

93230

SALE AND PURCHASE OF MERCHANTABLE TIMBER

23289

THIS AGREEMENT, executed in duplicate this 28 day of May, 1980, by and between SOQUEL CONSTRUCTION CORPORATION, a CALIFORNIA CORPORATION, hereinafter referred to as the Seller, and EAGER BEAVER LOGGING, INC., an OREGON CORPORATION, and persons unnamed, hereinafter referred to collectively as the Buyer.

ARTICLE 1: TIMBER SOLD.

1.01 Seller agrees to sell and Buyer agrees to buy, upon the covenants and terms herein recited, all that merchantable timber of the species hereinafter specified now growing, lying, standing or being situated upon the Sale Area.

ARTICLE 2: MERCHANTABLE TIMBER.

2.01 MERCHANTABLE TIMBER, refers to ponderosa pine of minimum size shown on the attached and incorporated specifications marked EXHIBIT "A". It is estimated that the Sale Area contains 3,800 MBF of such timber, however, this estimate is not a representation, warranty or guarantee of the volume of timber in the Sale Area.

ARTICLE 3: SALE AREA.

3.01 SALE AREA hereinafter refers to the following described land, situated in the County of Klamath, State of Oregon to wit:

Government Lots 1, 10, 11, 12, 13, 22, 23,
24, 25, 30, 31, 32, 33, 38 and 39 of Section 21,
Lots 1, 2, 7, 8, 9, 10, 15 and 16 in Section 28
Township 35 South, Range 7 East of the Willamette
Meridian.

SAVING AND EXCEPTING THEREFROM that portion of above-description conveyed to State of Oregon by Charles Cleveland, et ux., in

Witness:
Soquel Construction
1435 Bull Lake
San Diego, Ca.
45062

Deed dated May 31, 1938, recorded June 10, 1938, in Volume 116, page 135, Deed Records of Klamath County, Oregon.

EXCEPT from Lot 22 that portion conveyed by Deed recorded March 7, 1962, in Volume 290, page 207, Deed Records of Klamath County, Oregon, as follows: That portion of Lot 22, Section 21, Township 35 South, Range 7 East of the Willamette Meridian lying west of the westerly right of way line of U. S. Highway 97 as the same is now laid out and constructed across said Lot 22, and north of the right of way line of Modoc Point Canal as the same is now laid out and constructed across said Lot 22 (as shown on the attached and incorporated Sales Area map marked EXHIBIT "B").

ARTICLE 4: PURCHASE PRICE.

4.01 Minimum Purchase Price is the sum of \$ 325,000.00 which Buyer promises to pay to Seller as hereinafter provided.

ARTICLE 5: TERMS OF PAYMENT.

5.01 Buyer shall pay Seller monthly for all Merchantable Timber and Chip harvested hereunder. Such payment shall be made at the rate established in EXHIBIT "C" incorporated and attached as part of this Agreement.

ARTICLE 6: TITLE AND LIENS.

6.01 Seller hereby warrants that it is the owner of the Timber sold pursuant to this Agreement, free and clear of any and all claims, liens, or encumbrances except those of record and has the full right and authority to sell said Timber. Seller further agrees to defend such title against all claims of all persons and to indemnify, defend and hold Buyer harmless from any loss, cost and expense or liability arising from or caused by a breach of the warranties contained in this Paragraph.

6.02 Passage of Title. No Title to Timber or Chip shall pass to Buyer unless and until it is severed and removed from the

Sale Area. Seller shall have a lien upon all Timber and Chip harvested and removed for the amount of payment required therefore and yet unpaid.

6.03 All Timber must be severed and removed from the Sale Area before March 1, 1981. On said termination date the rights of Buyer to cut and remove hereunder shall terminate. In the event that Buyer's performance of its duties hereunder are rendered impractical by the happening of some unforeseen event beyond the control of Buyer, Seller may at its sole option after receipt from Buyer of a reasonable written request to change the termination date, extend said termination.

ARTICLE 7: SCALING AND MEASUREMENT.

7.01 All Merchantable Timber subject to this sale Agreement shall be scaled at Buyer's sole cost in accordance with provisions of the Southern Oregon Bureau Log Scaling and Grading Rules, 1973 edition, as revised and issued by the United States Department of Agriculture, Forest Service or Southern Oregon Log Scaling and Grading Bureau, Region 6, (Short Log East-Side Scale), Decimal C Log Rule.

7.02 In the event that Seller notifies Buyer of its dissatisfaction with the performance of any such scaler employed by Buyer and its reasons therefore, Buyer shall remove such scaler and engage one acceptable to Seller.

7.03 The scaler shall maintain complete records of log scaling showing for each log scaled the length, diameter, species, net volume Decimal C and deductions for defect. Said records shall be open to inspection by Seller or Buyer.

7.04 Buyer shall furnish Seller with a copy of all scaling tickets at such times reasonably requested by Seller. In addition, at the end of each monthly scaling period ending on the 1st day of each month respectively, Buyer shall furnish Seller, within five (5) days after each period, scale records and a full and true copy of the scale report for same period.

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ARTICLE 8: MISCELLANEOUS.

- 8.01 Clean Up. All equipment and property and all debris resulting from Buyer's operations shall be removed by Buyer from Seller's land, at Buyer's sole expense, prior to Seller's notice to Buyer that the contract has been performed in full or the date of termination, whichever is later. No polluting substances such as petroleum products shall be removed or buried in a manner which may result in the pollution of water courses. Anything to the contrary notwithstanding, Buyer shall be responsible for removal and disposal of slash from the Sale Area (except roads and drainage structures).
- 8.02 Damage To Structures. Buyer shall exercise reasonable care to not damage fences, utility lines or other structures such as boundary markers and damage to any such structure shall be immediately rectified at Buyers expense.
- 8.03 Fire Precautions. Buyer shall take every precaution to minimize the hazard of fire resulting from its operations hereunder and upon the discovery of any fire upon the Sale Area or lands adjacent thereto Buyer shall immediately contact Seller and the organization responsible for fighting such fires.
- 8.04 Independent Contractor. Buyer is an independent contractor and not an employee, or agent of Seller. Buyer shall conduct all of its operations hereunder in a workmanlike manner in conformance with all laws, including those relating to labor practices, equal opportunity, wages and hours, payment of withholding taxes, and workman's compensation and maintenance of Industrial Accident Insurance.
- 8.05 Indemnity. Buyer shall indemnify, defend and hold Seller harmless from any loss, expense, liability or claim associated or in any way arising from Buyer's performance or nonperformance of this Agreement including, but not limited to, such loss, expense, liability or claim arising from injury or harm to persons or property including harm to the person or property of Buyer, its officers, employees, agents, invitees or contractors except to the extent such loss, expense or liability is directly and solely

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caused by Seller's negligence. Buyer's duty to hold Seller harmless as provided herein shall include Buyer's duty to prevent liens from being filed against the property of Seller, to remove such liens as are filed as a result of Buyer's operations associated with this Agreement and to hold Seller harmless from any cause of action related to the wrongful logging of lands adjacent to the Sale Area.

8.06 Insurance. Prior to commencing operations on the premises, Buyer shall, at its sole cost and expense, procure and maintain, for so long as such operations continue, the following described liability insurance covering its operation under this Agreement; this shall be evidenced by Certificates of Insurance on record with Seller.

- (a) Public liability and property damage insurances, of any person or persons: (Loggers Broadform Property), \$ 500,000.00
- (b) Public liability insurance covering injury to or death of any person or persons: \$ 500,000.00

8.07 Taxes. Buyer shall be responsible for the payment of all severance, harvest, processing, transfer, transportation or other taxes that may be levied or assessed which arise out of Buyer's performance of this contract.

8.08 In the event that Buyer harvests any Timber other than that sold hereunder, Buyer shall pay Seller, as liquidated damages for such action, an amount equal to three times the board footage of such timber times the price set forth in EXHIBIT "C".

8.09 Access Roads. For the purpose of ingress and egress to, over and across the Sale Area during the term of this Agreement, Seller grants Buyer a license for ingress and egress for the hauling of Timber over such roads as are specified on the attached and incorporated map marked EXHIBIT "B". Buyer shall in addition to its other duties hereunder, construct, maintain, repair and use such roads in accordance with the attached and incorporated

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Road Specifications marked EXHIBIT "B".

8.10 Governing Law. All questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be governed by the laws of the State of Oregon.

8.11 Binding on Heirs and Successors. Subject to the restrictions against assignment as herein contained, this Agreement shall inure to the benefit of and shall be binding upon the assigns, successors in interest, personal representatives, estates, heirs, and legatees of each of the parties hereto.

8.12 Counterparts. This Agreement may be exercised in several counterparts and all so executed shall constitute one agreement which shall be binding on all the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

8.13 Entirement Agreement. This Agreement contains the entire understanding among the Parties and supersedes any prior written or oral agreement between them respecting the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

8.14 Amendments. This Agreement is subject to amendment only with the unanimous consent of all of the Parties.

SOQUEL CONSTRUCTION, INC.

EAGER BEAVER LOGGING, INC.

BY: *D. T. Miller*
D. T. MILLER

BY: *Edward A. Hughes*

GUARANTEE AGREEMENT

For value received and in consideration of the above Agreement on the part of Seller to enter into the foregoing contract for the Sale And Purchase Of Merchantable Timber with Buyer,

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I do hereby unconditionally guarantee unto Seller the prompt and full payment of any and all sums due or which may hereafter become due to Seller, from Buyer, directly or contingently, by virtue of any or all transactions or dealings between said parties pursuant to the terms of said contract or any written modification thereof. Should there be any default in said contract on the part of Buyer, Seller shall have the right to proceed under this Guarantee Agreement immediately, without any demand or notice and without first proceeding against Buyer on the original contract. I further agree to pay for all costs and expenses, including attorneys' fees, incurred in connection with the enforcement of this Guarantee Agreement.

CIRCLE DE LUMBER COMPANY

Dated: May 28/80

Daniel G. Brown

By: Daniel G. Brown

EXHIBIT "A": MERCHANTABLE TIMBER

All operations conducted pursuant to this Agreement either by Buyer or its agents, employees, contractors, invitees or permittees shall conform to the requirements of this EXHIBIT "A".

LOGGING

- (A) Merchantable Timber as used throughout this Agreement means ponderosa pine trees 8" DBH and larger or logs not less than eight feet long and eight inches in diameter measured inside the bark at the small end which after deduction for visible indication of defect, scale no less than one-third of their gross scale, provided however that no log scaling less than ten board feet shall be considered merchantable. As used herein scaling shall be performed in accordance with EXHIBIT "D" attached hereto.
- (B) Prior to commencement of harvesting or logging operations, Buyer shall secure Seller's approval of a plan for harvesting which shall set forth the manner in which the Sale Area is to be harvested hereunder. Such plan shall conform to this Agreement in all respects and to the extent that such plan is not inconsistent herewith shall be incorporated herein by this reference.
- (C) Except as rendered impracticable by the happening of an unforeseen event beyond the reasonable control of Buyer, logging shall commence on 29 MAY 1980.
- (D) Buyer shall clear cut the Sale Area cutting all merchantable timber in the Sale Area including dead or dying trees. Dead trees shall be opened by Buyer to enable the determination of whether such trees are merchantable. Buyer agrees to remove all non-merchantable timber for sale as merchantable chip material.
- (E) Logging shall be conducted in an orderly and progressive manner in accordance with all applicable laws, rules and regulations and in such manner as to minimize environmental harm. Accordingly, timber felling and other harvesting operations shall be performed so as to prevent unnecessary damage to timber not sold hereunder.

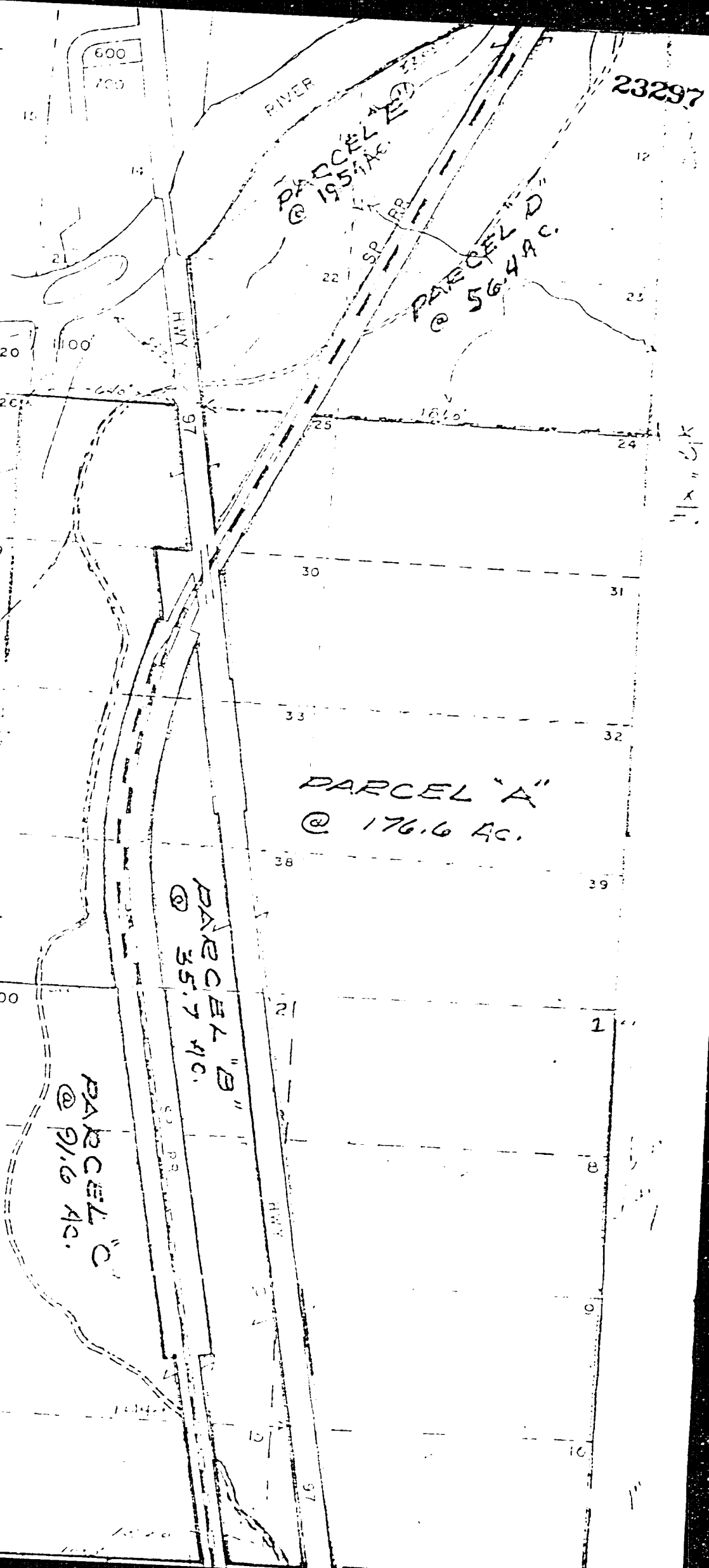
EXHIBIT "A" (con't)
(K) Cutting Map

SEE MAP 2134

ARCAD PROJECT 8-76602

Chiloquin, Or. 97624

29
6.50
152.0
217.60
51.80
52.80
= 134.20
Tearing Code



(d) Stump shall be cut as low as possible but in no event shall stump exceed ten inches above the ground level on the side adjacent to the highest ground.

(e) Upon completion of logging, Buyer shall contact Seller to arrange an inspection of the contract area and to secure a notice of release therefrom.

(f) Timber which is harvested shall not be commingled with timber from other sales nor shall it be removed from the areas agreed upon for logging unless and until sealed and branded in conformance herewith.

(g) All Merchantable Timber in the Sale Area shall be clear cut by Buyer in accordance with a reasonable and sound plan of sustained yield management, in conformance with applicable Federal, State and local laws, rules and regulations and as required by the specifications for the conduct of Buyer's operations which are shown in EXHIBIT "A" herewith.

(h) Areas to be clear cut of all standing timber are as follows:

1. Clear cut of all ponderosa pine and brush:
Parcels "A" 176.6 acres
Parcels "C" 91.6 acres
Parcels "E" 19.6 acres
2. Prior to commencement of harvesting or logging operations, Seller shall flag certain road and highway front site-trees which are not to be harvested as part of this Agreement.

(i) Cutting Map.

EXHIBIT "B": ACCESS ROADS

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All operations conducted pursuant to this Agreement either by Buyer or its agents, employees, contractors, or permittees shall conform to the specifications incorporated as a part of this Agreement marked EXHIBIT "B".

A) Ingress and egress to, over and across the Sale Area for the hauling and harvesting of timber by the Buyer shall be restricted to such roads as are specified on paragraph (F) of this EXHIBIT "B".

B) Access and use of aforesaid roads shall occur only during the normal working hours and days between 7:30 A. M. and 5:00 P. M., any amendment to these conditions shall occur only by written consent of the Seller.

C) Buyer shall as a condition maintain and repair all roads throughout its use for all operations conducted pursuant to this Agreement.

D) All unsurfaced roads shall be post-graded upon completion of logging operation in a good workman like manner, Buyers performance of its obligation shall be released by the Seller upon full and complete performance in writing.

E) Buyer shall be responsible for all permits, license and fee required by State, County, and local agencies for access and egress to the Sale Area and in accordance with all conditions of road specifications marked EXHIBIT "B".

F) (EAP) Access Roads.

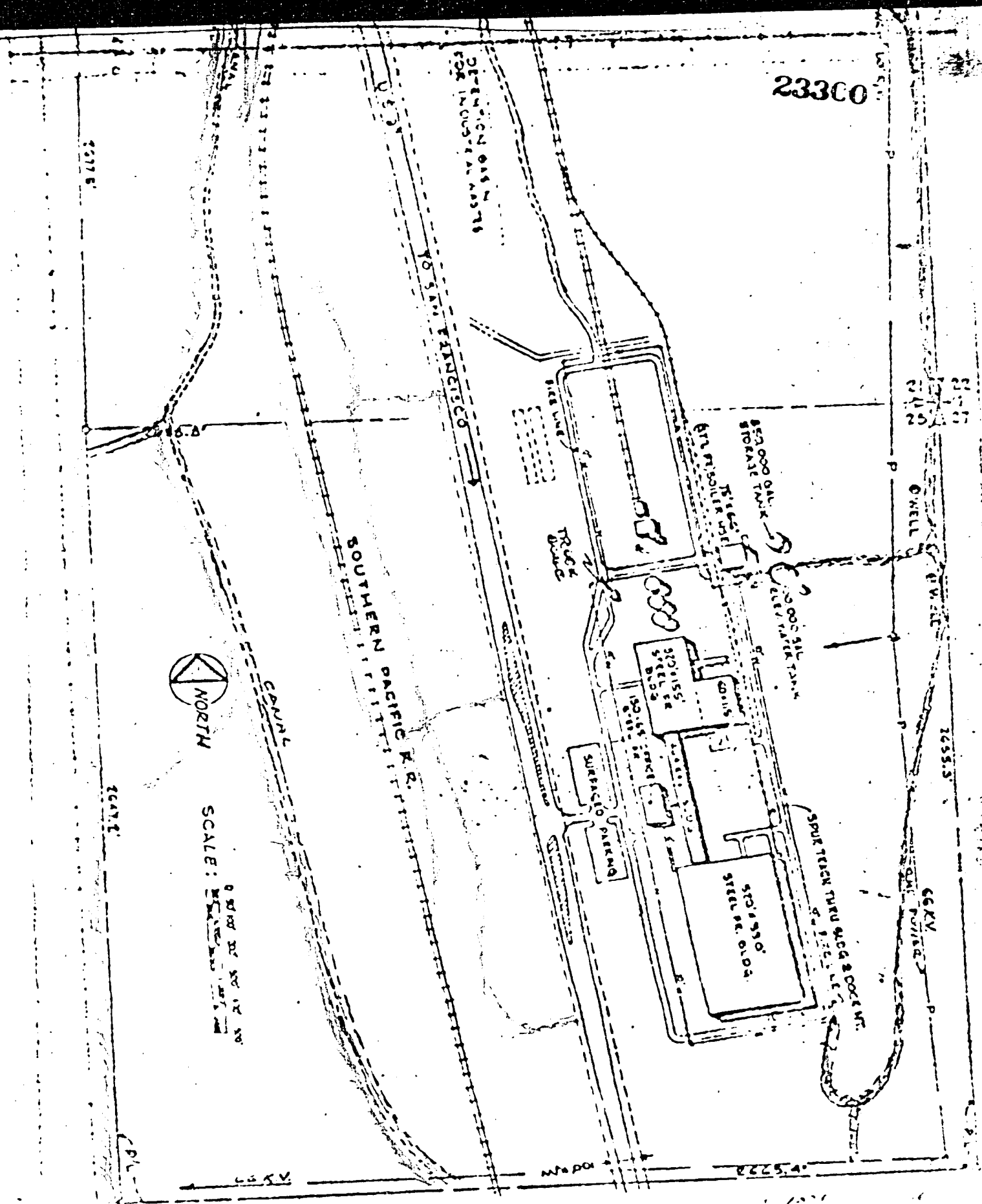


EXHIBIT "B" (CON'T)
(F) ACCESS ROADS

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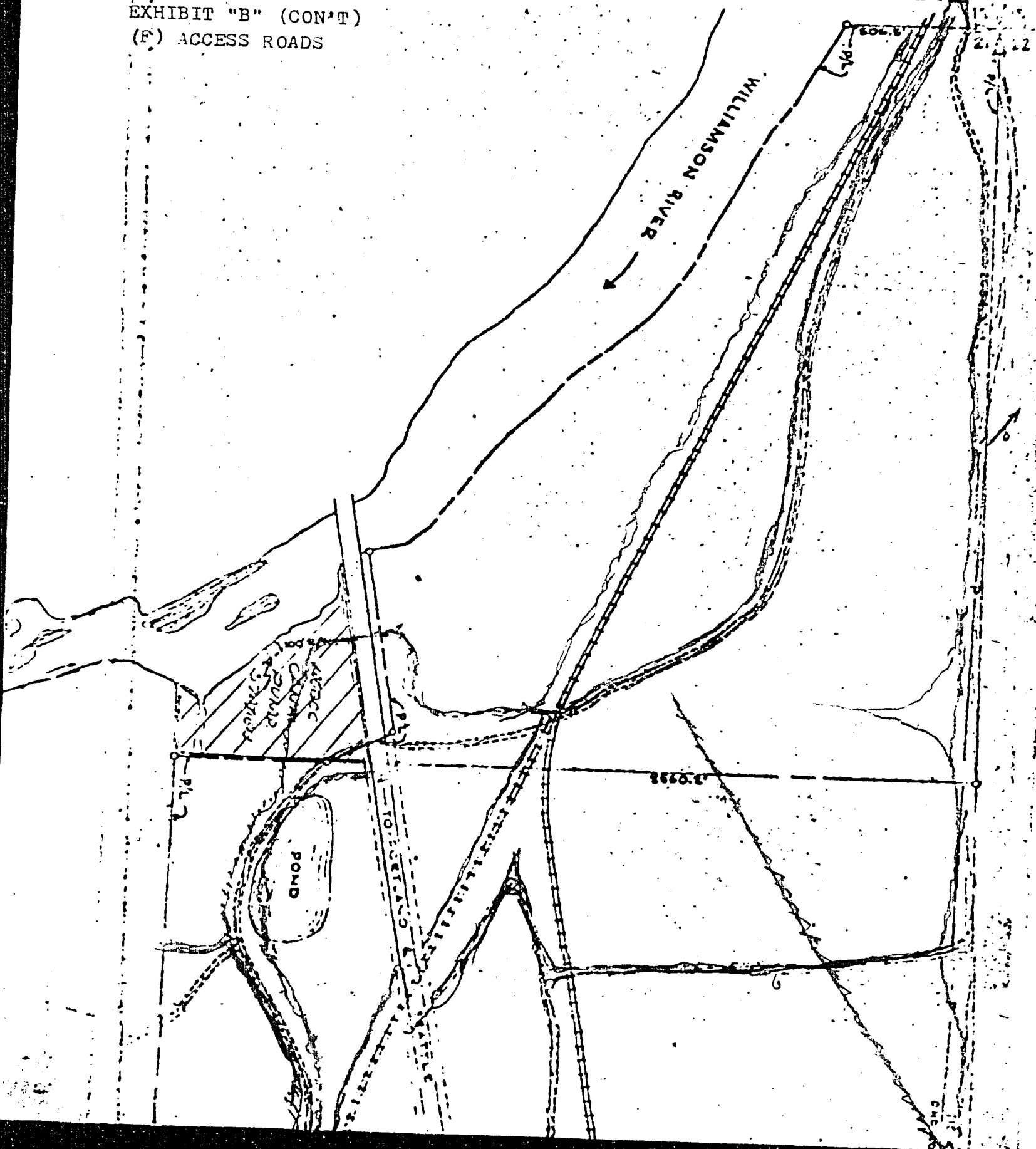


EXHIBIT "C": PAYMENTS AND TRUST

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1. PURCHASE PRICE. It is understood and agreed that the Purchase Price is a minimum guarantee only and it to be used solely for the purposes set forth herein. The actual amount payable by Buyer to Seller shall be determined by Paragraph 2 of this EXHIBIT "C".
2. RATE OF PAYMENT.
 - (a) Buyer shall pay Seller in full for all Merchantable Timber harvested. Such payment shall be made at the rate of \$ 135. per MBF, (Short Log East-Side Scribner Scale) of Merchantable Timber sold hereunder.
 - (b) Buyer shall pay Seller in full for all Merchantable Chip material harvested, at the rate of .375% of mill price paid to Buyer hereunder.
3. TERMS OF PAYMENT. Buyer shall make stumpage payments to Seller for timber harvested, scaled or measured hereunder at the above rate of payment. Such payment shall be due no later than ten days after receipt by Buyer of invoice for such timber harvested during any monthly cutting period. In the event payment of any stumpage payment required hereunder is not received within ten days after the payment to Buyer referred to above, Seller may at its option and without prejudice to its other rights hereunder, suspend Buyer's operations hereunder until such payment has been made. All due but unpaid account required hereby shall accrue interest at a rate of 1.5% per month from the day such payment is due.
4. RETAINED STUMPAGE PAYMENT. In lieu of an advance stumpage payment, Buyer shall deposit in a Trust Account as established hereunder, 1% of all receipts of invoices for Timber and Chip harvested. Said Trust shall secure Buyer's performance of its obligation, and shall be released by Seller upon full and complete performance by Buyer of its obligations hereunder.
5. BANK TRUST ACCOUNTS. Upon execution of this Agreement Seller shall establish Trust Accounts with the U. S. NATIONAL

(EXHIBIT "C": PAYMENTS AND TRUST CON'T.)

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BANK OF OREGON, 740 Main, Klamath Falls, Oregon, 97601, as follows:

(a) A Trust Account shall be opened to consummate this Agreement in the name of and in Trust to the Seller for contract payments per ARTICLE 5 of this Agreement.

(b) A Trust Account shall be opened to consummate this Agreement and held jointly in the name of the Seller and Buyer for contract payments per Paragraph 4 of EXHIBIT "C", a part of this Agreement.

EXHIBIT "D": SCALING AND GRADING

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- A. ALL MERCHANTABLE TIMBER SHALL BE SCALED IN ACCORDANCE WITH PROVISIONS OF SOUTHERN OREGON BUREAU LOG SCALING AND GRADING RULES, 1979 EDITION, AS REVISED AND ISSUED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE ON SOUTHERN OREGON LOG SCALING AND GRADING BUREAU, REGION 6, SHORT LOG SCALE, DECIMAL C LOG RULE.
- B. SCALING SHALL BE IN ACCORDANCE WITH OREGON LOG SCALING AND GRADING BUREAU, (SHORT LOG EAST-SIDE SCALE), MAXIMUM LOG SCALE LENGTH 40 FEET AND MINIMUM DIAMETER SMALL END 6 INCHES.
- C. RECORDS OF SCALING SHALL SHOW EACH LOG SCALED BY LENGTH, DIAMETER, SPECIES, NET VOLUME DECIMAL C AND DEFECT DEDUCTION.
- D. IN THE EVENT OF DISPUTE BETWEEN SELLER AND BUYER WITH PERFORMANCE OF ANY SCALER OR SCALING AGENCY BECOMES DEADLOCKED, SOUTHERN OREGON BUREAU OF LOG SCALING SHALL HAVE FINAL AUTHORITY IN ISSUES OF SCALING ARBITRATION.
- E. BRAND REGISTRATION SHALL BE: FO NO. 1.

STATE OF OREGON; COUNTY OF KLAMATH; ss.

And for record at request of Glenn D. Ramirez, Attorney

on 2nd day of December A. D. 19 80 at 9:31 o'clock A M., at

fully recorded in Vol. M80, of Deeds on Page 23289

W. D. MILNE, County Clerk

By Benetha Adetoch

Fee \$56.00