

48746

UNITED STATES NATIONAL BANK OF OREGON
MORTGAGE & ASSIGNMENT OF SELLER'S INTEREST
UNDER LAND SALE CONTRACT

1. Grant of Assignment and Mortgage. **BROOKS RESOURCES CORPORATION** and/or **BLACK BUTTE RANCH** May 9, 1985

("Seller"), whose address is **416 N. E. Greenwood, P. O. Box 6119, Bend, Oregon 97708**

("Bank"), whose address is **321 S. W. Sixth Ave., Portland, Oregon 97204**, hereby assigns to **UNITED STATES NATIONAL BANK OF OREGON**

all of Seller's right, title and interest in the following-described contracts ("Contracts"):

CONTRACT DATE	ORIGINAL SELLER	PURCHASER	PRINCIPAL AMOUNT OWING	COUNTY	RECORDED BOOK	PAGE
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1. **SEE ATTACHED EXHIBIT A**

2. **SEE ATTACHED EXHIBIT A**

3. **SEE ATTACHED EXHIBIT A**

4. **SEE ATTACHED EXHIBIT A**

and mortgages to Bank all of Seller's rights and interest in the real and personal property that is the subject of the Contracts ("Property" or "Properties"), which Properties are more fully described as follows:

Legal descriptions of said properties are as included in said Land Sale Contracts, recorded as described on the attached Exhibit A.

or on Exhibit A which may be attached to this Mortgage and Assignment.

2. Indebtedness. This Mortgage and Assignment ("Agreement") secures the payment of the principal and interest on, and the performance of, (1) the following promissory notes ("Notes") executed by Seller, or by the persons or entities named below as "Debtor":

NAME OF DEBTOR (insert "Seller" or name of other Debtor, as appropriate)	DATE	ORIGINAL AMOUNT	PRINCIPAL AMOUNT OWING	DATE FINAL PYMT. ON NOTE IS DUE
BROOKS RESOURCES CORPORATION and		\$7,000,000	\$7,000,000	March 31, 1986
BLACK BUTTE RANCH CORPORATION and		\$3,000,000	\$3,000,000	May 9, 1990
each of them as to each Note		\$2,000,000	\$2,000,000	March 31, 1986

(See attached Exhibit B)

(2) any future loans Bank in its discretion may make to Seller or Debtor, (3) any sums Bank may pay, or costs Bank may incur, in discharging obligations of the Seller or Debtor under this Agreement or under the Contracts, all costs of collecting the Notes or other amounts owed, whether or not litigation is commenced, and attorneys' fees incurred in any litigation or on appeal, including costs and fees incurred in representing the interest of the Bank as a creditor in any insolvency proceedings, and (4) all other liabilities and obligations of Seller or Debtor to Bank of every kind and description, whether direct or indirect, primary or secondary (including any as guarantor or surety), absolute or contingent, due or to become due, joint or several, and whether now existing or hereafter incurred. The foregoing is "the Indebtedness" referred to in this Agreement.

3. Encumbrances. Seller warrants and will forever defend title to the Properties against the lawful claims of all persons, subject only to the contractual rights of each contract purchaser under the particular Contract to which that purchaser is a party, and warrants that the Properties are subject to no other interest or encumbrance materially and adversely affecting the use of the Property or its value as security, except for the following:

In accordance with May 9, 1985 LOAN AGREEMENT

The foregoing interests, encumbrances, and rights are herein called "Permitted Encumbrances".

Bank in its discretion may pay and/or discharge any encumbrances, and Seller shall pay Bank on demand amounts disbursed for this purpose, together with interest at the highest lawful rate provided under any of the Notes.

4. Bank Not Liable. The Bank, in accepting this Agreement, or in its discretion performing any of Seller's obligations hereunder, does not assume any liability or responsibility to continue to perform, or to perform any of Seller's other obligations under the Contracts.

5. Seller's Warranties. Seller represents and warrants to Bank that (1) Seller is the sole owner of the Contracts, free of any security interest, lien or other encumbrances, and has the right to assign the Contracts and mortgage the Property without violating any legal or contractual obligation; (2) each Contract is a valid, legal and binding contract for the sale of the Property described therein, not subject to any offset, discount, or deduction not stated in the Contract, and that no defense exists on the part of any purchaser, guarantor, or other person represented as obligated on the Contract; (3) no Contract is now delinquent or in default and that all taxes and assessments on the Property are now current; and (4) the principal amount owing on each Contract as of the date of this Agreement is as stated in Section 1.

6. Seller's Covenants. Seller covenants that (1) Seller shall deliver and pledge the signed original of each Contract to Bank concurrently with this Agreement, or upon demand by Bank; (2) Seller shall promptly upon request execute and give Bank financing statements, memorandums of this Agreement, or any other document that Bank considers advisable to protect its interest under this Agreement, which may be filed or recorded at Seller's expense; (3) Seller shall perform all obligations of Seller under the Contracts, prevent waste of the Property, and do all things necessary to prevent events or conditions that would adversely affect the value of the Contracts and Property as security; (4) if any Contract requires the purchaser to obtain Seller's consent to a sale of the Property or other transfer of purchaser's interest, then Seller, five days before giving its consent, shall notify Bank of the identity of the proposed transferee, and shall withhold its consent except to a person who Seller has reasonably determined, after adequate inquiry, to be creditworthy; and (5) Seller shall do all in its power to collect payments under the Contract when due, and shall notify Bank in writing within 48 hours of discovery that a purchaser has failed to make any payment within ten days following the date it is due under a Contract, or of discovering a default under a Contract or an event or condition that would be, or justify, a declaration of a default after a lapse of time or the giving of notice; and (6) Seller shall keep records reasonably satisfactory to Bank respecting the Contracts and payments on the Contracts, and shall allow Bank access to the records at all times.

7. Insurance. Seller shall be responsible for seeing that the Property is kept insured with an insurer acceptable to Bank against fire, extended coverage and other risks specified by Bank, in an amount equal to the lesser of the insurable value of all improvements on the Properties or the amount of the Indebtedness, and shall give Bank the policies or other evidence of insurance satisfactory to Bank. If Bank requests, Seller shall have the insurance made payable to Bank or, at Bank's option, secure an endorsement acceptable to Bank making the insurance payable to Bank only and providing Bank notice prior to lapse or cancellation.

8. Substituted Performance. If Seller fails to keep the Property insured or fails to perform any other obligation, or fails to comply with any requirement of Seller under this Agreement or under any Contract, if taxes or assessments are not paid, or liens or encumbrances (other than Permitted Encumbrances) affect the Property or Contracts, or if any other event or condition affects or threatens the value of the Property or the Contracts, then Bank shall have the right to take any action which in its discretion it considers necessary to cure or prevent such failure or condition or protect its security; expenses so incurred shall be a part of the Indebtedness, payable on demand at the highest lawful interest rate charged on any of the Notes.

10. Condemnation. Seller shall be responsible to defend any condemnation action affecting the Property, and the net proceeds of any award after deducting reasonable costs, expenses and attorneys' fees incurred by Seller in the action shall be paid to Bank for application to the Indebtedness.

11. Release. After full payment of the Indebtedness, Bank shall release this Mortgage and Assignment and, upon written demand of Seller, will terminate its financing statements affecting the Property and the Contracts.

12. Default. The following are events of default:

- (1) Any payment of principal or interest due on any of the Notes, or on any other part of the Indebtedness, is not paid when due;
- (2) Seller or Debtor's death, dissolution, termination of existence, or failure to pay debts as they become due; appointment of a receiver for any part of Seller's or Debtor's assets; assignment by Seller or Debtor for the benefit of creditors; or the commencement of any proceedings under any bankruptcy or insolvency law by or against Seller or Debtor;
- (3) Any default under any Contract, or any event or condition not cured within ten days, which with the lapse of time or the giving of notice, would constitute a default under any Contract, or would justify a declaration of default under any Contract, whether or not waived by Seller, or any failure of Seller to notify Bank of such a default, event, or condition;
- (4) The Property or any Contract is or becomes subject to any lien or encumbrance, other than Permitted Encumbrances;
- (5) Failure of the Seller to perform any other covenant under this Agreement within 15 days after Bank mails or, at Bank's option, delivers written notice specifying the failure; or
- (6) Any representation of Seller proves to have been false when made.

13. Direct Collection. Either before or after default, Bank shall have the right to notify the purchasers and other obligors under any Contracts to make payments owing on the Contracts directly to the Bank, and the purchasers and other obligors shall thereafter be required to do so. At the request of Bank, the Seller shall promptly at Seller's expense notify the purchasers and other obligors under any or all Contracts to make payments directly to the Bank. After notification, the Seller shall not solicit payments from the notified persons. If Seller nevertheless has or comes into possession of payments made on any Contracts, Seller shall immediately remit them to the Bank, and until remitted shall hold them separate and as an express trust for Bank. Purchasers and other persons obligated under the Contracts are hereby authorized and directed to recognize the rights of Bank, including the rights of Bank to receive payments under the Contracts, without investigating the existence, amount, or validity of the Indebtedness owed to Bank, the existence or non-existence of a default, the reason for Bank's action or claim, the application of payments, or any other facts, and Seller hereby agrees, for the benefit of Bank and the purchasers and other obligors, that Seller shall indemnify and hold harmless the Bank and the purchasers and other obligors against the claims of Seller and all other persons relating to payment by them to Bank, including legal fees and costs of defending against such claims. A receipt of Bank for payments shall be a full discharge and release of the obligation of the purchaser or other obligor to make the payments for which the receipt is given. Checks for payments shall be made to the order of Bank only.

14. Collection Agencies and Escrows. If amounts due under any Contract are being collected by an agent, or paid to an escrow holder, this Agreement is an irrevocable instruction from Seller to any such agent or escrow holder to pay and deliver to Bank, at Bank's request, any money due under the Contracts or any other property or documents which are, or would otherwise be, payable or deliverable to Seller or to an account or person named by Seller.

15. Rights Upon Default. After the occurrence of any event of default, in addition to or in place of its rights under Section 13, the Bank may at Bank's option exercise any one or more of the following rights and remedies:

- (1) The right, without notice, presentment, or demand, to declare the entire Indebtedness immediately due and payable.
- (2) With respect to all or any part of the Property or the Contracts, the right to foreclose by judicial proceedings.
- (3) The rights and remedies of a secured party under the Uniform Commercial Code, as well as those stated herein. The Bank may without notice take possession of all personal property not already in its possession and/or require Seller to assemble it and turn it over to Bank at a reasonably convenient place designated by the Bank. Although the Bank may in its discretion and without liability do so, the Bank shall have no duty to take any action to preserve rights against any party to the Contracts, to instruments, or to other personal property in its possession, either before or after default, and shall have no duty whatsoever with respect to personal property in its possession beyond the use of ordinary reasonable care in its physical custody and preservation. The Bank may retain personal property in which it has a security interest in satisfaction of the Indebtedness or may sell or otherwise dispose of such personal property at either public or private sale, first giving Seller ten days' notice of the date and place of public sale or the date after which private sale may be made. The Seller agrees that ten days' notice is reasonable notice. The Seller shall be liable for any deficiency and the Bank shall account for any surplus.

In exercising its rights and remedies, the Bank shall be free to sell or otherwise dispose of all or any part of the Contracts or Properties, separately or at once, and on any terms. The Bank shall be entitled to purchase all or any portion of the Property or the Contracts at any public sale.

16. Debtor's Signature. If Seller and Debtor are not the same, Debtor's signature indicates Debtor's agreement to those provisions that may affect Debtor. This Assignment does not give Debtor any interest in the Properties or the Contracts.

17. Waiver, Notice and Other Collateral.

- (1) A waiver by Bank of a breach of this Agreement shall not constitute a waiver of, or prejudice the Bank's right to demand strict compliance with, that provision or any other provision.
- (2) Seller waives presentment, demand, notice and protest with regard to any part of the Indebtedness, and consents to any exchange or any release of collateral pledged by any person with respect to the Indebtedness. Bank may realize upon and apply any collateral it may have with respect to the Indebtedness in any manner and in any order without affecting Bank's rights to realize upon and apply the proceeds of the Properties or the Contracts.

BROOKS RESOURCES CORPORATION

By Michael P. Wallen
Title President

BLACK BUTTE RANCH CORPORATION

By Michael P. Wallen
Title President

BROOKS RESOURCES CORPORATION
CORPORATE ACKNOWLEDGEMENT
STATE OF OREGON

County of Deschutes) SS.
Personally appeared Michael P. Wallen

is the President of the corporation that executed this Mortgage and Assignment of Seller's Interest and that the seal affixed hereto is its seal and that this Mortgage and Assignment of Seller's Interest was voluntarily signed and sealed in behalf of the corporation by authority of its Board of Directors.

Before me:

Leanne A. Jackson
Notary Public for Oregon
My commission expires: 7-16-87

May 9, 1985

BLACK BUTTE RANCH CORPORATION
CORPORATE ACKNOWLEDGEMENT
STATE OF OREGON

County of Deschutes) SS.
Personally appeared Michael P. Wallen

is the President of the corporation that executed this Mortgage and Assignment of Seller's Interest and that the seal affixed hereto is its seal and that this Mortgage and Assignment of Seller's Interest was voluntarily signed and sealed in behalf of the corporation by authority of its Board of Directors.


Before me:

Leanne A. Jackson
Notary Public for Oregon
My commission expires: 7-16-87

May 9, 1985

ASSIGNMENT OF CONTRACT
BROOKS RESOURCES CORPORATION, KLAMATH COUNTY

1. 490-00-031
Contract of Sale dated December 24, 1975, between Brooks Resources Corporation as Seller, and Kenneth D. Stevens and Patricia A. Stevens, Purchaser, which contract or memorandum of contract was recorded on March 19, 1976, in book M76, page 4024, Official Records of Klamath County, Oregon.


Initials



Initials

EXHIBIT B

7152

The Note described in paragraph 2 above having an original principal balance of \$7,000,000. evidences the revolving line of credit which the Bank established for Debtors whereby the Bank commits to loan Debtors, on a revolving credit basis, as more particularly described in that certain Loan Agreement executed by Debtors and the Bank concurrently with execution of the Revolving Note, such amounts and at such times as Debtors shall request, but in no event to exceed a \$7,000,000. This principal balance outstanding at any one time. This Mortgage and Assignment secures all amounts loaned by the Bank to Debtors under said Revolving Note plus all amounts loaned under the \$3,000,000. Term Note #1 and the \$2,000,000. Term Note #2 described in paragraph 2 above, plus interest on all such amounts as stated therein.

Ret. Bend Title Co.

Book 752

Bend, Ore

97709



Initials


Initials

STATE OF OREGON; COUNTY OF KLAMATH; ss.

Filed for record this 14th day of May A.D. 19 85 at 9:47 o'clock A.M., and duly recorded in Vol. M85 of Mortgages on Page 7149.

Fee: \$17.00

By  EVELYN BIEHN, County Clerk.