

23067

Vol. 76 Page

20221

BARGAIN AND SALE DEED

38-11213

KNOW ALL MEN BY THESE PRESENTS that UNITED STATES NATIONAL BANK OF OREGON, a national banking association, Trustee, Grantor, for and in consideration of the sum of One Million, One Hundred Thousand and One (\$1,100,001.00) Dollars, to it paid, has bargained and sold and by these presents does bargain, sell and convey to NICOL LAND & CATTLE CO., a partnership consisting of Donovan L. Nicol, Mark Edward Nicol and Dana Marie Nicol, Co-partners, Grantee, the following described premises situated in Klamath County, Oregon, to-wit:

In Township 29, South, Range 9 East of the Willamette Meridian:

- Section 15: S1/2 NE1/4 SW1/4; E1/2 SE1/4 SW1/4;
W1/2 SE1/4; S1/2 SE1/4 SE1/4
- Section 22: E1/2; E1/2 E1/2 NW1/4; E1/2 NE1/4 SW1/4;
S1/2 SW1/4
- Section 23: W1/2 W1/2
- Section 27: All
- Section 28: E1/2 E1/2 NE1/4; E1/2 NE1/4 SE1/4;
SE1/4 SE1/4
- Section 32: NE1/4 SE1/4; S1/2 SE1/4
- Section 33: E1/2; S1/2 NW1/4; SW1/4
- Section 34: All
- Section 35: W1/2 E1/2; W1/2

Return: Nicol Land & Cattle Co.
212 Williams Bldg.
Klamath Falls, Ore 97601

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20222

In Township 30 South, Range 9 East of the Willamette Meridian:

Section 2: NE1/4; W1/2; NE1/4 SE1/4; W1/2 SE1/4

Section 3: All

Section 4: All

Section 5: NE1/4 NE1/4; S1/2 NE1/4; SE1/4 NW1/4;
NE1/4 SW1/4; N1/2 SE1/4

Section 9: NE1/4; E1/2 NW1/4

Section 10: W1/2 NE1/4; W1/2;

together with all the rights of the Klamath Tribe of Indians in and to the waters of the Williamson River and its tributaries and all ground water lying under said lands to the fullest extent the Grantor has a right to convey; except, this conveyance does not include timber which is subject to that certain contract known as the "Timber Contract, Windmill Timber Sale" dated September 28, 1976 wherein the United States National Bank of Oregon as Trustee for the nonwithdrawing members of the Klamath Indian Tribe is the Seller and Modoc Lumber Company is the Buyer, which timber is reserved unto Grantor. A copy of said contract is attached hereto as Exhibit A. Grantor further reserves unto

(1) itself or its successors or assigns;

(2) the buyer under the above-described contract, its successors or assigns; and

(3) any buyer or potential buyer of the timber reserved by Grantor hereunder, the right of reasonable ingress or egress for the purpose of:

(a) performing its obligations or enforcing its rights under the above-described contract or any other contract for the sale of the timber reserved hereunder by Grantor; or

(b) buying or selling the reserved timber.

This conveyance is subject to:

(1) That certain easement dated August 12, 1958 and recorded November 7, 1958 in Book 13, Page 105, Records of Klamath County, Oregon and dated May 22, 1959, recorded June 3, 1959 in Book 13, Page 448, Records of Klamath County, Oregon;

(2) The rights of the public, if any, in and to public roads and highways; and

(3) That certain contract known as the "Timber Contract, Windmill Timber Sale" dated September 28, 1976 wherein the United States National Bank of Oregon as Trustee for the nonwithdrawing members of the Klamath Indian Tribe is the Seller and Modoc Lumber Company is the Buyer and attached hereto as Exhibit A. The Grantor herein retains its interest in the above contract including, but not limited to, its right to obtain all payments pursuant thereto.

TO HAVE AND TO HOLD the said premises with their appurtenances unto the said NICOL LAND & CATTLE CO., a partnership consisting of Donovan L. Nicol, Mark Edward Nicol and Dana Marie Nicol, Co-partners, its successors and assigns forever.

IN WITNESS WHEREOF, United States National Bank of Oregon has hereunto set its association name by its duly authorized officer this 17th day of December, 1976.

UNITED STATES NATIONAL BANK
OF OREGON, a National Banking
Association

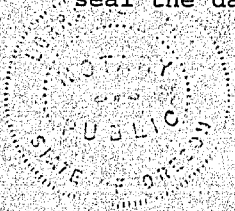
By

RW Mezger
Trust Officer

STATE OF OREGON)
) ss.
County of Multnomah)

On this 17th day of December, 1976, before me, a Notary Public in and for said County and State, appeared R. W. Mezger, to me personally known, who, being duly sworn, did say that he, the said R. W. Mezger, is a Trust Officer of UNITED STATES NATIONAL BANK OF OREGON, Trustee, the within named association, and that the said instrument was signed in behalf of said association by authority of its Board of Directors, and said R. W. Mezger acknowledged the said instrument to be the free act and deed of said association.

IN WITNESS WHEREOF I have hereunto set my hand and seal the day and year last above written.



Soreau Sara
Notary Public for Oregon
My Commission Expires: 4-18-80

TIMBER CONTRACT
WINDMILL TIMBER SALE

1. This Agreement made and entered into at Klamath Falls, Oregon, between UNITED STATES NATIONAL BANK OF OREGON, Trustee for the nonwithdrawing members of the Klamath Indian Tribe, Seller, hereinafter called Trustee, and MODOG LUMBER COMPANY, hereinafter called Purchaser.

2. WITNESSETH that the Trustee, in consideration of the agreement by Purchaser, agrees to sell to Purchaser and Purchaser agrees to buy upon the terms and conditions herein stated, and the General Timber Sale Regulations which are attached hereto and made a part of this contract, all the designated merchantable dead timber, standing or fallen, and all the merchantable live timber marked or otherwise designated by the Trustee for selective logging, located within a specified area designated as the Windmill Timber Sale area as set forth in Paragraph 3, the boundaries of which will be marked in the field and as shown approximately on the attached map which is made a part hereof. "Merchantable timber" includes all trees approximately ten (10) inches and larger in diameter at a point four and one-half (4-1/2) feet from the ground which contain one (1) or more merchantable sixteen (16) foot log.

3. The approximate area of the logging unit is 303 acres, located within the following:

SE1/4, NE1/4, SW1/4, NW1/4 Section 5;
SE1/4, SW1/4 Section 4; E1/2, NW1/4 Section 9;
SW1/4 Section 10; Township 30 South, Range
9 East Willamette Meridian.

4. The estimated volume of timber to be cut is as follows:

Ponderosa Pine	1,749,000 board feet
Lodgepole Pine	132,000 board feet

It is mutually agreed that the foregoing are estimates only and they shall not be construed as guarantees or limitations of the volumes of the several species of timber to be marked or otherwise designated for cutting under the terms

at any time. The actual volume of timber cut or otherwise designated for cutting shall be controlling regardless of whether it is more or less than the above estimates.

5. For and in consideration of the agreement by the Trustee, Purchaser agrees that he will cut and pay for all designated timber in the sale prior to the contract expiration date of December 31, 1977. He is further agreed that Purchaser will dispose of all slash and snags, as required in this contract, by December 31, 1978. Purchaser agrees to pay to the Trustee the full value of said timber as determined by the actual scale at the following rates per thousand feet board measure, Scribner Decimal O Log Scale:

- A. Ponderosa Pine shall be paid for at the rate of \$174.00 per M board feet.
- B. Lodgepole Pine and Others shall be paid for at the rate of \$50.00 per M board feet.
- C. Fiber Logs, All Species, shall be paid for at the rate of \$5.00 per M board feet, Gross Scale.

6. Purchaser further agrees that it will pay for, as merchantable timber, pieces ten (10) feet and longer, will utilize the trees to a diameter of eight (8) inches in the top where possible, and will pay for all timber on the basis of a scale recognizing twenty (20) feet as minimum length of single logs, and that all logs will be considered merchantable as provided in the attached General Timber Sale Regulations. Cutting butt logs in excess of thirty-six (36) feet in length is prohibited.

7. Purchaser further agrees that it will pay for, as fiber logs, pieces ten (10) feet and longer not considered merchantable as provided by the General Timber Sale Regulations, but containing fifty (50) percent or more chipable fiber, on the basis of a gross scale recognizing twenty (20) feet as minimum length of single logs.

8. Purchaser further agrees that prior to the time when cutting begins he will make a cash deposit of \$25,000.00 and will make subsequent deposits of \$25,000.00 at such times as the Trustee may require in order to insure that the stumpage price of the timber cut and not paid for at any time shall not exceed

the cash deposit then in the hands of the Trustee. The Trustee will collect the price payable for all timber cut and loaded by charging the same against the advance deposit in accordance with the General Timber Sale Regulations.

9. Purchaser shall pay for all damages caused to timber by fires for the origin or spread of which Purchaser or any of its employees, its subcontractors or their employees, are responsible by act or neglect. If merchantable timber within the contract sale area is injured by a fire for the origin or spread of which Purchaser and its employees, its subcontractors and their employees, are in no way responsible, Purchaser shall be liable for the loss sustained only to the extent that such loss shall be due to its failure to cut and remove the injured timber as expeditiously as possible under the existing circumstances and the terms of this contract.

10. Purchaser further agrees that all roads constructed or improved by it on the Klamath Tribal Management Unit in connection with the logging of timber under this contract and all bridges, trestles, drainage structures, and like improvements, will be installed as permanent improvements and will be left intact at the completion of logging operations and will become the property of the Trustee when the contract is completed.

11. Purchaser will furnish and maintain in good and serviceable condition such fire fighting tools and equipment and provide such fire protection personnel as may be required by the Trustee to meet the fire protection requirements of the contract, the General Timber Sale Regulations, and the existing fire danger hazards or risks. The requirements shall not be less than are required under the laws of the State of Oregon.

12. Purchaser further agrees that within six (6) months from completion of logging it will cause all snag and designated cull trees more than fourteen (14) inches in diameter at four and one-half (4-1/2) feet from the ground and more than sixteen (16) feet in height from the ground to be felled, unless relieved in writing by the Trustee; provided, that the Trustee, in its discretion, may relieve Purchaser from falling snag and cull trees on specifically designated areas. Waivers of snag and cull tree felling requirements shall always be specific with respect to areas and will not be valid unless made in writing and signed by Trustee.

13. Prior to commencing operations hereunder Purchaser shall furnish to the Trustee a performance bond in the penal sum of \$25,000.00 with sureties satisfactory to the Trustee conditioned on the faithful performance of all the terms of this contract and the General Timber Sale Regulations attached hereto.

14. Purchaser agrees to obtain at its own expense all logging and operating permits and agrees to pay the Forest Products Harvest and Vico Fund Tax. The Trustee will pay the Eastern Oregon Severance Tax.

15. Purchaser shall comply strictly with all state and federal laws and regulations applicable to its operations, particularly with those relating to fire control and prevention, labor, forest conservation and harvesting.

16. Purchaser assumes the risk of injuries to persons, including its employees, the risk of liability for trespass on lands other than the contract lands, and the risk of damage to property or the incurring of any other expense in any manner arising out of operations under this agreement, including without limitation the risk of expense for suppression of fire coming onto or originating on the contract lands. Purchaser shall indemnify and defend the Trustee from any loss, damage and expense in any manner resulting or arising out of Purchaser's operations or any failure of Purchaser to comply with any provision of this agreement.

17. Purchaser shall comply with the Oregon Workmen's private insurance providing sufficient employee compensation benefits and providing employer's liability insurance with limitations of not less than \$250,000.00 for injury to one person, and \$1,000,000.00 for injury to two or more persons in one occurrence, such insurance to be evidenced by certificates in the same form as required in this agreement for Purchaser's general liability insurance.

18. Before commencing operations Purchaser shall procure and carry during the term of this agreement, at its cost, public liability and property damage insurance acceptable to the Trustee with limits of not less than \$500,000.00 for injury to one person, \$1,000,000.00 for injury to two or more persons in one occurrence, and \$100,000.00 for damage to property. Such insurance shall cover all risks arising directly or indirectly out of Purchaser's operations, including without limitation risks arising out of conditions created on the property by purchaser, shall protect Purchaser against claims of the Trustee and shall protect

Purchaser and the Trustee against claims of third persons. Certificates evidencing such insurance and bearing endorsements requiring ten days' written notice to the Trustee prior to any change or cancellation shall be furnished to the Trustee before operations are commenced.

19. A waiver by any party hereto of any breach of any of the provisions of this agreement shall be limited to such particular instances, and shall not operate as a waiver of, or be deemed to waive, any other or future breaches of the same or any other provision hereof.

20. In the event suit or action is instituted to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorney's fees at trial and on any appeal of such suit or action in addition to all other sums provided by law.

21. Any notices required or permitted to be given under the provisions of this agreement shall be given in writing and mailed by registered or certified mail, addressed as follows:

- (a) To the Trustee at P. O. Box 789, Klamath Falls, Oregon, or to such other address as it may in writing designate to Purchaser.
- (b) To the Purchaser at P. O. Box 257, Klamath Falls, Oregon, or to such other address as it may in writing designate to Trustee.

22. Time is of the essence of this agreement. If Purchaser fails to make any payment at the time it is due hereunder and does not correct such failure within five days after written demand by the Trustee to do so or if Purchaser fails to perform any other obligation or condition imposed on it by the terms of this agreement and such failure (other than default in payment) continues for 20 days after written notice from the Trustee specifying the failure and demanding its cure, or if Purchaser should become insolvent, or make an assignment for the benefit of creditors, or be adjudged bankrupt, or a receiver or a trustee in bankruptcy reorganization for its property be appointed, then the Trustee may at its option terminate this agreement. In the event of termination, all rights of Purchaser hereunder shall immediately cease, title to the contract timber and all logs not then scaled shall be in the Trustee free of any claim of Purchaser, and the Trustee may retain all advance payments then in its hands as an agreed-upon measure of minimum liquidated

damage on account of Purchaser's failure to perform hereunder. The foregoing right is cumulative, and the Trustee may also exercise any other right available to it under the laws of Oregon.

23. This agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, but no interest of Purchaser hereunder shall be assigned or otherwise transferred, voluntarily or involuntarily, without the prior written consent of the Trustee. Purchaser may exercise its rights and discharge its obligations through Agents, including independent contractors, but shall at all times remain fully responsible to the Trustee for the actions of such Agents.

24. Trustee reserves the right to sell the land which is described in this contract, reserving title to marked timber until satisfactory completion of the contract.

25. Trustee reserves the right to salvage dead and dying trees in the sale area during the life of this contract.

26. Trustee has made no representations to Purchaser directly or indirectly upon which Purchaser has relied with respect to quantity, quality or kind of merchantable timber on the contract lands or with respect to easements or rights of way. Purchaser is familiar with the contract lands, the contract timber, and access to the lands and timber and is making this contract on the basis of its own knowledge and observations and not on the basis of any representations by Trustee.

Signed and sealed in quadruplicate this 28th day of September, 1976.

UNITED STATES NATIONAL BANK OF OREGON, Trustee

By *[Signature]*

Trust Officer

NODOC LUMBER COMPANY

By *[Signature]*

GENERAL TIMBER SALE REGULATIONS

1. The word Trustee as used in these regulations signifies The United States National Bank of Oregon acting in behalf of the non-withdrawing members of the Klamath Indian Tribe.

2. The term Forester in charge, wherever used in these regulations, signifies the forester assigned by Trustee from time to time to supervise timber work on the Klamath Indian Management Trust area within which the sale area is situated.

3. All scaling will be performed at the expense of the purchaser by the Southern Oregon Log Scaling and Grading Bureau (the Bureau) based upon U. S. Forest Service Log Scaling Handbook, East Side Rules. The Trustee is to be provided by the Bureau promptly as soon as prepared copies of semi-monthly summaries of volume and grade, daily log scale certificates, daily log ticket tabulations and East Side detail log listing.

4. No timber other than that designated by Trustee may be cut by the Purchaser on the sale area without a separate contract of sale therefor.

5. Other sales within a sale area may be made provided such sales will not, in the judgment of the Forester in charge, interfere with the operations of the previous Purchaser. Rights-of-way may be granted through portions of the sale area during the contract period, provided they do not interfere with the operations of the previous Purchaser.

6. Title to the forest product covered by any contract will not pass to the Purchaser until such products are paid for.

7. Cash deposits in advance of cutting will be required. Additional cash deposits must be made from time to time, when demanded by Trustee, so that the existing advance deposit will at all times exceed the stumpage value of all timber cut and not paid for. At the close of each month a statement of all timber cut during the month will be rendered to the Purchaser as a demand for payment of the full stumpage value of the timber covered by such statement and such payment will be collected by charging the same against the existing advance deposit. At any time that any payment or deposit is not made promptly when demanded by Trustee cutting operations shall be suspended.

8. The areas to be logged will be designated by the Forester in charge. When logging is begun on a logging unit, it will not be discontinued and started elsewhere without the written consent of the Forester in charge.

9. Selective logging or the logging of areas in such manner as to preserve a part of the merchantable timber, promote the growth of young trees, or preserve the forest cover, will be practiced on all lands chiefly suitable for the production of timber crops. Live trees of diameters below those named in the contract may be designated for cutting and larger trees may be reserved from cutting at the discretion of the Forester in charge. If live trees which are not designated for cutting are cut, or are seriously injured through lack of care, they will be double scaled and so charged and paid for.

10. All dead trees standing or fallen which contain one merchantable log or more will be logged for their merchantable contents, and wherever selective logging is required by the contract, the Purchaser will fell all other dry trees before the slash is burned.

11. Young growth will be protected as far as possible in every branch of the logging operations, and its use in the construction of improvements may be restricted by the Forester in charge.

12. Stumps will be cut low so as to avoid waste, and the mean height of any stump will not exceed one-half of its diameter except where because of defect or deformity this height is not considered practical by the Forester in charge, provided that the minimum height required will be twelve inches. Stumps with no defect or deformity which exceed one-half their diameter in height will be charged to the Purchaser at the rate of \$1.00 per stump.

13. Waste in butts, tops, breaks, and particularly sound logs and all trees designated for logging which are not logged and all trees which are left felled or lodged or badly damaged by the logging operations will be scaled for their merchantable contents and charged against the Purchaser.

14. The log lengths and products taken from each tree will be such as to completely utilize the merchantable material in the tree and to yield a maximum stumpage value. Trees improperly cut into lengths or products of a lesser value shall be scaled, counted, or measured as if cut so as to yield the maximum value.

15. The Scribner Decimal C log rule will be used in scaling logs. The rule will be read to the nearest inch on the average top diameter inside bark. Logs exceeding the maximum length allowed by a contract will be scaled as two or more logs with proper allowance for the increase in diameter at the points of division.

16. The overlength allowed on logs for trimming will not exceed the following:

<u>Log Length</u>	<u>Trimming Allowance</u>
8 - 18 feet	6 inches
20 - 38 feet	12 inches
40 feet & longer	18 inches

Logs which overrun this allowance will be charged to the Purchaser at \$2.00 per log. Logs may be measured at any time, either in the woods or at the Purchaser's log dump, by the Forester in charge or other employee of the Trustee.

17. Proper deductions will be made for rot, shake, hollow, and other defects which make a log partially unmerchantable, including sweep exceeding one inch in each four feet of length, but deductions will not be made for any defect or damage due to the act or neglect of the Purchaser or his employees.

18. A check scaler employed by the Purchaser may, at hours convenient to the scaler and with the consent of the Forester in charge, compare his scale of logs with that of the scaler. A copy of the regular scale reports will be furnished to the Purchaser through the Forester in charge.

19. For convenience, in scaling the logs or other products will be bunched as the scaler may direct on the land where cut or at the landing, log dump or point of shipment, and will not be moved therefrom until he has scaled them. Logs that are moved contrary to the scaler's instructions will be double scaled.

20. A merchantable log is any log that will manufacture one-third or more of its total contents into sound lumber eight feet and longer, except as special provision is made in a particular contract. More defective logs and logs smaller than the merchantable size set in the contract will be culled if left in the woods, but any such logs that are taken for manufacture

or sale will be scaled for the actual sound contents of lumber of any length. Any log taken by the Purchaser which is smaller than the minimum scaling length or diameter given on the log-scale rule will be scaled for their merchantable contents.

21. The slash resulting from the logging operations, including all branches up to four inches in thickness lopped from tops and logs, will at the time of skidding be piled compactly and away from reserved trees on the whole area to be logged, unless some other method of slash disposal is provided in the contract.

22. Burning of the slash by the Purchaser will be done at such times and in such manner as may be required by the Forester in charge. Slashing will not be burned during any period of fire danger. Whenever fire runs through a slashing, except in compliance with the instructions of the Forester in charge, the Purchaser may be required to lop or to pile and reburn the slash.

23. Unsatisfactory disposal of the slash will be cause for the Forester in charge to suspend all operations of the Purchaser until the unsatisfactory condition is corrected.

24. Damage to land or other property of the Trust resulting from rights-of-way, dams, and other improvements or operations of the Purchaser will be appraised by the Forester in charge, and if not offset by the value of the permanent improvements made by the Purchaser, will be charged against the Purchaser.

25. Existing fences, roads, trails, and other improvements will be protected as far as possible in the logging operations, and whenever they are broken or obstructed the Purchaser will promptly repair the damage. If he fails to make the repairs promptly, the Forester in charge may make the repairs and the Purchaser may be charged with the expense thereof.

26. Improvements necessary to execute his contract such as camps, sawmills, roads, etc. may be constructed and maintained by the Purchaser on and across the contract area and other Trust lands subject to control by the Trustee.

27. Streams will not be obstructed by felled trees or otherwise except by the improvements hereinbefore provided for, nor will they be polluted by sawdust or any other refuse from a camp or mill.

28. The time limit for the removal of the improvements and other property of the Purchaser is one year after the expiration of the contract. After that time the title to improvements, including camps, will attach to the land and no personal property of the Purchaser will thereafter be removed except with the written consent of the Forester in charge, provided that improvements necessary for the logging of other Trust timber may be left for such time and on such terms as may be prescribed by the Trustee.

29. Extension of time for the performance of any contract may be granted the Purchaser by the Trustee in its discretion and subject to such conditions as it may impose.

30. If extension of time to cut and remove the timber is not granted by the Trustee, the Purchaser can cut no timber after the expiration of the contract, but he may remove the timber previously cut and paid for within one year of the expiration of the contract. If not removed within the time allowed, the title will revert to the vendor notwithstanding the Purchaser may have paid for the timber.

31. Assignment of any contract in whole or in part by the Purchaser will not relieve him of his contract obligations unless the assignment is approved by the Trustee nor until the bond is satisfactorily renewed.

32. Refunds of overpayments will be made to the Purchaser by the Trustee provided all terms of the contract have been fulfilled, and the Trustee may also, in its discretion, reduce the amount of timber that is required by the contract to be paid for and removed in any one year.

33. Suspension of the Purchaser's operations may be made by the Forester in charge if any requirements of the contract and of these regulations are disregarded and until there is satisfactory compliance.

34. Complaints by the Purchaser arising from any action taken by the Forester in charge under the terms of any contract will not be considered unless made in writing to the Trustee within 30 days of the alleged unsatisfactory action.

35. During periods of high fire danger roads will be kept open and passable so far as practical during logging operations.

36. Roads will be watered and maintained during periods of dry weather or when deemed necessary by the Forester in charge.

37. Roads will be left intact upon completion of logging operations and those roads designated by the Forester in charge will be graded.

38. New roads constructed for the purpose of logging or hauling operations will meet with approval of the Forester in charge. Dead end roads will be kept minimal except when terrain features dictate their necessity.

I hereby certify that the within instrument was received and filed for record on the 17th day of DECEMBER A.D., 1976 at 3:50 o'clock P M., and duly recorded in Vol. M 76, of DEEDS on Page 20221.
WM. D. MILNE, County Clerk

WM. D. MILNE, County Clerk
By Hazel Brazil Deputy