

K-43313  
SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT is entered into among KLAMATH COLD STORAGE, INC. ("Borrower"), whose address is 661 Spring Street & 254 Market Street, Klamath Falls, OR 97601; WESTERN BANK ("Lender"), whose address is 421 South 7th Street, P.O. Box 669, Klamath Falls, OR 97601-0322; and RUTH H. TEASDEL ("Creditor"), whose address is 501 Hampton Road, Piedmont, CA 94611. As of August 30, 1991, Borrower is indebted to Creditor in the aggregate amount of One Hundred Sixty Three Thousand One Hundred Fourteen Dollars (\$163,114.00). This amount is the total indebtedness of every kind from Borrower to Creditor. Borrower and Creditor each want Lender to provide financial accommodations to Borrower in the form of (a) new credit or loan advances, or (b) other benefits to Borrower. Borrower and Creditor each represent and acknowledge to Lender that Creditor will benefit as a result of these financial accommodations from Lender to Borrower, and Creditor acknowledges receipt of valuable consideration for entering into this Agreement. Based on the representations and acknowledgments contained in this Agreement, Creditor, Borrower and Lender agree as follows:

1. Definitions. The following words shall have the following meanings when used in this Agreement. Terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Agreement. The word "Agreement" means this Subordination Agreement, as this Subordination Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Subordination Agreement from time to time.

Borrower. The word "Borrower" means Klamath Cold Storage, Inc.

Creditor. The word "Creditor" means Ruth H. Teasdel.

FIBO. FIBO means First Interstate Bank of Oregon.

Lender. The word "Lender" means WESTERN BANK, its successors and assigns.

Security Interest. The words "Security Interest" mean and include without limitation any type of collateral security, whether in the form of a lien, charge, mortgage, deed of trust, assignment, pledge, chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

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**Subordinated Indebtedness.** The words "Subordinated Indebtedness" mean and include all present indebtedness, obligations, liabilities, claims, rights, and demands of any kind which are now owing from Borrower to Creditor. The term "Subordinated Indebtedness" includes without limitation all principal, all interest, all contingent obligations of Borrower (such as a guaranty), and all other obligations, secured or unsecured, of any nature whatsoever which are presently outstanding.

**Superior Indebtedness.** The words "Superior Indebtedness" mean and include all present indebtedness, obligations, liabilities, claims, rights, and demands of an kind which are now owing from Borrower to Lender. The term "Superior Indebtedness" includes without limitation all principal, all interest, all contingent obligations of Borrower (such as a guaranty), all obligations arising by reason of Borrower's accounts with Lender (such as an overdraft on a checking account), and all other obligations of Borrower to Lender, secured or unsecured, of any nature whatsoever which are presently outstanding.

2. **Release of Creditor by FIBO.** The effectiveness of this Agreement is conditioned upon the receipt by Creditor of a full release from FIBO of any and all obligations of Creditor to FIBO, including, without limitation, any obligations arising under the \$1,000,000 loan dated August 31, 1979 and all security given in connection with such loan including, without limitation, the assignment of payments under the \$1,200,000 Promissory Note dated April 20, 1979 issued by Brooks Resources Corporation to Creditor.

3. **Subordination.** Subject to the terms of this Agreement, all Subordinated Indebtedness of Borrower to Creditor is and shall be subordinated in all respects to all Superior Indebtedness of Borrower to Lender. If Creditor holds one or more Security Interests, whether now existing or hereafter acquired, in any of Borrower's real property or personal property, Creditor also subordinates all its Security Interests to all Security Interests held by Lender, whether the Lender's Security Interest or Interests exist now or are acquired later.

4. **Payments to Creditor.** Except as provided in this Agreement, Borrower will not make and Creditor will not accept, at any time while any Superior Indebtedness is owing to Lender: (a) any payment upon any Subordinated Indebtedness, (b) any advance, transfer, or assignment of assets to Creditor in any form whatsoever that would reduce at any time or in any way the amount of Subordinated Indebtedness, or (c) any transfer of any assets as security for the Subordinated Indebtedness. Notwithstanding the above, Creditor may accept and retain regularly scheduled payments of \$2,606.00 each month from Borrower in accordance with the terms of the Subordinated Indebtedness ("Scheduled Payments") provided Borrower is not in default in payment of any of the Superior

Indebtedness (a "Superior Default"). If a Superior Default shall have occurred and if Lender shall not have accelerated the payment of the Superior Indebtedness within one hundred twenty (120) days after the occurrence of the Superior Default, or if such Superior Default is cured or is waived by Lender, or, if the Superior Indebtedness has been accelerated and such acceleration has been waived by Lender or if Lender shall have waived in writing its right to prevent a Scheduled Payment to Creditor, then after the elapse of such 120-day period or after the time of such cure or waiver, as applicable, Borrower may pay or cause to be paid to Creditor and Creditor may accept and retain, Scheduled Payments on the Subordinated Indebtedness, including any Scheduled Payments which were not paid as a result of the existence of such Superior Default or acceleration. Creditor further agrees that so long as the Superior Indebtedness remains outstanding, Creditor will not take any action to accelerate the payment of the Subordinated Indebtedness or to foreclose, execute upon, or otherwise realize on any security given by Borrower to secure the Subordinated Indebtedness prior to the earlier of: (a) the acceleration of the Senior Indebtedness, or (b) if Borrower is in default of a Scheduled Payment and such default continues unremedied for one hundred twenty (120) consecutive days after Creditor's written notice thereof to Lender.

5. Requirement of Notice. Lender agrees to notify Creditor upon the happening of any of the following: (a) the occurrence of any Superior Default, specifying the nature thereof, or of any acceleration of Senior Indebtedness, (b) waiver or cure of any Superior Default or the waiver of any acceleration of Senior Indebtedness, or (c) the transfer of any Senior Indebtedness, specifying the name and address of the transferee.

Creditor agrees to notify Lender upon the happening of any of the following: (a) the occurrence of any default on any Scheduled Payment, specifying the nature thereof, or of any acceleration of Subordinated Indebtedness, (b) waiver or cure of any default on the Subordinated Indebtedness or waiver of any acceleration of Subordinated Indebtedness, or (c) transfer of any Subordinated Indebtedness, specifying the name and address of the transferee.

Failure of any party to give any notice as required hereunder shall not relieve any other party of its obligations hereunder, except that if Lender fails to give notice to Creditor as specified above, Creditor may retain the Schedule Payments as provided herein.

In the event of any distribution, division, or application, whether partial or complete, voluntary or involuntary, by operation of law or otherwise, of all or any part of Borrower's assets, or the proceeds of Borrower's assets, in whatever form, to creditors of Borrower or upon any indebtedness of Borrower, whether by reason of the liquidation, dissolution or other winding-up of

Borrower, or by reason of any execution sale, receivership, insolvency, or bankruptcy proceeding, assignment for the benefit of creditors, proceedings for reorganization, or readjustment of Borrower or Borrower's properties, then and in such event the Superior Indebtedness shall be paid in full before any payment is made upon the Subordinated Indebtedness.

Should any payment, distribution, security, or proceeds thereof be received by Creditor at any time on the Subordinated Indebtedness contrary to the terms of this Agreement, Creditor immediately will deliver the same to Lender in precisely the form received (except for the endorsement or assignment of Creditor where necessary), for application on or to secure the Superior Indebtedness, whether it is due or not due, and until so delivered the same shall be held in trust by Creditor as property of Lender.

**6. Creditor's Representations and Warranties.** Creditor represents and warrants to Lender that to the best of her knowledge: (a) no representations or agreements of any kind have been made to Creditor which would limit or qualify in any way the terms of this Agreement, (b) this Agreement is executed at Borrower's request and not at the request of Lender, and (c) Lender has made no representation to Creditor as to the creditworthiness of Borrower.

**7. Creditor's Waivers.** Except as provided in this Agreement, Creditor waives any right to require Lender: (a) to make, extend, renew, or modify any loan to Borrower or to grant any other financial accommodations to Borrower whatsoever; (b) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Superior Indebtedness or of any nonpayment related to any Security Interests, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Superior Indebtedness; (c) to resort for payment or to proceed directly or at once against any person, including Borrower; (d) to proceed directly against or exhaust any Security Interests held by Lender from Borrower, any other guarantor, or any other person; (e) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (f) to pursue any other remedy within Lender's power; or (g) to commit any act or omission of any kind, at any time, with respect to any matter whatsoever.

**8. Default by Borrower.** If Borrower becomes insolvent or bankrupt, this Agreement shall remain in full force and effect. In the event of a corporate reorganization or corporate arrangement of Borrower under the provisions of the Bankruptcy Code, as amended, this Agreement shall remain in full force and effect and the court having jurisdiction over the reorganization or arrangement is hereby authorized to preserve such priority and subordination in approving any such plan of reorganization or

arrangement. Any default by Borrower under the terms of the Subordinated Indebtedness also shall be a default under the terms of the Superior Indebtedness to Lender.

9. Miscellaneous Provisions. The following miscellaneous provisions are a part of this Agreement:

a. Applicable Law. This Agreement has been delivered to Lender and accepted by Lender in the State of Oregon. If there is a lawsuit, Creditor and Borrower agree upon Lender's request to submit to the jurisdiction of the courts of Klamath County, State of Oregon. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. No provision contained in this Agreement shall be construed as requiring Lender to grant to Borrower or to Creditor any financial assistance or other accommodations.

b. Amendments. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless made in writing and signed by Lender, Borrower, and Creditor.

c. Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including attorneys' fees and legal expenses, incurred in connection with the enforcement of this Agreement. Lender may pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

d. Successors. This Agreement shall extend to and bind the respective heirs, personal representatives, successors and assigns of the parties to this Agreement, and the covenants of Borrower and Creditor respecting subordination of the Subordinated Indebtedness in favor of Lender shall extend to, include, and be enforceable by any transferee or endorsee to whom Lender may transfer any or all of the Superior Indebtedness.

e. Waiver. Neither Creditor nor Lender shall be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender or Creditor, as the case may be. No delay or omission on the part of Lender or Creditor in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender or Creditor of a provision of this Agreement shall not prejudice or constitute a waiver of Creditor's or Lender's right otherwise to demand strict compliance with that

provision or any other provision of this Agreement. No prior waiver by Lender or Creditor, nor any course of dealing between Lender and Creditor, shall constitute a waiver of any of Creditor's or Lender's rights or of any of Creditor's or Lender's obligations as to any future transactions. Whenever the consent of Lender or Creditor is required under this Agreement, the granting of such consent by Lender or Creditor in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender or Creditor as the case may be.

LENDER, BORROWER AND CREDITOR ACKNOWLEDGE HAVING READ ALL THE PROVISIONS OF THIS SUBORDINATION AGREEMENT, AND LENDER, BORROWER AND CREDITOR AGREE TO ITS TERMS. THIS AGREEMENT IS DATED AS OF SEPTEMBER 18, 1991.

**BORROWER:**  
Klamath Cold Storage, Inc.

By: Truman Passmore  
Truman Passmore  
President/Secretary

**LENDER:**  
Western Bank

By: Stephen J. Sutton

**CREDITOR:**

By: Ruth H. Teasdel

Ruth H. Teasdel

STATE OF OREGON,  
County of Klamath ss.

Filed for record at request of:

Klamath County Title co.  
on this 3rd day of Oct. A.D. 19 91  
at 2:34 o'clock P. M. and duly recorded  
in Vol. M91 of Mortgages Page 20155.  
Evelyn Biehn County Clerk  
By Pauline Mulender  
Deputy.

Fee. \$33.00

Return  
Western Bank  
P.O. Box 669  
Klamath Falls, OR 97601