

AUG 9 1961

(Date)

Resolution No. 61-89

RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION

WHEREAS, the Tribal Council has for sometime been planning the construction of a new sawmill, and

WHEREAS, the Federal Government has agreed to lend to the Tribe the sum of Five Hundred Thousand Dollars (\$500,000.00) to help defray the costs of constructing said sawmill, and

WHEREAS, an additional sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) is needed both for the construction and working capital, and

WHEREAS, Tribal, Agency and Area Representatives have been negotiating to borrow said sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) with the Arizona Bank, and

WHEREAS, the said Arizona Bank has offered to lend said sum of money.

BE IT RESOLVED that the Tribal Chairman and Secretary be authorized and directed to execute all documents necessary to effectuate a Two Hundred Fifty Thousand Dollars (\$250,000.00) loan from the Arizona Bank payable Fifty Thousand Dollars (\$50,000.00) per year plus interest at the rate of six percent (6%) per annum on the unpaid balance.

BE IT FURTHER RESOLVED that the Chairman and the Secretary be authorized and directed to execute for and on behalf of the White Mountain Apache Tribe, the Loan Agreement and Promissory Note, copies of said documents being attached hereto and by reference made a part hereof.

The foregoing resolution was on August 3, 1961 duly adopted by a vote of 9 for and 0 against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article V, Section 1 (1) of the Amended Constitution and By-Laws of the Tribe, ratified by the Tribe June 27, 1958 and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

APPROVED..... AUG 11 1961

*Albert M. Hawley*  
Superintendent

*Lester Oliver*  
Chairman of the Tribal Council

*Mary C. Goodfield*  
Secretary of the Tribal Council

AUG 18 1961

Mr. F. M. Haverland

Area Director, Phoenix, Arizona

Dear Mr. Haverland:

Resolution No. 61-73<sup>87</sup> was enacted on August 3 by the Council of the White Mountain Apache Tribe pursuant to authority in Article V, Section 1 (1) of the Tribe's Constitution. This resolution is subject to the review and approval of the Secretary of the Interior. I recommend that this resolution be not rescinded.

The resolution approves a loan of \$250,000 from the Arizona Bank, Phoenix, Arizona. It authorizes and directs the Chairman and Secretary to execute all necessary documents for and on behalf of the White Mountain Apache Tribe. The Loan Agreement and the Timber Contract between the Tribe and Southwest Lumber Mills, Inc. are attached and made a part of Resolution No. 61-73.

Section 5, page 2, of the Loan Agreement assigns to the Bank, as security, Contract No. I-30-Ind-2481, dated May 20, 1943, between the White Mountain Apache Tribe and Southwest Lumber Mills, Inc. Upon any occurrence of a default by the Tribe, all proceeds from Contract No. I-30-Ind-2481 will be paid to the Arizona Bank with the exception that the United States shall receive for administrative charges an amount equal to ten percent of all proceeds.

I recommend that the Loan Agreement between the White Mountain Apache Tribe and the Arizona Bank be approved.

Sincerely yours,

/s/ Albert M. Hawley

Superintendent

and because of its effect upon the general assignment of tribal income given by the Tribe to the United States in connection with Revolving Credit loan contract 14-20-450-3604.

A copy of the subject contract is being transmitted simultaneously to the Field Solicitor, Phoenix, for his opinion thereon. We have not withheld submission of the contract to you until the Solicitor's opinion has been received because of the time element involved. The Solicitor is in process of moving his office to the new Federal Building.

Early approving action is greatly needed. The next key point in the Tribe's proceeding with its sawmill venture is the employment of the construction engineer and putting him to work. Such employment and the initiating of construction are dependent on approval of this \$250,000 bank loan and the surety that the \$500,000 of the Government loan is available. A committee appointed by the Tribal Council has examined applications for the position of construction engineer. Its decisions are made. It is planned to employ the construction engineer and put him immediately to work within the period September 15-29, 1961, thus the need for early action on the \$250,000 loan.

Please advise us by teletype when the loan is approved by the Secretary.

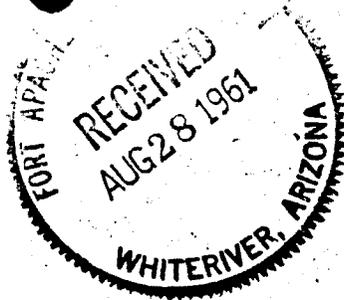
Sincerely yours,

(Signed) F. M. HAYWARD

Area Director

Enclosures

Copy to: Field Solicitor, w/cy contract & attachments  
Supt., Fort Apache Agency



Credit

August 25, 1961

Air Mail

Commissioner, Bureau of Indian Affairs

Washington 25, D. C.

Dear Sir:

Enclosed are an original and five copies of Resolution 61-89 adopted on August 3 by the Tribal Council of the White Mountain Apache Tribe and approved by the Superintendent, Fort Apache Agency, on August 11. A copy of Superintendent Hawley's letter of August 18 is enclosed. Also enclosed are the original and five copies of a loan agreement between the White Mountain Apache Tribe and The Arizona Bank of Phoenix, Arizona.

Resolution 61-89 was adopted under authority of Article V, Section 1(1) of the Tribe's Constitution, which is subject to review by the Secretary of the Interior. The resolution was approved by the Superintendent on August 11, pursuant to Article VI, Section 1(a) of the Constitution and is subject to review by the Secretary of the Interior within 90 days of the date of its enactment.

Resolution 61-89 authorizes the Tribal Chairman and Tribal Secretary to execute all documents necessary to effectuate a \$250,000 loan to the Tribe by The Arizona Bank, repayable at the rate of \$50,000 per year plus interest at 6 per cent per annum on the unpaid balance. As security for the loan the Tribe is assigning the proceeds anticipated from timber contract L-30-Ind. 2481 with the Southwest Lumber Mills, Inc. A copy of this contract and a modification thereto are attached to each copy of the loan agreement. Mr. James E. Bohling who has signed the agreement for the bank is Assistant Cashier and a loan officer, and evidence of his authority to contract in behalf of the bank is contained in letter of August 22, signed by T. C. Basham, Vice-President, attached to the contract.

The contract requires the approval of the Secretary because of the provisions of Article V, Section 1 (b) and (1) of the Tribe's Constitution, the assignment of income from the timber contract,

MODIFICATION OF CONTRACT

MAVERICK LOGGING UNIT

FORT APACHE INDIAN RESERVATION

CONTRACT No. I-30-Ind-2481

WHEREAS, the Southwest Lumber Mills, Inc., of McNary, Arizona, by contract approved by the Assistant Secretary of the Interior on July 19, 1943, agreed to log and pay for the timber designated for cutting on the Maverick Logging Unit, within the Fort Apache Indian Reservation, Arizona, and

WHEREAS, the aforesaid contract provides in part as follows:

"WITNESSETH: That the Superintendent, in consideration of the agreements by the Purchaser, agrees to sell to the Purchaser and the Purchaser agrees to purchase and pay for upon the terms and conditions herein stated and the General Timber Sale Regulations, approved April 10, 1920, hereto attached and made a part of this contract, all of the merchantable dead timber, standing or fallen, and all the merchantable live timber, marked or otherwise designated by the officer in charge for selective logging as required by the attached General Timber Sale Regulations, estimated to be approximately 400,000,000 feet of timber, net scale, principally ponderosa pine, within a tract of about 65,000 acres of tribal land on the Fort Apache Indian Reservation known as the Maverick Unit.

"FOR AND IN CONSIDERATION OF the agreements by the Superintendent, the Purchaser agrees that prior to March 31, 1970, he will cut and remove all the timber covered by this contract, and will pay to the Superintendent, for deposit in the Individual Indian Moneys Account of the White Mountain Apache Tribe of the Fort Apache Reservation, after proper deductions in accordance with the requirements of the Act of February 14, 1920 (41 Stat. 415), as amended, for timber sale administration by the Government, the full value of the timber as shall be determined by the actual scale of the timber at fixed rates per thousand feet board measure, Scribner Decimal C Log Scale, which rates, until changed as hereinafter provided, shall be as follows:

For Ponderosa Pine	<u>THREE</u> Dollars and <u>No</u> cents
For Douglas Fir	<u>THREE</u> Dollars and <u>No</u> cents
For Mexican White Pine	<u>THREE</u> Dollars and <u>No</u> cents
For Spruce	<u>THREE</u> Dollars and <u>No</u> cents
For Other Species	<u>ONE</u> Dollar and <u>Fifty</u> Cents

COPY

"The Secretary of the Interior is authorized and directed to revise stumpage prices at any time upon 30 days' notice to the Purchaser as the trend of economic conditions in the lumber industry shall warrant; provided, that any new rates so established shall not be less than those specifically set forth above.

\* \* \* \* \*

"The Purchaser agrees that the officer in charge of the sale may reserve from cutting forty percent (40%) more or less of the merchantable timber eighteen (18) inches and larger in diameter at breast height on the area logged. The estimated removable stand covers approximately 65,000 acres which is exclusive of approximately 3,300 acres on which all or a part of the merchantable timber may be reserved for roadside scenic strips, stream protection border strips and recreational areas.

\* \* \* \* \*

"The Purchaser further agrees that he will remove from the sale area and pay for as merchantable timber pieces 10 feet and longer, will utilize the trees to a diameter of 8 inches in the top where straight and sound, and will pay for all logs on the basis of a scale recognizing 16 as the maximum length of a single log; that all timber will be considered merchantable as provided for in the attached regulations; and that he will conform to all requirements of the General Timber Sale Regulations which are attached hereto and made a part of this contract."

AND WHEREAS, it has been found that the boundaries of the Maverick Unit as set forth in the contract are not described and are therefore indeterminate with respect to the area to be covered; and the stumpage readjustment and other provisions as quoted above are mutually unsatisfactory to the White Mountain Apache Tribe of Indians and to the Purchaser; and consequently that it will be mutually advantageous to each party of the contract to modify the terms thereof,

AND WHEREAS, it has been found that the stumpage adjustment procedure contemplated by this modification should be subject to a retroactive additional payment for timber cut under this contract during the calendar year 1956,

NOW THEREFORE, for and in consideration of the mutual benefits which will accrue to the Purchaser and the White Mountain Apache Tribe of Indians of the Fort Apache Indian Reservation of Arizona, it is hereby stipulated and agreed that the above-quoted portions of

the said timber purchase contract are hereby deleted therefrom and the following paragraphs are hereby inserted in said contract in lieu of such deleted portions:

WITNESSETH: That the Superintendent, in consideration of the agreements by the Purchaser, agrees to sell to the Purchaser and the Purchaser agrees to purchase and pay for upon the terms and conditions herein stated and the General Timber Sale Regulations, approved April 10, 1920, hereto attached and made a part of this contract, all the merchantable dead timber, standing or fallen, and all the merchantable live timber, marked or otherwise designated by the officer in charge for selective logging as required by the attached General Timber Sale Regulations, estimated to be approximately 400,000,000 feet of timber, principally ponderosa pine, which estimate is not guaranteed, within a tract of approximately 75,000 acres of tribal land on the Fort Apache Indian Reservation known as the Maverick Logging Unit and described as bounded on the north by the Mt. Thomas Roadless Area, on the east by the boundary between the reservation and the Apache National Forest, on the south by the Black River Roadless Area, and on the west by the western limits of the merchantable timber lying within the drainages of Willow and Tonto Creeks. The western boundary is more exactly shown on the map which is attached to and made a part of this contract modification.

FOR AND IN CONSIDERATION OF the agreements by the Superintendent, the Purchaser agrees that prior to March 31, 1970, he will cut all timber covered by this contract and will pay by remittance drawn to "Bureau of Indian Affairs" and transmitted to the Superintendent of the Fort Apache Indian Agency, for the use and benefit of the Indians entitled thereto, after proper deductions in accordance with the requirements of the Act of February 14, 1920 (41 Stat. 415), as amended, the full value of said timber as shall be determined on the basis of an actual log scale, at fixed rates per thousand feet board measure, Scribner Decimal C Log Scale, which rates shall be established for each quarter-annual period beginning January 1, April 1, July 1 and October 1; PROVIDED, That the rates during the remainder of the quarterly period within which this modification is approved shall be as follows:

For Ponderosa Pine	8 Dollars and <u>95</u> cents
For Douglas Fir	<u>6</u> Dollars and <u>95</u> cents
For Mexican White Pine	<u>8</u> Dollars and <u>95</u> cents
For Spruce	<u>6</u> Dollars and <u>95</u> cents
For Other Species	<u>3</u> Dollars and <u>15</u> cents

QUARTER-ANNUAL DETERMINATION OF STUMPAGE RATES

It is mutually agreed that for the quarter-annual periods following the one in which this contract modification is approved, the stumpage rates shall be adjusted by the procedure set forth as follows:

In order to determine the stumpage rates to be paid for the timber cut under this contract, it is agreed that the arithmetical averages of the Western Pine Association index prices of lumber for the full quarterly period beginning July 1, 1957, are:

Ponderosa pine (1954-56 basis)	<u>\$87.71</u>
Dry Larch-Douglas-fir (1951-53 basis)	<u>\$69.75</u>
Engelmann Spruce (1953-54 basis)	<u>\$81.92</u>
White fir (1942-49 basis)	<u>\$61.58</u>

and that stumpage shall bear the relationship to the arithmetical average index price of lumber as follows:

<u>Stumpage</u>	<u>Arithmetical average index price of lumber</u>
Ponderosa pine and Mexican white pine	Ponderosa pine (1954-56 basis)
Douglas-fir	Dry Larch-Douglas-fir (1951-53 basis)
Spruce	Engelmann spruce (1953-54 basis)
Other species	White fir (1942-49 basis)

The Secretary of the Interior or his duly authorized representative, hereinafter called the Approving Officer, shall obtain from the Western Pine Association, through its published reports or otherwise, statements of the index prices of lumber for each month during the life of this contract, or any extension thereof, and shall calculate the arithmetical averages of the corresponding index prices of lumber for each quarterly period.

To determine the stumpage rates which are to become effective for each quarterly period, the Approving Officer shall compare the arithmetical averages of index prices stipulated above with the corresponding arithmetical averages of index prices for the quarter-annual period just passed, and shall increase or decrease the stumpage rates set forth above by 50 percent of the difference between these average index prices. The resulting stumpage rates shall be those paid for timber actually scaled during the succeeding quarter-annual period.

## ADJUSTMENT OF STUMPAGE RATES

With respect to the timber cut under this contract, if the average index prices of lumber, referred to in the preceding section, became unavailable for use, or no longer provide an acceptable basis for stumpage rate determinations, the Approving Officer shall adopt the following procedure for adjusting the stumpage rates.

The Approving Officer shall on his own motion or upon request of the parties to the contract, accompanied by a submission in writing of the facts warranting the action, and if it appears equitable, provide for consultations with the parties, either separately or collectively as circumstances and convenience permit. The Approving Officer shall establish a one-month period for consultation during which time the parties may submit any appropriate facts or recommendations they may desire. As soon as practicable after the close of the consultations the Approving Officer shall evaluate the data submitted and, on the basis of such material and other available material that a prudent man would consider, either determine new stumpage rates or that no change should be made in the procedure of the preceding section. The Approving Officer shall announce his decision and the basis upon which it is determined. In the event the decision provides for changed stumpage rates they shall become effective one month after the date of announcement.

It is agreed that any consideration of changes in the stumpage rates, other than those provided for in the preceding section, must be based on changes subsequent to the quarter-annual period stipulated in this modification of contract in production costs, forest product prices, or other economic factors affecting the forest products industry of the region in which the timber is located, or be justified by the necessity for making equitable adjustments to meet situations which were not recognized or anticipated at the time the modification of contract was made. It is understood that a decision at any time by the Approving Officer, either to change or not to change stumpage rates in accordance with this section, shall not affect his authority in any subsequent adjustment studies to consider any pertinent changes that have occurred subsequent to the period considered in this contract modification.

It is understood that the quarter-annual stumpage adjustment requirements of the previous section shall have no application if revised stumpage rates are determined according to the procedure in this section and that the revised stumpage rates may be made effective without reference to

SIGNED AND SEALED in sextuplicate this 12 day of February 1958.

Witnesses:

SOUTHWEST LUMBER MILLS, INC.

/s/ Cornelia Watts

By: /s/ P. C. Gaffney

/s/ John A. Armstrong (SEAL)

Vice President

By: /s/ R. W. Rehfeld

Asst. Secretary

/s/ Eileen G. Rolfe

/s/ Albert M. Hawley

Superintendent

/s/ M. C. Collins

Signed this 12 day of February 1958 for the White Mountain Apache Tribe of the Fort Apache Indian Reservation, pursuant to authority granted by Resolution No. 58-6 of the Tribal Council on the 12 day of February 1958.

Attest:

WHITE MOUNTAIN APACHE TRIBE

/s/ Mary C. Endfield  
Secretary of the Council

/s/ Clinton Kessay  
Chairman of the Council

The Maryland Casualty Company of Baltimore, Maryland, surety on the bond of the Southwest Lumber Mills, Inc., covering performance under the Maverick Logging Unit Contract No. I-30-Ind-2481, which bond was approved by the Assistant Secretary of the Interior on July 19, 1943, hereby consents to the modification agreement above set forth, and agrees to continue as surety on the bond the same as though no modification of the contract had been made.

Executed for the Maryland Casualty Company this 19 day of FEBRUARY 1958.

Witness:

MARYLAND CASUALTY COMPANY

/s/ Jane Nelson (Corporate)  
(Seal)

By /s/ Frances Gray  
Frances Gray, Attorney-in-Fact

Approved: Mar. 24, 1958.

/s/ Roger Ernst  
Assistant Secretary of the Interior  
Roger Ernst

Modification of Maverick Logging Unit contract

SIGNED AND SEALED in sextuplet this \_\_\_\_\_ day of \_\_\_\_\_, 1943.

\_\_\_\_\_  
Purchaser

BY \_\_\_\_\_  
President

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
\_\_\_\_\_  
Signed this \_\_\_\_\_ day of \_\_\_\_\_ 1943, for the White Mountain Apache Tribe of the Fort Apache Indian reservation pursuant to authority granted by Resolution No. 84, of the Tribal Council on the 9th day of March, 1942.

WHITE MOUNTAIN APACHE TRIBE

BY \_\_\_\_\_  
Chairman of the Tribal Council

Attest:

\_\_\_\_\_  
Secretary of the Tribal Council

Approved:

\_\_\_\_\_  
Assistant Secretary of the Interior

The Purchaser further agrees that if fires, for the starting or spread of which he or any of his employees, his subcontractors or their employees, shall be responsible by act or neglect, shall destroy young growth under 10 inches in diameter or any portion of the reservation, he will pay liquidated damages of ten dollars (\$10.00) per acre for the area thus burned over unless a lesser rate of damage shall be approved by the Commissioner of Indian Affairs; and he agrees that, in addition to these liquidated damages, he will pay the damage that shall be caused to all timber larger than 10 inches in diameter at four and one-half feet from the ground at the rates per thousand feet in effect at the time of damage, or to any other property of the Indians or the Government. Should merchantable timber be injured by a forest fire for the origin of which the Purchaser, his agents, employees, subcontractors or their employees are in no way responsible, said Purchaser shall be accountable for the loss sustained only to the extent that such loss shall be due to his failure to cut and remove the injured timber as expeditiously as shall be possible in the existing circumstances and the terms of this contract.

The Purchaser further agrees that preference shall be given to Indians in the hiring, retention, promotion, replacement or reinstatement of employees in any branch or trade in which they are sufficiently skilled in connection with the operation and manufacture of wood products from Indian timber; that Indians shall be privileged to join or not join any organization in connection with the operation as they see fit and that this agreement shall take precedence over any agreement the Purchaser has made or may make with other than Indian employees.

The Purchaser further agrees that he will extend to Indian employees the same sanitary housing facilities and conveniences and on the same rental basis as are enjoyed by other employees performing the same type or similar work.

The Purchaser further agrees that prior to initial logging operations he will submit to the Superintendent a logging plan indicating progressive logging operations for a period of five years; that the initial plan will be followed by additional plans at five-year periods, and that no major changes in the logging plans, as presented, can be made without approval of the Superintendent.

It is further understood and agreed that this contract shall be null and void and of no effect until approved by the Secretary of the Interior, and until the latter shall approve a bond of the Purchaser in the penal sum of Forty Thousand Dollars (\$40,000) conditioned on the faithful performance of all the terms of this contract and the Regulations attached hereunto.

The Purchaser agrees that the officer in charge of the sale may reserve from cutting forty percent (40%) more or less of the merchantable timber eighteen (18) inches and larger in diameter at breast height on the area logged. The estimated removable stand covers approximately 65,000 acres which is exclusive of approximately 3,300 acres on which all or a part of the merchantable timber may be reserved for roadside scenic strips, stream protection border strips and recreational areas.

The Purchaser further agrees that he will cut and remove from some portion of the sale area at least 5,000,000 feet, board measure, log scale, prior to April 1, 1945, and each succeeding year ending March 31, and not to exceed 18,000,000 feet during any 12 months ending March 31 until the contract is completed unless special authority is granted the operator by the Commissioner of Indian Affairs to exceed the maximum annual cut for any given 12 months' period; however, that in no event shall the total cut for the five year periods beginning April 1, 1944, 1949, 1954, 1959, 1964, 1969 exceed 100,000,000 board feet.

The Purchaser, if he fails to cut in any contract logging year ending March 31 the minimum of 5,000,000 feet of timber required by the contract to be cut during such year, shall pay to the Superintendent of the Fort Apache Agency as an advance payment, on or before the end of such contract year, the value of the uncut balance of the required minimum, figured at the ponderosa pine price; and advance payments so made shall be applicable to timber cut in a subsequent year only after the Purchaser in such subsequent year has cut and paid for the minimum of 5,000,000 feet of timber required to be cut that year by the contract; Provided, that the Secretary of the Interior in his discretion and with the consent of the tribal council may relieve the Purchaser in whole or in part from the minimum cutting and paying requirements because of adverse market conditions, fire damage to the Purchaser's manufacturing plant, or acts of God or Government control. The Purchaser agrees that he will surfac and maintain, as required by the Superintendent, all forest truck trails within or without the timber sale unit which are used by the Purchaser.

The Purchaser further agrees that he will remove from the sale area and pay for as merchantable timber pieces 10 feet and longer, will utilize the trees to a diameter of 8 inches in the top where straight and sound, and will pay for all logs on the basis of a scale recognizing 16 feet as the maximum length of a single log; that all timber will be considered merchantable as provided for in the attached regulations; and that he will conform to all requirements of the General Timber Sale Regulations which are attached hereto and made a part of this contract.

The Purchaser further agrees that as soon as possible after the close of each calendar year, and in any event not later than March 15 following, he will submit in duplicate to the Commissioner of Indian Affairs, through the Superintendent a complete detailed financial statement of operations and sales for the calendar year just ended, certified to by a certified public accountant and the Purchaser. The Purchaser further agrees upon written request of the Commissioner to furnish to the Commissioner of Indian Affairs through the Superintendent from time to time similar financial statement, in duplicate, properly certified to by the Purchaser and a certified public accountant. All financial statements so submitted will be considered as confidential.

DEPARTMENT OF THE INTERIOR  
UNITED STATES INDIAN SERVICE

TIMBER CONTRACT

MAVERICK LOGGING UNIT

THIS AGREEMENT, made and entered into at the Fort Apache Agency, Whiteriver, Arizona, this 20 day of MAY 1943, under authority of the Act of June 25, 1910 (36 Stat. 857), and the Act of June 18, 1934 (48 Stat. 984) between the Superintendent of the Fort Apache Agency, hereinafter called the Superintendent, for and in behalf of the White Mountain Apache Tribe of Indians, party of the first part, and SOUTHWEST LUMBER MILLS, Inc. of McNARY, ARIZONA, party of the second part, hereinafter called the Purchaser.

WITNESSETH: That the Superintendent, in consideration of the agreements by the Purchaser, agrees to sell to the Purchaser and the Purchaser agrees to purchase and pay for upon the terms and conditions herein stated and the General Timber Sale Regulations, approved April 10, 1920, hereto attached and made a part of this contract, all the merchantable dead timber, standing or fallen, and all the merchantable live timber, marked or otherwise designated by the officer in charge for selective logging as required by the attached General Timber Sale Regulations, estimated to be approximately 400,000,000 feet of timber, net scale, principally ponderosa pine, within a tract of about 65,000 acres of tribal land on the Fort Apache Indian Reservation known as the Maverick Unit.

FOR AND IN CONSIDERATION OF the agreements by the Superintendent, the Purchaser agrees that prior to March 31, 1970, he will cut and remove all the timber covered by this contract, and will pay to the Superintendent, for deposit in the Individual Indian Moneys Account of the White Mountain Apache Tribe of the Fort Apache Reservation, after proper deductions in accordance with the requirements of the Act of February 14, 1920 (41 Stat. 415), as amended, for timber sale administration by the Government, the full value of the timber as shall be determined by the actual scale of the timber at fixed rates per thousand feet board measure, Scribner Decimal C Log Scale, which rates, until changed as hereinafter provided, shall be as follows:

For Ponderosa Pine	<u>THREE</u>	Dollars and	<u>NO</u>	Cents
For Douglas Fir	<u>THREE</u>	Dollars and	<u>NO</u>	Cents
For Mexican White Pine	<u>THREE</u>	Dollars and	<u>NO</u>	Cents
Spruce	<u>THREE</u>	Dollars and	<u>NO</u>	Cents
For Other Species	<u>ONE</u>	Dollars and	<u>FIFTY</u>	Cents

The Secretary of the Interior is authorized and directed to revise stumpage prices at any time upon 30 days' notice to the purchaser as the trend of economic conditions in the lumber industry shall warrant; provided, that any new rates so established shall not be less than these specifically set forth above.

The Purchaser further agrees that prior to the time when the stumpage value of the timber cut shall exceed the cash deposit of thirty-six thousand dollars (\$36,000) submitted with his proposal to purchase timber, he will make a cash deposit of ten thousand dollars (\$10,000) and subsequent deposits of ten thousand dollars (\$10,000) at such times as may be necessary to insure that the stumpage value of the timber cut and not paid for at any time shall not exceed the cash deposit then held by the Superintendent.



5. The LOAN shall not be secured except to the extent hereinafter set forth. TRIBE shall, and hereby does, assign to BANK, as security for each of TRIBE'S obligations hereunder and under said note, all proceeds (including damages, liquidated or otherwise, payable or to be payable with respect thereto) payable or to be payable to TRIBE under Contract No. I-30-Ind-2481, dated May 20, 1943, between TRIBE and Southwest Lumber Mills, Inc., a copy of which, with certain modifications, is attached hereto and made a part hereof and marked Exhibit "A". So long as no default exists with respect to the LOAN, BANK shall not give notice of the assignment to Southwest Lumber Mills, Inc., nor file the assignment or notice thereof in any public office for the purpose of giving constructive notice of the existence thereof; but upon the occurrence of any default with respect to the LOAN, BANK shall be entitled to take all action, give all notices, and make all filings which in its opinion shall be appropriate, and shall be entitled to receive all amounts hereby assigned and apply them to payment of the LOAN and each of TRIBE'S obligations with respect thereto. The first proceeds of said contract during each cutting season (October to March) commencing with the 1961 to 1962 season, to the extent of the payment due BANK on the February 1 occurring during such cutting season shall be paid by TRIBE to BANK immediately on receipt thereof in satisfaction of such annual payment, and shall be used for no other purpose, but after payment to BANK of an amount sufficient to discharge such annual payment, with interest, BANK shall not, unless TRIBE is in default, be entitled to require further payments from the proceeds of said contract with respect to said cutting season. Each right of BANK to receive the proceeds of said contract shall be subject to the right of the United States to receive, as an administrative charge, an amount equal to 10% of all proceeds.

6. TRIBE warrants and covenants as follows, all covenants to be applicable to all times during which any indebtedness to BANK exists hereunder:

(a) The contract assigned in Paragraph 5 is valid and enforceable with respect to every party thereto and is in full force and effect according to its terms, as modified, all as shown by Exhibit "A" except as to modifications which do not reduce the obligations of Southwest Lumber Mills, Inc., nor grant it any right of set-off.

(b) TRIBE shall not, without BANK'S prior written approval, consent to or permit any modification of said contract which would reduce the payments to be made under said contract or grant to Southwest Lumber Mills, Inc., any right of set-off, nor release any party from any obligation thereon; and, if BANK requests, will seek specific performance of any such contract rather than any other remedy or

means of enforcement or collection of damages in case of default or breach thereof.

(c) The contract assigned by Paragraph 5 required, on June 30, 1961, the cutting and purchase, in addition to the timber then already cut and purchased, of at least 106,653,120 board feet log scale.

(d) TRIBE is legally entitled to execute, and, upon execution and approval of the Secretary of the Interior, will be bound by this Loan Agreement and each instrument provided for or contemplated thereby.

(e) TRIBE shall permit BANK, or persons authorized by it, to inspect at all reasonable times all books and records pertaining to TRIBE'S business or affairs relating to timber and timber products, and shall authorize all officials of The Bureau of Indian Affairs to disclose to BANK all such information.

(f) TRIBE shall cause notice to be given to BANK of all meetings of its Tribal Council at which any business is to be conducted or is conducted in connection with BANK'S loan, the use of the proceeds of BANK'S loan, TRIBE'S contract with Southwest Lumber Mills, Inc., or any other matter which affects or may affect BANK'S loan or the repayment thereof. Such notice shall be given at the same time such notice is given to the members of such Tribal Council and TRIBE shall permit a representative of BANK to attend such meetings, if BANK so elects.

7. TRIBE hereby irrevocably consents to be sued in any court of competent jurisdiction as to the subject matter of the suit with respect to any matter arising out of or in connection with the LOAN or this Loan Agreement and hereby agrees that it is subject to the jurisdiction of said courts for such purpose.

8. Should there be any breach or default with respect to any of the warranties or covenants of this Loan Agreement or with respect to any instrument executed in connection herewith, whenever discovered, all obligations then owing by TRIBE to BANK shall, at BANK'S option, upon not less than twenty (20) days written notice to TRIBE given in the same manner as the notice provided in Paragraph 14 hereof, become immediately due and payable, regardless of the due date thereof as determined without reference to this provision.

9. TRIBE acknowledges that the LOAN and all obligations in connection therewith are general obligations of TRIBE, for which

TRIBE is absolutely liable and that they are not payable only out of a particular fund or with funds from a particular source.

10. TRIBE shall do or cause to be done all acts and execute all instruments necessary or appropriate to the performance of this Loan Agreement and all instruments provided for herein or executed in connection herewith, including, without limiting the generality of the foregoing, the inclusion in any budget or budgets adopted by it of appropriation for payment of its obligations to BANK.

11. TRIBE shall furnish BANK with proper evidence of the authority of the persons who act on its behalf in the execution and performance of this Loan Agreement and all instruments to be executed pursuant hereto and a written opinion from its legal counsel, Barry DeRose, that such persons have been duly and properly authorized so to act and that the acts to be done are within TRIBE'S legal authority and that this Loan Agreement and all instruments provided herein to be executed by TRIBE will, when signed by such persons in its behalf, be valid and binding on TRIBE, according to their terms.

12. No waiver by BANK of any breach or condition of default hereunder shall be deemed or construed to constitute a waiver of any other breach or condition of default hereunder, whether like or unlike the breach or condition of default waived.

13. This Loan Agreement and every instrument pursuant hereto shall inure to the benefit of and be binding upon the successors in interest of the parties hereto.

14. Approval of this Loan Agreement by the Secretary of the Interior, as provided by law, is a condition precedent to its effectiveness, and it shall be effective only from the time of such approval; provided, however, that in the event he shall not have approved this Loan Agreement at 5:00 P.M. on December 15, 1961, BANK may thereafter, by written notice given to TRIBE at any time before the time of such approval and actual receipt by BANK of written notice from the Secretary of the Interior of such approval, terminate its responsibility hereunder, and upon such termination neither party shall have any duty for or right against the other party on account of this Loan Agreement or on account of such termination. Such written notice shall be deemed given when deposited in the United States mails, postage prepaid by ordinary mail, in an envelope addressed to TRIBE at Whiteriver, Arizona.

THE ARIZONA BANK

By *J. Baerly*

WHITE MOUNTAIN APACHE TRIBE

By *Lester Oliver*

By *Mary L. Bradford*