

## ASSIGNMENT OF NOTE, LIENS, AND RELATED PROPERTY

I. In accordance with that certain Assignment and Purchase Agreement dated as of June 16, 1995, by and between Bank of Montreal, a Canadian chartered bank ("Assignor"), and KUKUI, INC., a Texas corporation ("Assignee"), as the same may have been from time to time extended or otherwise amended by the parties thereto (as so extended or otherwise amended, the "Agreement"), for and in consideration of the sum of Ten And No/100 Dollars (\$10.00) and other good and valuable consideration paid by Assignor to Assignee, the receipt and sufficiency of which are hereby acknowledged, Assignor (subject, in each case, to the terms of Paragraph II hereof) has assigned, set over, granted, sold, transferred, and delivered, and by these presents does hereby ASSIGN, SET OVER, GRANT, SELL, TRANSFER, and DELIVER, unto Assignee and its successors and assigns (but without recourse, representation, or warranty, express or implied, except as specifically set forth in the Agreement) the following described note together with all renewals, rearrangements and replacements thereof, and together with all liens and security interests securing payment of the same and all other rights related thereto, to wit:

A. That certain Revolving Note (the "Note"), dated October 8, 1991, in the original principal amount of Fifty Million and 00/100 Dollars (\$50,000,000), executed by McKenzie Methane Corporation ("Debtor"), and payable to the order of Assignor, against which advances have been made pursuant to a Revolving and Term Loan Agreement, dated as of October 8, 1991, by and between Assignor and Debtor (the "Loan Agreement"), together with all liens and security interests securing payment of the Note, including (without limitation) the following:

1. Mortgage, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven McKenzie and Timothy McKenzie to Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
2. Supplemental Mortgage, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven McKenzie and Timothy McKenzie to Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
3. Supplemental Mortgage, Assignment, Security Agreement and Financing Statement dated as of January 28, 1992 from Debtor, Michael McKenzie, Steven McKenzie and Timothy McKenzie to Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;

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SHELBY COUNTY JUDGE OF PROBATE  
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4. Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven McKenzie and Timothy McKenzie to Mark Green, Trustee and Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
5. Supplemental Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven McKenzie and Timothy McKenzie to Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
6. Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven McKenzie, Timothy McKenzie, Frances McKenzie, Suzanne McKenzie and Anne McKenzie to Graham Abstract Company, Inc., Trustee and Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
7. Supplemental Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of October 8, 1991 from Debtor, Michael McKenzie, Steven Mckenzie, Timothy McKenzie, Frances McKenzie, Suzanne McKenzie and Anne McKenzie to Graham Abstract Company, Inc., Trustee and Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
8. Supplemental Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of February 25, 1992 from Debtor, Michael McKenzie, Steven Mckenzie, Timothy McKenzie, Frances McKenzie, Suzanne McKenzie and Anne McKenzie to Graham Abstract Company, Inc., Trustee and Assignor, as previously recorded by Assignor as set forth on Schedule I hereto;
9. Mortgage, Deed of Trust, Assignment, Security Agreement and Financing Statement dated as of February 25, 1992 from Debtor, Michael McKenzie, Steven Mckenzie, Timothy McKenzie, Frances McKenzie, Suzanne McKenzie and Anne McKenzie to Graham Abstract Company, Inc., Trustee and Assignor (each of the documents described in clauses 1 through 9 hereof being herein referred to as a "Mortgage" and, collectively, as the "Mortgages");
10. Guaranty dated as of October 8, 1991 made by Michael McKenzie in favor of Assignor;

11. Guaranty dated as of October 8, 1991 made by Timothy McKenzie in favor of Assignor;
12. Guaranty dated as of October 8, 1991 made by Steven McKenzie in favor of Assignor (each of the guaranties described in clauses 10 through 12 hereof being referred to herein as a "Guaranty" and collectively as the "Guaranties"; the Guaranties, the Mortgages, the Loan Agreement, and the Note are collectively referred to herein as the "Loan Documents");

B. All accrued interest, claims in litigation, claims for amounts written off on the general books of Assignor, claims by Assignor made against Debtor in respect of the Note in the litigation involving Assignor, Debtor, Michael McKenzie, Steve McKenzie and Timothy McKenzie, being Case No. 93-C-6310, *Bank of Montreal v. McKenzie Methane Corporation*, in the United States District Court, Northern District of Illinois, Eastern Division;

C. All accrued interest, claims in litigation, claims for amounts written off on the general books of Assignor, claims by Assignor made against Debtor in respect of the Note in the litigation involving Assignor, Debtor, Michael McKenzie, Steve McKenzie and Timothy McKenzie, being Case No. 93L-348, *Bank of Montreal v. Michael McKenzie, Steven McKenzie and Timothy McKenzie*, in the Circuit Court of Cook County, Illinois, which litigation is the subject of a Judgment and Order, dated September 14, 1994 and a Judgment and Order, dated February 23, 1995 issued by the Circuit Court of Cook County, Illinois; and

D. Any and all other "Assigned Rights" (as defined in the Agreement), to the extent not otherwise described in subparagraphs A through C hereof.

TO HAVE AND TO HOLD the Note, together with the above-described liens, security interests, and property, as well as all other rights, title, interest or claims that Assignor may have in and to the Note or any property securing payment of the same, unto Assignee, its successors and assigns, forever.

II. This Assignment of Note, Liens, and Related Property is made pursuant to (a) the Plan, (b) the Order Confirming Liquidating Plan of Reorganization of Kukui, Inc. for McKenzie Methane Corporation, and (c) the Agreement. In accordance with the Agreement, and notwithstanding anything herein to the contrary, the rights, titles, interests, liens, privileges, claims, demands, and equities assigned pursuant hereto shall not include:

A. The right or the ability of Assignor to assert any of the rights, waivers, or other provisions contained in the Loan Documents as a defense to any and all claims



or litigation instituted against Assignor or any of the other Assignor Indemnified Parties (as defined in the Agreement);

B. The obligations of the Obligors (as defined in the Loan Agreement) under Section 27 of the Loan Agreement and Section 2.1 of the Guaranties to indemnify Assignor and the other Assignor Indemnified Parties for Indemnified Liabilities (as defined in the Loan Agreement) incurred by such Assignor Indemnified Parties after the date hereof; and


C. Any rights of subrogation, reimbursement, exoneration, contribution or indemnification which Assignor or the other Assignor Indemnified Parties may now or hereafter acquire against the Obligors or any other party under applicable law for any Indemnified Liabilities incurred by Assignor or any of the other Assignor Indemnified Parties after the date hereof (the rights set forth in the foregoing subparagraphs A through C of paragraph II are hereinafter referred to as the "Retained Rights").

Nothing herein contained shall in any way limit Assignor's ability to defend or otherwise prosecute any litigation commenced against any Assignor Indemnified Party by any party or entity other than Assignor nor Assignor's ability to defend or otherwise prosecute any litigation against any Obligor for any of the Retained Rights (including, without limitation, any rights to receive reimbursement for any cost or expenses associated with such litigation), and Assignor hereby expressly reserves such rights; provided, however, that Assignor agrees that (1) Assignor shall not assert any of the rights set forth in subparagraphs A, B, or C of paragraph II in any manner that would have an adverse effect on any of the Assigned Rights (it being understood by the parties hereto that Assignor's assertion of any indemnification claim or other claim retained by Assignor will not be deemed to have an adverse effect on the Assigned Rights unless a recovery is sought against the property described in the Mortgages); and (2) Assignor will not assert any of the rights set forth in subparagraphs A, B, or C of paragraph II in any action instituted by Assignee with respect to the Assigned Rights unless Assignor is involuntarily brought into such action.

Notwithstanding anything contained herein to the contrary, the liens created pursuant to the Mortgages and other Loan Documents being conveyed to Assignee hereby are NOT RELEASED or RELINQUISHED in any manner or respect whatsoever, and such Mortgages and other Loan Documents shall remain valid and continuous and in full force and effect, unless and until released by written instrument executed by Assignee or its successors or assigns. There shall not in any event be a merger of any of the liens created pursuant to the Mortgages or other Loan Documents with the working interests, title or other interests of Assignee by virtue of the conveyance evidenced hereby and the interest in the Mortgages and other Loan Documents and the working interest or other interests held by Assignee shall be and remain at all times SEPARATE and DISTINCT.

EXECUTED this 30 day of October, 1995, but to be effective as of August 29,  
1995.

Assignor:  
BANK OF MONTREAL

By:   
Name: \_\_\_\_\_  
Title: R. DOMACHEVSKY  
Vice President

STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

BE IT REMEMBERED that I, Sandra J. Pyle, a Notary Public duly qualified, commissioned, sworn and acting in and for the County and State aforesaid, hereby certify that, on this 30th day of October, 1995, there appeared before me severally each of the following persons, each being the natural person or else the designated officer of the corporation or association set opposite his name, and each such natural person, corporation and association being a party to the foregoing instrument:

R. Domachevsky, Vice President of Bank of Montreal, a Canadian chartered bank.

**ALABAMA**

Before me on this day personally appeared the aforementioned persons, whose names are signed to the foregoing conveyance in the capacities set forth opposite the names of such persons above, and who are known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, they, as such officers or individuals with full authority, executed the same voluntarily for and as the act of said corporation, said association or said individuals, as the case may be.

**COLORADO**

The foregoing instrument was acknowledged before me this day by each such person on behalf of said corporation or association, or himself, as the case may be.

**ILLINOIS**

The foregoing instrument was acknowledged before me this day by said persons as the designated officers of the corporation or association set opposite their names (or himself, as the case may be) on behalf of said corporation or association (or themselves).

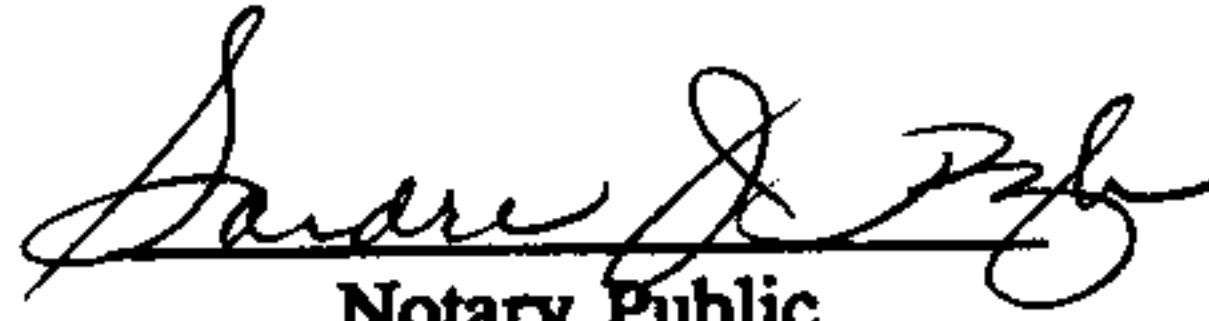
**NEW MEXICO**

The foregoing instrument was acknowledged before me this day by each such person as the designated officers of the corporation or association set opposite their names (or himself, as the case may be) on behalf of said corporation or association, or himself, as the case may be.

**TEXAS**

This instrument was acknowledged before me on this day by each such person as the designated officer of the corporation or association set opposite his name (or himself, as the case may be), on behalf of said corporation or association set opposite his name (or of himself, as the case may be).

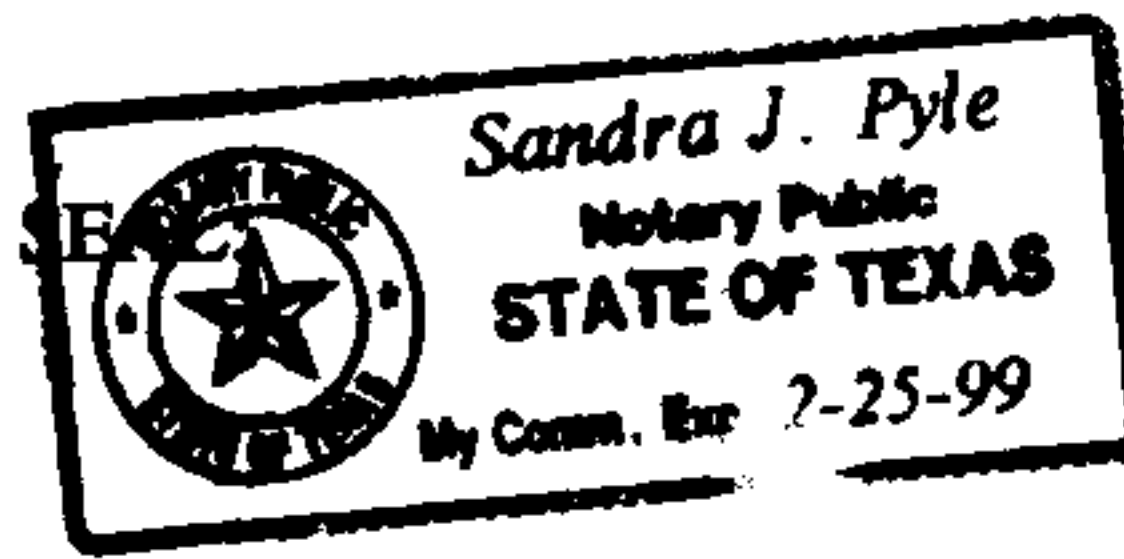
Witness my hand and official seal.



Notary Public

Residing at HOUSTON,  
TEXAS

My commission expires:





**Schedule I**

**BANK OF MONTREAL/MCKENZIE METHANE CORPORATION**

**RECORDING SCHEDULE FOR MORTGAGE,  
ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT  
DATED OCTOBER 8, 1991 AND RELATED UCC-1 FINANCING STATEMENTS**

<b>Jurisdiction</b>	<b>Document</b>	<b>Date Filed</b>	<b>UCC</b>	<b>Real Property</b>
Alabama Secretary of State	UCC-1	10/11/91	91-37354	
Bibb County, AL Judge of Probate	Mortgage UCC-1 (Fixture)	10/15/91 10/15/91	14633	Book 172, Page 1019
Jefferson County, AL Judge of Probate	Mortgage *Mortgage	10/16/91 08/10/92		Book 4125, Page 572 Book 900, Page 004 (Bessemer Division of Jefferson County)
	UCC-1 (Fixture) *UCC-1 (Fixture)	10/16/91 08/10/92	655154 *162858	
Shelby County, AL Judge of Probate	Mortgage UCC-1	10/15/91 10/15/91	029646	Book 368, Page 447
Tuscaloosa County, AL Judge of Probate	Mortgage UCC-1	10/15/91 10/15/91	00066285	Book 1541, Page 411
Colorado Secretary of State	UCC-1	10/11/91	912075228	
LaPlata County, CO	Mortgage UCC-1 (Fixture)	10/11/91 10/11/91		Doc. #617440 Doc. #617441
New Mexico Secretary of State	UCC-1	10/11/91	91-1011068	
San Juan County, NM	Mortgage UCC-1 (Fixture)	10/11/91 10/11/91	12040	Book 1137, Page 307

Bessemer Division of Jefferson County



# **BANK OF MONTREAL/MCKENZIE METHANE CORPORATION**

## **RECORDING SCHEDULE FOR SUPPLEMENTAL MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENTS DATED OCTOBER 8, 1991 AND RELATED UCC-3 AMENDMENTS**

<b>Jurisdiction</b>	<b>Document</b>	<b>Date Filed</b>	<b>Original File No./New File No. (if any)</b>	<b>Real Property</b>
Alabama Secretary of State	UCC-3	08/03/92	91-37354/none	
Bibb County, AL Judge of Probate	Mortgage UCC-3	08/03/92 08/03/92	14633/none	Book 174, Page 812
Jefferson County, AL Judge of Probate	Mortgage *Mortgage	08/04/92 *08/10/92		Book 4330, Page 069 *Book 900, Page 092
	UCC-3 *UCC-3	08/04/92 *08/10/92	655154/662877 *162858/162856	
Shelby County, AL Judge of Probate	Mortgage UCC-3	08/03/92 08/03/92	029646/1992-15838	Instr. No. 1992-15837
Tuscaloosa County, AL Judge of Probate	Mortgage UCC-3	08/03/92 08/03/92	00066286/ 00097094	Book 1578, Page 0604
Colorado Secretary of State	UCC-3	08/05/92	912075228/ 922056393	
LaPlata County, CO	Mortgage UCC-3	08/03/92 08/03/92	617441/631308	Recpt. #631307
New Mexico Secretary of State	UCC-3	08/03/92	91-101068/ none	
San Juan County, NM	Mortgage UCC-3	08/03/92 08/03/92	12040/013126	Book 1150, Page 288

\*Bessemer Division of Jefferson County

# **BANK OF MONTREAL/MCKENZIE METHANE CORPORATION**

## **RECORDING SCHEDULE FOR SUPPLEMENTAL MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT DATED AS OF JANUARY, 1992 AND RELATED UCC-3 FINANCING STATEMENTS**

<b>Jurisdiction</b>	<b>Document</b>	<b>Date Filed</b>	<b>Original File No./New File No. (if any)</b>	<b>Real Property</b>
Alabama Secretary of State	UCC-3	02/10/92	91-37354	
Jefferson County, AL Judge of Probate	Mortgage *Mortgage	02/10/92 *08/10/92		Book 4198, Page 014 *Book 900, Page 069
	UCC-3 *UCC-3	02/10/92 *08/10/92	655154/658118 *162856/162857	
New Mexico Secretary of State	UCC-3	03/09/92	911011068/ none	
	UCC-3	08/04/92	911011068/ none	
San Juan County, NM	Mortgage Mortgage UCC-3	03/05/92 08/03/92 03/05/92		Book 1143, Page 430 Book 1150, Page 289

\*Bessemer Division of Jefferson County

# BANK OF MONTREAL/MCKENZIE METHANE CORPORATION

## RECORDING SCHEDULE FOR UCC-1 FINANCING STATEMENTS FILED WITH THE OFFICE OF THE TEXAS SECRETARY OF STATE

Description of Document	Dated Filed	Filing Information
UCC-1 Financing Statement with Alabama Mortgage attached	4/11/94	064556
UCC-1 Financing Statement with Colorado Mortgage attached	4/11/94	064557
UCC-1 Financing Statement with New Mexico Mortgage attached	4/11/94	064558
UCC-1 Financing Statement with Alabama Supplemental Mortgage attached	4/11/94	064561
UCC-1 Financing Statement with New Mexico Supplemental Mortgage attached	4/11/94	064560
UCC-1 Financing Statement with New Mexico Supplemental Mortgage attached	4/11/94	064562
UCC-1 Financing Statement with Alabama Supplemental Mortgage attached	4/11/94	066264
UCC-1 Financing Statement with Colorado Supplemental Mortgage attached	4/11/94	064559
UCC-1 Financing Statement with New Mexico Supplemental Mortgage attached	4/11/94	066265

Inst # 1995-32826

11/14/1995-32826  
01:20 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
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