellation shall be construed as additional remedies to forfeiture and not an alternative to it.
37. When any default or delay by the Company in the performance or observance of any of the terms, conditions, provisions, agreements, covenants and stipulations of this Agreement is occasioned in whole or in part through:
- (a) industrial disputes;
  - (b) government review or judicial proceedings respecting forest management impact of woodland operations or the possible environmental impact of the mill facilities, or
  - (c) interruption which is not the result of any wilful or negligent act or omission by the Company, such as power failure, fire, sabotage, tempest, war or acts of God

and not avoidable by reasonable effort or foresight, the Company shall not be deemed in default under this Agreement and the time for performance or observance of such term, condition, provision, agreement, covenant or stipulation shall be extended by such reasonable period of time as the Minister may specify in writing to the Company.

38. (1) Except as otherwise provided in paragraph 34, the Minister may, by giving the Company ninety (90) days notice in writing, cancel this Agreement when:
- (a) any goods or chattels of the Company which are located in or about the Town of High Prairie, Alberta and which constitute a material part of the Company's assets located thereat, are lawfully seized or taken in execution by a creditor of the Company, and the Company has failed to take any legal action to contest the same within ninety (90) days after such seizure or taking, or
  - (b) the Company makes an assignment in bankruptcy or takes the benefit of any Act in force for bankrupt or insolvent debtors, or



- (c) the Company fails from time to time to observe or perform any of the covenants, stipulations, terms, conditions, provisions and agreements required to be observed or performed by the Company under this Agreement, and having been given notice of such failure under paragraph 35 of this Agreement, fails to remedy such failure within the time allowed by the said paragraph for so doing, or any extension thereof given by the Lieutenant Governor in Council.
- (2) Subparagraphs (1)(a) and (b) do not apply if a trustee for the holders or receiver managers or the holders themselves of bonds, debentures, or other securities of the Company exercises any rights or remedies contained in any deed of trust or mortgage or other agreement under which such bonds, debentures or other securities are issued or secured, including but without restricting the generality of the foregoing, the taking of possession by the trustee, receiver managers or the holders themselves of the Company's properties and assets and the operation or disposition thereof for the benefit of the holders of the Company's bonds, debentures or other securities.
39. The Minister does not guarantee any quality or quantity of timber on the forest management area.
40. No implied contract of any kind by or on behalf of the Minister shall arise or be construed from anything contained in this Agreement and the only rights, powers and privileges granted to the Company are those contained in this Agreement.
41. The Minister and the Company agree that the lines on the map shown in Appendix "A" hereunto annexed are intended, where those lines outline areas that are not surveyed, to be the survey lines of the townships, sections, or half sections, as the case may be, that would exist if such areas were surveyed under the system of township surveys prescribed by the *Surveys Act*.
42. The Company shall comply with and observe all the provisions and requirements of all relevant Acts of the Province of Alberta and the regulations thereunder in force from time to time that apply to the Company or to this Agreement either specially or generally by express wording or by implication.
43. The Company shall during the term of this Agreement maintain an office in the Province of Alberta and maintain a registration under the *Business Corporations Act* and its regulations.
44. (1) Excepting a dispute arising under paragraph 28(2), where any dispute arises between the parties to this Agreement concerning the application or interpretation of this Agreement the dispute may be referred to arbitration pursuant to the *Arbitration Act* but only upon the mutual agreement of both parties.
- (2) Where both parties do not agree to refer a dispute concerning this Agreement to arbitration as provided in subparagraph (1), the dispute shall be resolved by means of civil action before the Courts of the Province of Alberta.
45. (1) The Company shall not assign this Agreement or any of the rights granted to it by this Agreement without the consent of the Minister in writing and such consent may in his sole discretion be withheld. Where the Minister refuses consent to an assignment, he shall advise the Company in writing of his reasons for so refusing.

- (2) Subparagraph (1) does not apply to:
- (a) the employment of one or more contractors in the normal conduct of its operations;
  - (b) an assignment or transfer of this Agreement by way of mortgage or charge or the grant of a security interest in this Agreement to lenders to or trustees for lenders to the Company;
  - (c) an assignment or transfer to a person, firm or corporation upon the sale or other disposition by or on behalf of lenders to or trustees for lenders referred to in subparagraph (2)(b) in the course of realization or enforcement of security against the mill facilities, provided that any such assignment, transfer or other disposition shall not be made without the consent of the Minister in writing, such consent not to be unreasonably withheld.
46. Any waiver by the Minister of the strict performance by the Company of its covenants or of any term, condition, stipulation, agreement or provision under this Agreement is not binding upon the Minister unless such waiver is expressed in writing under the authority of the Minister, and any such waiver or any extension of time granted by the Lieutenant Governor in Council hereunder shall not abrogate such or any covenant, term, condition, stipulation, agreement or provision herein or constitute a waiver or extension of time as to any subsequent breach of the same or any other covenant, term, condition, stipulation, agreement or provision herein.
47. The Company covenants and agrees to observe, perform and keep all covenants, terms, conditions, stipulations, agreements and provisions herein on its part to be observed, performed and kept and time shall be and remain of the essence thereof and notwithstanding any binding waiver given by the Minister as referred to in paragraph 46 or any extensions of time given by the Lieutenant Governor in Council under this Agreement that thereby may affect the time for performing any particular act, covenant, term, condition, stipulation, agreement or provision of this Agreement herein, time shall remain of the essence pertaining to all subsequent performance by the Company of any and all acts, covenants, terms, conditions, stipulations, agreements and provisions herein contained and to this entire Agreement.
48. (1) The Company assumes liability for and shall pay all claims of the Minister for all damages to any real or personal property (other than timber) of the Crown caused by the Company, its servants, agents, workmen and contractors, whether or not the damage so caused is due to the negligence of the Company, its servants, agents, workmen and contractors, as the case may be, provided that such liability under this subparagraph shall not include economic loss or incidental and consequential loss and damage.
- (2) Subparagraph (1) shall not restrict, in any manner, the ability of the Minister to pursue the Company under the common law for economic loss or incidental and consequential loss and damage, which liability may be resolved by means of arbitration pursuant to the Arbitration Act with the mutual agreement of both parties, or failing such agreement, by civil action before the courts of the Province of Alberta.
49. The Company agrees to hold harmless the Minister from any and all third party claims, demands or actions for which the Company is legally responsible, including those arising out of negligence, willful harm, or crimes by the Company or the Company's employees or agents.

50. The Company shall submit to the Minister when required any information or documents the Minister may reasonably request in respect of matters relating to this Agreement for the purpose of verifying the Company's continued compliance with the terms of this Agreement.

51. Any notice required to be given under this Agreement shall be deemed to be well and sufficiently given if delivered to the address set out below or if mailed at any government post office in the City of Edmonton, Alberta by prepaid registered mail addressed as follows:

(a) to the Company:

Tolko Industries Ltd.  
Bag 3000  
High Prairie, Alberta T0G 1E0  
Attention: President

(b) to the Minister:

Minister of Environmental Protection  
Legislature Building  
Edmonton, Alberta T5K 2B7

or to such other address any party may from time to time inform the other party in writing, and any such notice shall be deemed to have been received on the fourth business day after the mailing thereof, or if delivered, when delivered; provided that if mailed should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down or other labour dispute which might affect the delivery of such notice then such notice shall only be effective if and when actually delivered.

52. This Agreement is made subject to the approval of the Lieutenant Governor in Council.

53. (1) The Company agrees that the Minister shall cancel the DTA upon approval of the Company's preliminary forest management plan under paragraph 10(3); provided however, if the forest management area does not include all areas covered by the DTA, the Minister shall cause to be concurrently issued to the Company, for the sum of One (\$1.00) Dollar, a deciduous timber allocation for those portions of the forest management units originally forming part of the DTA that are not included in the forest management area.

(2) Except in circumstances where this Agreement is canceled in accordance with paragraph 34.(2), in all other circumstances if this Agreement is canceled the Minister shall grant to the Company, for the sum of One (\$1.00) Dollar, a deciduous timber allocation in the forest management area for the volume of deciduous timber that becomes available as a result of the cancellation of this Agreement.

(3) The obligations of the Minister to grant a deciduous timber allocation under subparagraph (2) shall survive cancellation of this Agreement.

54. This Agreement inures to the benefit of and is binding upon the Crown and Her assigns, and the Company and its successors and assigns if approved by the Minister in accordance with the provisions of this Agreement.

55. This Agreement shall be construed as having been made in the Province of Alberta and the laws of the Province of Alberta shall be applied in the event of any action or arbitration mutually agreed to, respecting any dispute arising from this Agreement, its formulation, interpretation, and each and every other aspect pertaining to or resulting from its entire contents.

IN WITNESS WHEREOF the party of the first part executes this Agreement under the hand of the Minister subscribed hereunder and the party of the second part executes this Agreement by subscribing hereunder the signatures of its duly authorized corporate officers at Edmonton, AB. this 13th day of May, 1997.

Her Majesty the Queen  
In Right of Alberta

D. McKay  
Witness

L. Lund  
Minister of Environmental Protection

[Signature]  
Witness

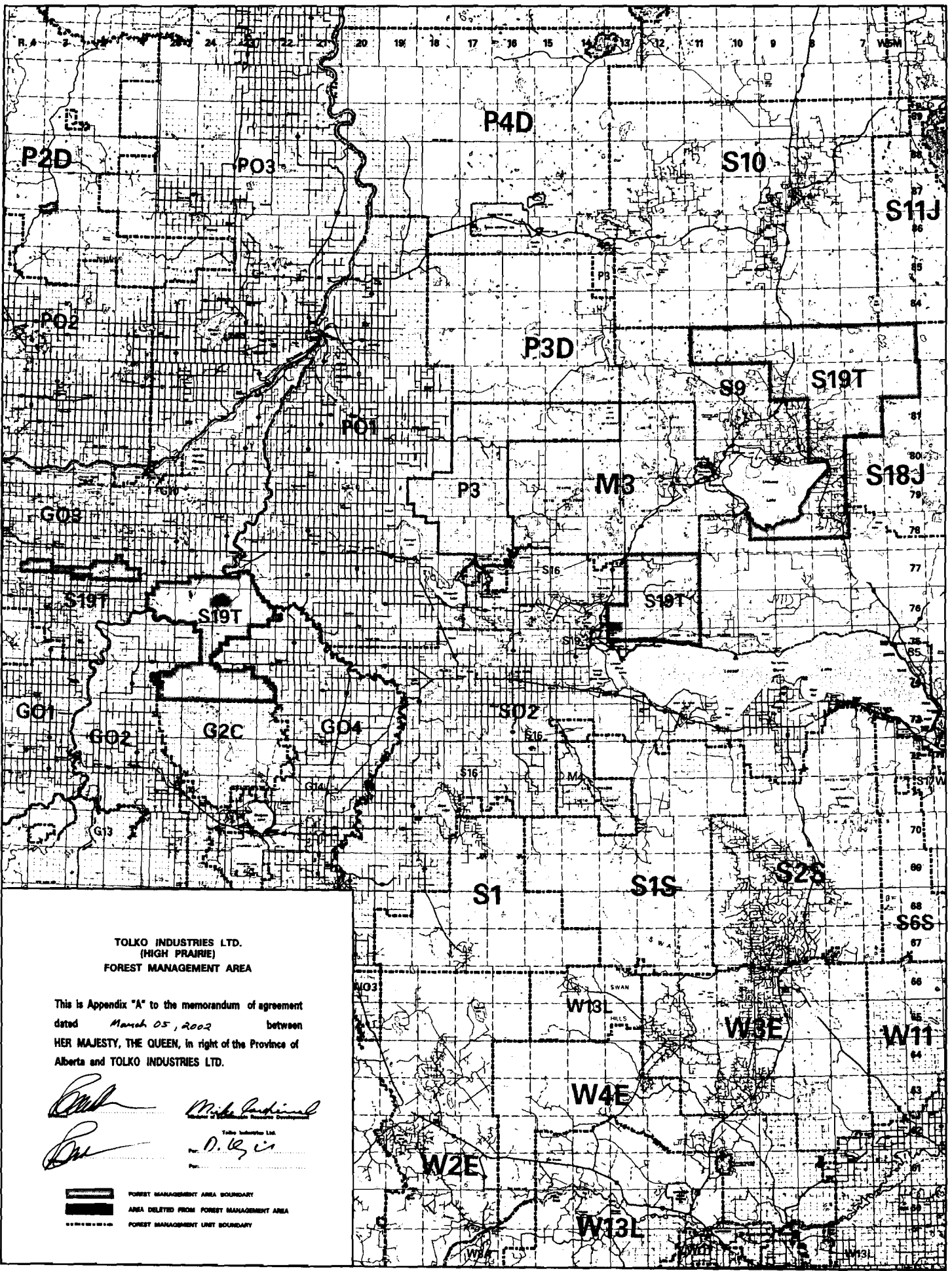
Tolko Industries Ltd.

[Signature]  
Witness

Per: [Signature]

[Signature]  
Witness

Per: [Signature]



**TOLKO INDUSTRIES LTD.  
(HIGH PRAIRIE)  
FOREST MANAGEMENT AREA**

This is Appendix "A" to the memorandum of agreement dated *March 05, 2002* between HER MAJESTY, THE QUEEN, in right of the Province of Alberta and TOLKO INDUSTRIES LTD.

*[Signature]*  
*[Signature]*  
 Tolko Industries Ltd.  
 P. D. G. C.

-  FOREST MANAGEMENT AREA BOUNDARY
-  AREA DELETED FROM FOREST MANAGEMENT AREA
-  FOREST MANAGEMENT UNIT BOUNDARY

**TOLKO INDUSTRIES LTD.**

**APPENDIX "B"**

**A. CONIFEROUS QUOTA HOLDERS WITHIN THE FOREST  
MANAGEMENT AREA**

1. Alberta Plywood Ltd.

**B. CONIFEROUS QUOTA CERTIFICATES ISSUED WITHIN THE FOREST  
MANAGEMENT AREA**

CTQS090002