

**RIGHT OF WAY AGREEMENT
(Timber)**

THIS RIGHT OF WAY AGREEMENT ("Agreement"), made this 1st day of November, 1997, by and between IMPERIAL COLLIERY COMPANY, a West Virginia corporation ("Imperial"); MIDVALE COLLIERY COMPANY, a West Virginia corporation ("Midvale"); and BANK ONE, WEST VIRGINIA, N.A., a national banking association, as Trustee Under the Last Will and Testament of T. A. Deitz, Deceased (the "Trustee"), Midvale and the Trustee being hereinafter referred to collectively as the "Grantees";

WHEREAS, Imperial is the owner of real property on or near Gauley Mountain, and on Rich Creek and Gauley River in Fayette County, West Virginia, which property is hereinafter referred to as the "Imperial Property", an outline of which is generally shown on the map attached hereto marked Appendix A; and

WHEREAS, Grantees separately own tracts of land adjoining the Imperial Property, which tracts (hereinafter referred to as "Grantees Property", an outline of which is generally shown on the map attached hereto marked Appendix A, were leased to Imperial for coal mining purposes by Agreement of Lease dated May 1, 1967, between Midvale, The Charleston National Bank, a national banking association, as sole remaining trustee under the Last Will and Testament of T. A. Deitz, Deceased (predecessor to the Trustee) and Imperial, which Agreement of Lease is hereinafter referred to as the "Coal Lease"; and

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DEC 9 2 22 PM '97
ADMITTED TO RECORD
FAYETTE COUNTY
COMMISSIONER

WHEREAS, Grantees desire to obtain from Imperial a right of way over the Imperial Property for the purposes set out hereafter.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of all of which is hereby acknowledged, Imperial does hereby GRANT and CONVEY to Grantees a nonexclusive right of way for road purposes only over portions of the Imperial Property upon the following terms and conditions:

1. The location of the right of way hereby granted shall be limited to all existing roads, roads hereafter built by Imperial and any roads or road extensions hereafter constructed by Grantees or either of them with the prior written consent of Imperial. If Grantees or either of them desire to construct a road or extension at no cost to Imperial, application shall be made to Imperial for consent to do so, specifying the location of the proposed road. Imperial must respond within thirty (30) days and consent to the road construction and location shall not be unreasonably withheld. This right of way shall include the bridge over the Gauley River at Beech Glen, to the extent that Imperial has the right to use such bridge and grant such rights to Grantees. In the event Imperial determines that the portion of CSX railroad right of way no longer in use by the railroad will be used by vehicular traffic rather than for railroad use, then Grantees shall thereupon have the right to use such portion under this Agreement.

2. The right of way hereby granted shall be used for access to public roads (including Routes 60/3 and 60/7) but only for traffic related to or in support of timbering operations. At least 30 days before commencing timbering operations, Grantees shall notify Imperial of the commencement date and the location of the roads to be used.

3. This right of way shall be for the benefit only of Grantees Property and any future contiguous additions to such property. The rights granted hereunder shall be for the benefit of Grantees or either of them and their respective successors and assigns, but such rights shall be used in common with Imperial and its successors and assigns.

4. The term of this Agreement shall commence immediately and expire on May 1, 2029, provided, however, that in the event Grantees terminate the Coal Lease on the basis of a Non-Monetary Default by Imperial, then this Agreement shall expire ten (10) years after such termination. As used herein, a "Non-Monetary Default" shall mean a breach of any provision of the Coal Lease except provisions requiring the payment of money, such as the provisions for the payment of tonnage or minimum royalties.

5. Grantees shall pay to Imperial a wheelage fee of Five Dollars (\$5.00) for each 1,000 board feet of timber cut from Grantees Property or contiguous additions thereto and hauled over the Imperial Property (excluding haulage by rail over existing, active CSX rail lines which cross the Imperial Property), provided,

however, that until November 1, 2007, no fee shall be payable on the first 500,000 board feet of timber hauled each year (pro rata for any partial year). A full accounting and payment of any sums due hereunder shall be made on or before the 20th day of each month following any month in which timber is so hauled and shall be accompanied by such records as Imperial may reasonably request evidencing the quantity of timber so hauled. On November 1, 2007, and again on November 1, 2017, the wheelage rate shall be adjusted as necessary to reflect the then current market rate for timber wheelage in Central West Virginia. At least ninety (90) days prior to each date, the parties shall communicate regarding the new rate. If the parties fail to agree on the new rate by the adjustment date, upon demand of either party, and as a condition precedent to any other dispute resolution procedure, the issue shall be settled exclusively by arbitration in accordance with the rules of the American Arbitration Association. If feasible, the arbitrator(s) shall have experience regarding current rates being charged for timber wheelage in Central West Virginia. Until the new rate is established, Grantees shall continue to pay at the rate in effect on the day before the adjustment date, but the new rate, once established, shall be deemed to apply as of the adjustment date and the appropriate retroactive adjustment shall be made.

6. Any damage done to any road on Imperial Property by Grantees or their respective successors or assigns shall be repaired by Grantees at their sole costs and expense.

9. The parties hereto acknowledge that the Trustee has constituted Midvale as the agent of Trustee for purposes of administration of this Agreement. Imperial shall send all notices or other communications relating to this Agreement to Midvale.

IN WITNESS WHEREOF, the parties have caused their respective corporate names to be signed by its proper officers thereunto duly authorized all as of the day and year first above written.

IMPERIAL COLLIERY COMPANY

By CL Chutkan ^{sr}
Its President

MIDVALE COLLIERY COMPANY

By Donald Faulkner
Its President

BANK ONE, WEST VIRGINIA, N.A.,
as Trustee Under the Last Will and
Testament of T. A. Deitz, Deceased

By [Signature]
Its Senior Vice President

STATE OF WEST VIRGINIA,

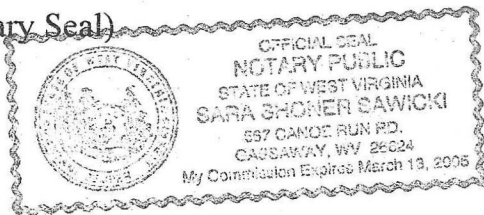
COUNTY OF KANAWHA, to wit:

The foregoing instrument was acknowledged before me this 14th day of November, 1997, by C. Lynch Christian, III, the President of IMPERIAL COLLIERY COMPANY, a West Virginia corporation, on behalf of the corporation.

My commission expires March 13, 2005.

Sara Shoner Sawicki
Notary Public

(Notary Seal)



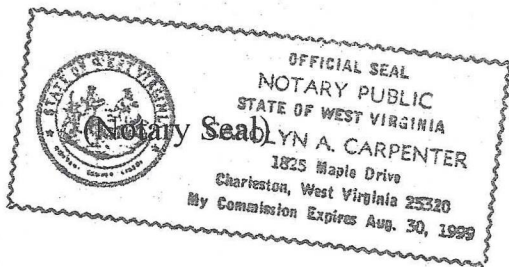
STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

The foregoing instrument was acknowledged before me this 18th day of November, 1997, by Donald C. Pauley, the President of MIDVALE COLLIERY COMPANY, a West Virginia corporation, on behalf of the corporation.

My commission expires August 30, 1999.

Carolyn A. Carpenter
Notary Public



STATE OF WEST VIRGINIA,

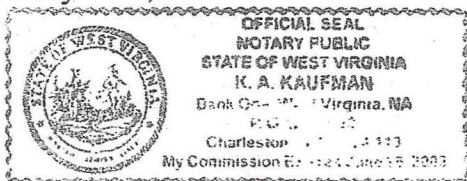
COUNTY OF KANAWHA, to wit:

The foregoing instrument was acknowledged before me this 19th day of November, 1997, by J. Scott Sperry, the Senior Vice President of BANK ONE, WEST VIRGINIA, N.A., a national banking association, as Trustee Under the Last Will and Testament of T. A. Deitz, Deceased, on behalf of the association.

My commission expires June 16, 2003.

K. A. Kaufman
Notary Public

(Notary Seal)



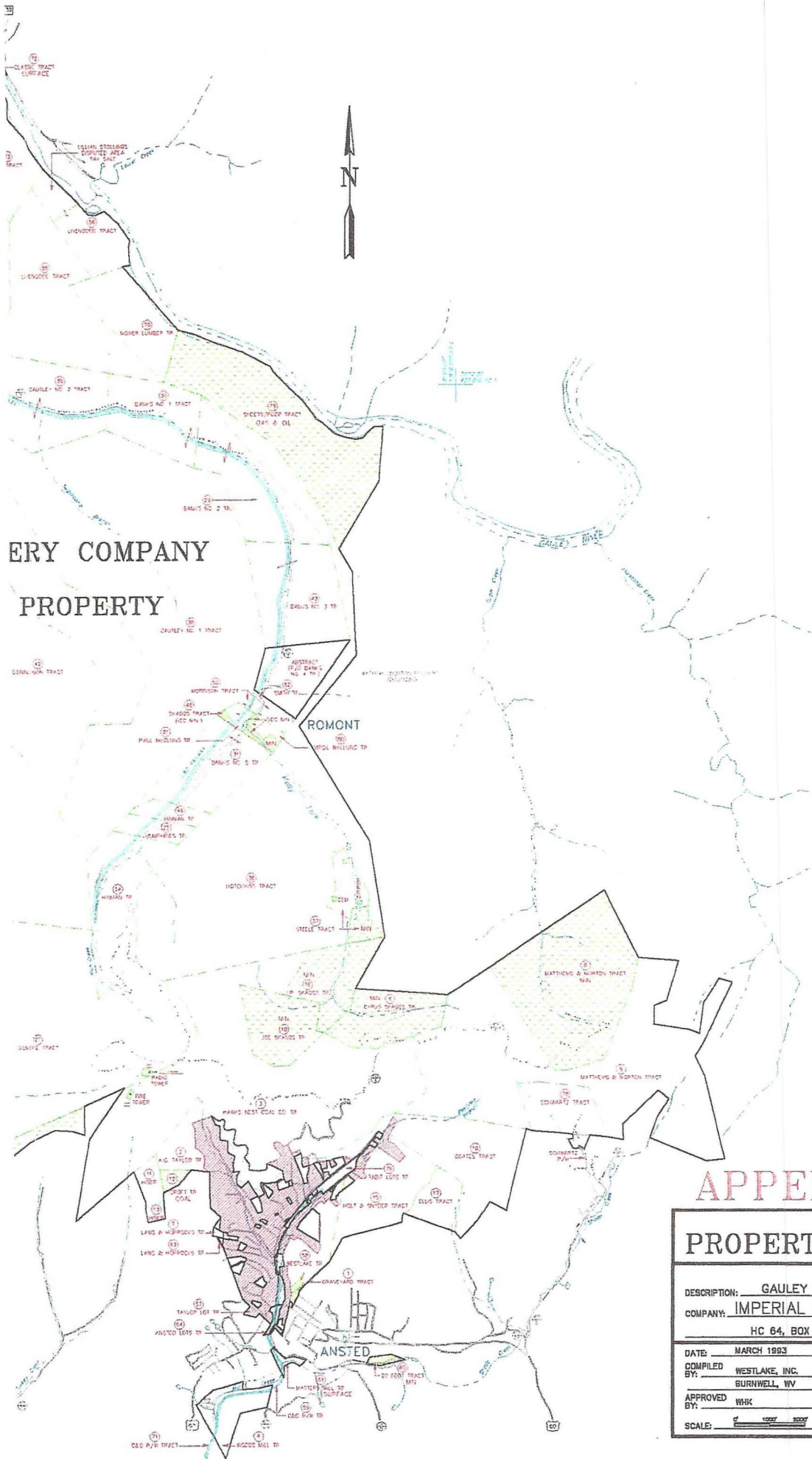
This instrument was prepared by William C. Payne, P. O. Box 273, Charleston, West Virginia and Charles Q. Gage, P. O. Box 553, Charleston, West Virginia.

"DECLARATION OF CONSIDERATION OF VALUE"

Under the penalties of fine and imprisonment as provided by law the undersigned (grantor-s) (grantee-s) hereby declare the total consideration of the property transferred by the document to which this declaration is appended is (\$ Less than \$100⁰⁰).

Given under my hand this 9 day of December, 19 97.

Ken Sperry



APPENDIX A

PROPERTY MAP

DESCRIPTION: GAULEY MT. PROPERTY
 COMPANY: IMPERIAL COLLIERY COMPANY
 HC 64, BOX 425, BURNWELL, WV 25083

DATE: MARCH 1993	DISTRICT(S): VALLEY/NEW HAVEN
COMPILED BY: WESTLAKE, INC.	COUNTY: FAYETTE CO., W.VA.
BURNWELL, WV	STATE: FAYETTE CO., W.VA.
APPROVED BY: WHK	QUAD(S): GAULEY BRIDGE/ANSTED
MAP NUMBER: \GAULEYMT.DWG	REVISION DATE: 11/8/97

SCALE: 0 1000 2000

MIDVALE/T. A. DEITZ
LEASE

LEGEND

- TRACT NO./DESCRIPTION
- PROPERTY LINES
- ROADS 60 39
- MINERAL/COAL/ GAS & OIL TRACTS
- STREAMS
- RAILWAYS

2000' 0' 2000' 4000'