0002

# Document Information Form

Mine Number: C/007/007

File Name: Incoming

To: DOGM

From:

Person N/A

Company N/A

Date Sent: N/A

Explanation:

Deed, Assignment and Bill of Sale.

cc:

File in:
C/ 007, 007, Incoming
Refer to:
- ☐ Confidential
- ☐ Shelf
- ☐ Expandable

Date _____ For additional information

File ACT/007/007
Folder #2

Entry No. 019370
Indexed
Abstracted
Rcdg. Fee 45.00

COUNTY OF CARBON ) SS
FILED AND RECORDED FOR
S.E. Utah Title
DEC 29 3 08 PM '87
BOOK 277 OF RECORDS
PAGE 679-690
ANN B. [illegible]
COUNTY RECORDER

# DEED, ASSIGNMENT AND BILL OF SALE

THIS DEED, ASSIGNMENT AND BILL OF SALE is made and entered into as of the 28th day of December, 1987 by and between KAISER FUEL CORPORATION ("Kaiser Fuel"), KAISER COAL CORPORATION ("Kaiser Coal") and SUNNYSIDE FUEL CORPORATION, a corporation organized and existing under the laws of the State of Utah ("Grantee").

W I T N E S S E T H :

WHEREAS, Grantee's affiliate is proposing to construct a cogeneration plant (the "Plant") near Sunnyside Mine in Carbon County, Utah, and proposes to acquire waste coal from Kaiser Fuel for use as plant fuel; and

WHEREAS, Kaiser Fuel is the owner of the gob, coal tailings and waste piles which are now or hereafter located on real property in Carbon County, Utah as more particularly described in the attached Exhibit "A" ("Tailings"); and

WHEREAS, Kaiser Coal is the owner of the real property upon which the Tailings are located, more particularly described in the attached Exhibit "A" (Real Property); and

WHEREAS, Kaiser Fuel desires to transfer, convey, assign, grant and sell to the Grantee, without warranty, the estate in the Tailings, whether such estate is classified as real property or personal property under Utah law; and

WHEREAS, subject to certain reservations, Kaiser Coal desires to grant to Grantee, without warranty, the Real Property;

File in:
- ☐ Confidential
- ☐ Shelf
- ☐ Expandable

Refer to Record No 0002 Date
In C/ 007, 007, Incoming
For additional information

WHEREAS, Kaiser Coal desires to reserve to itself, its successors and assigns the right to enter upon the Real Property for the purpose of transporting and depositing gob, coal tailings and slurry discharge from coal wash facilities from the Sunnyside Mine on the Real Property and the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine subject to an Operating Agreement mutually acceptable to Kaiser Coal and Grantee; and

WHEREAS, Kaiser Coal is permittee and owner of environmental permits associated with the Real Property including the Sunnyside Mine Permit ACT/007/007 ("Reclamation Permit") and desires to assign to Grantee those environmental permits associated with the Real Property, including that portion of the Reclamation Permit which associated with the Real Property subject to approval of transfer by the local, state and federal government if any such approval is required; and

WHEREAS, Kaiser Coal owns the Sunnyside Mine adjacent to the Real Property on lands described at Exhibit "C" ("Sunnyside Mine") and desires to grant to Grantee the right of ingress and egress for the purpose of transporting, mining and removing Tailings ("Access"). Grantee agrees to use the Access in a manner reasonably calculated to minimize interference with the coal mining activities of Kaiser Coal, its successors and assigns at the Sunnyside Mine.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars ($10.00) cash in hand paid to Kaiser Fuel and Kaiser

Coal and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Kaiser Fuel and Kaiser Coal hereby grant, sell, assign, set-over, transfer, quit-claim and convey to Grantee, its successors and assigns, without warranty, the following:

REAL PROPERTY

The real property interest in the Tailings and the Real Property upon which the Tailings are located and Access across the Sunnyside Mine to the Real Property, provided that Grantee agrees to use the Access in a manner reasonably calculated to minimize interference with the coal mining activities of Kaiser Coal, its successors and assigns at the Sunnyside Mine. Said grant is made expressly reserving unto Kaiser Coal, its successors and assigns the right to enter upon the Real Property for the purpose of transporting and depositing gob, coal tailings and slurry discharge from the coal wash facilities from the Sunnyside Mine on the Real Property and reserving the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine subject to and in accordance with all governmental restrictions applicable to the Real Property and subject to an Operating Agreement mutually acceptable to Kaiser Coal and Grantee and their respective successors and assigns or, in the absence of such operating agreement, on terms reasonably serving the respective interests of both parties or their successors and assigns. Said grant of

Tailings is made subject to interests identified at Exhibit "B" hereto.

PERSONAL PROPERTY

The personal property interest in, and only in, the Tailings now or hereinafter located on or in the lands described in Exhibit "A".

The Tailings transferred unto the Grantee pursuant to this Deed, Assignment and Bill of Sale are being transferred in an "as is", "where is" condition and, other than expressly provided herein, is being transferred without any representations, obligations or warranties whatsoever, whether express or implied.

PERMITS

Kaiser Coal's interest in all environmental permits associated with the Real Property, including that portion of the Reclamation Permit located on the Real Property, subject to approval of the local, state and federal government to said transfer if such approval is required.

REHABILITATION AND RECLAMATION

Grantee accepts this grant, recognizing that certain rehabilitation and reclamation work may be required resulting from the development, extraction, removal, transportation, storage or use of gob, coal tailings, and waste piles from or on the Real Property.

IN TESTIMONY WHEREOF, witness the execution hereof as of the day and year first above written.

KAISER FUEL CORPORATION

ATTEST: Julie G. Klein

BY Denise A. Dragoo
ITS Agent

KAISER COAL CORPORATION

ATTEST: Julie G. Klein

BY Denise A. Dragoo
ITS Agent

SUNNYSIDE FUEL CORPORATION

ATTEST: Julie G. Klein

BY Dennis P. Flynn
ITS Vice President

STATE OF Utah )
: ss:
COUNTY OF Salt Lake )

On the 28th day of December, 1987, personally appeared before me Denise A. Dragoo, who being by me duly sworn did say thatShe is the agent of Kaiser Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Denise A. Dragoo acknowledged to me that said corporation executed the same.

Julie G. Klein
Notary Public
Residing in Davis County

My Commission Expires:
6-22-89

STATE OF Utah )
: ss:
COUNTY OF Salt Lake )

On the 28th day of December, 1987, personally appeared before me Denise A. Dragoo, who being by me duly sworn did say that she is the agent of Kaiser Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Denise A. Dragoo acknowledged to me that said corporation executed the same.

Julie S. Klein
Notary Public
Residing in Davis County

My Commission Expires:
6-22-89

STATE OF Utah )
: ss:
COUNTY OF Salt Lake )

On the 28th day of December, 1987, personally appeared before me Dennis P. Flynn, who being by me duly sworn did say that he is the Vice President of Sunnyside Fuel Corporation and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Dennis P. Flynn acknowledged to me that said corporation executed the same.

Cheryl Ferrara
Notary Public
Residing in Sandy, Utah

My Commission Expires:
7/10/91

DAD:120887a

## SCHEDULE A

## FEE AREA

PARCEL B:

Describing a parcel of land located in Carbon County, Utah, which is located in the east half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and being more particularly described according to the following courses and distances, to-wit:

Beginning at the East one quarter corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian and running thence S 0°13'39" W, 1818.48 feet along the east section line of Section 6 to the south right of way line of an existing railroad track; thence northwesterly along a curve to the right with a radius of 450.00 feet, through an angle of 83°37'47", for a distance of 656.83 feet having a chord that bears N 40°27'18" W, 600.05 feet; thence N 1°21'36" E, 68.00 feet along the westerly right of way line of an existing railroad track; thence S 57°11'02" W, 338.86 feet to an existing 5/8 inch rebar; thence S 66°15'45" W, 220.17 feet to an existing 5/8 inch rebar; thence S 86°11'30" W, 261.34 feet to a metal fence post; thence N 4°41'13" W, 264.09 feet to a roof bolt on the west side of a gate in a fence line; thence N 10°54'48" W, 189.49 feet to a metal fence post; thence N 0°39'10" W, 254.39 feet to a metal fence post; thence N 10°09'48" W, 315.48 feet to a metal fence post; thence N 6°32'57" W, 232.70 feet to a roof bolt in an existing fence line; thence N 6°32'57" W, 65.24 feet to the south right of way line of a Denver and Rio Grande Railroad as described in a certain deed dated July 29, 1912; thence N 71°27'00" E, 1209.07 feet along the south line of a 50 foot wide right of way for the Denver and Rio Grande Railroad; thence northeasterly along a curve to the left with a radius of 979.93 feet, through an angle of 9°19'48", for a distance of 159.57 feet, having a chord that bears N 66°47'06" E, 159.40 feet to the east line of said Section 6; thence S 0°13'39" W, 174.12 feet along the east line of Section 6, to the point of beginning.

Containing 42.316 acres more or less.

PARCEL C:

Describing a parcel of land located in Carbon County, Utah, which is located in the south half of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian, and being more particularly described according to the following courses and distances, to-wit:

Beginning at the southeast corner of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian which is a brass cap; and running thence N 89°57'59" W, 2646.97 feet along the south line of said Section 6 to the south one-quarter corner of said Section 6; thence S 89°27'59" W, 1321.87 feet along the south line of said Section 6 to the southwest corner of the SE1/4SW1/4 of said Section 6; thence N 59°40'32" E, 666.58 feet to a metal fence post; thence N 44°13'50" E, 430.53 feet to a roof bolt; thence N 59°09'24" E, 167.86 feet to a metal fence post; thence N 63°51'14" E, 188.19 feet to a metal fence post; thence N 60°15'43" E, 335.60 feet to a metal fence post; thence N 21°00'31" W, 34.15 feet to an east brace post in a barbed wire fence; thence N 81°18'59" E, 1270.98 feet along an existing fence line to a roof bolt; thence N 36°40'17" E, 152.88 feet along a fence line to a roof bolt; thence S 4°41'13" E, 264.09 feet to a metal fence post; thence N 86°11'30" E, 261.34 feet to an existing 5/8 inch rebar; thence N 66°15'45" E, 220.17 feet to an existing rebar; thence N 57°11'02 E, 338.86 feet to the west right of way line of an existing railroad right of way; thence S 1°21'36" W, 68.00 feet along the westerly right of way line of an existing railroad track; thence southeasterly along a curve to the left with a radius of 450.00 feet, through an angle of 83°37'47", for a distance of 656.83 feet having a chord that bears S 40°27'18" E 600.05 feet to a point on the east line of said Section 6; thence S 0°13'39" W, 818.01 feet along the section line to the point of beginning.

Containing 79.085 acres, more or less.

ALSO:

Describing a parcel of land located in Carbon County, Utah, which is located in the north half of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian and being more particularly described according to the following courses and distances to-wit:

Beginning at the northwest corner of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian, which is a brass cap; and running thence N 89°27'59" E, 1253.27 feet along the north line of said Section 7 to the northeast corner of the NW1/4NW1/4 of said Section 7; thence N 89°27'59" E, 1321.87 feet along the north line of said Section 7 to the north one quarter corner of said Section 7; thence S 89°57'59" E, 2646.97 feet along the north line of said Section 7 to the northeast corner of said Section 7 which is a brass cap; thence S 0°15'54" W, 1322.37 feet along the east line of said Section 7 to the southeast corner of the NE1/4NE1/4 of said Section 7; thence S 89°53'03" W, 2656.91 feet along the south line of the north one half of the northeast one quarter of said Section 7 to the southwest corner

of the NW1/4NE1/4 of said Section 7; thence S 0°41'30" W, 664.69 feet along the east line of the SE1/4NW1/4 of said Section 7 to the southeast corner of the NE1/4SE1/4NW1/4 of said Section 7; thence S 89°40'06" W, 2560.98 feet aong the south line of the north one half of the south one half of the northwest one quarter of said Section 7 to the southwest corner of the NW1/4SW1/4NW1/4 of said Section 7; thence N 0°17'17" E, 1984.79 feet along the west section line of said Section 7 to the point of beginning.

Containing 197.985 acres, more or less.

Less a strip of land 200 feet wide for an existing railroad right of way lying in the west half of Section 7, Township 15 South, Range 14 East, Salt Lake Base and Meridian, the boundaries of which are parallel to and 100 feet distant at right angles from the following described center line:

Beginning at a point on the north boundary line of said Section 7, which point is Station 102+50.0 P.O.C. of the Railroad Center Line Survey, said point being N 89°27'59" E, 633.0 feet, more or less, along the north line of said Section 7, said point being on a curve to the right with a radius of 572.96 feet through an angle of 114°43' for a distance of 1147.2 feet and having a chord bearing of S 1°24'18" E and a distance of 443.97 feet, the tangent to curve at this point bearing S 24°12' E; thence continuing on the same curve right 455.9 feet in a southerly direction to Station 107+05.9 P.T.; thence S 21°23' W, 245.5 feet to Station 109+51.4 P.C., which point is the beginning of a curve to the left with a radius of 716.20 feet through an angle of 28°20' for a distance of 354.2 feet and having a chord bearing of S 7°13' W and a distance of 350.57 feet to Station 113+05.6 P.T.; thence S 6°57' E, 973.89 feet to Station 122+79.49, said point being on the south line of the north one half of the south one half of the northwest one quarter of said Section 7.

Containing 9.318 acres, more or less.

# EXHIBIT B

## DEED, ASSIGNMENT AND

## BILL OF SALE EXCEPTIONS

1. A Grant of Easement dated April 16, 1962, executed by Kaiser Steel Corporation in favor of Utah Power & Light Company recorded October 10, 1962 in Book 80 at page 608, granting a right of way and easement for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments across the NE 1/4 NE 1/4 of Section 7 and the S 1/2 SE 1/4 and SE 1/4 SW 1/4 of Sec. 6, T15S, R14E, SLBM.

2. A Pole Line Easement dated March 19, 1925, executed by Utah Fuel Company in favor of Utah Power & Light Company, recorded April 1, 1925 in Book 3J at page 155, granting a perpetual easement and right of way for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments along a line in Section 7, T15S, R14E, SLB&M, as therein described.

3. A Pole Line Easement dated December 29, 1942, executed by Utah Grazing Lands Company, a corporation, in favor of Utah Power & Light Company, recorded June 9, 1943 in Book 3W at page 598, granting a perpetual easement and right of way for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments along a line in the N 1/2 NE 1/4, Sec. 7, T15S, R14E, SLB&M as therein described.

4. NOTICE OF ATTORNEY'S LIEN dated November 26, 1984, executed by W. Jerry Ungricht of Ungricht, Randle & Deamer, recorded December 3, 1984 in Book 244 at page 589, claiming an Attorney's Lien as provided by Utah Code Annotated 78-51-41 for services rendered on behalf of New-Tech Mining Corporation on the matter of New-Tech Mining Corporation v. Kaiser Steel, et al., Civil No. C84-0426A in the United States District Court for the District of Utah, Central Division, and for services relating to the permitting of the Blackjack #1 Mine on the following described property in Carbon County, Utah:

   All coal refuse sources of New-Tech Mining Corporation in Carbon County, State of Utah, described as follows:

Section 7, T15S, R14E, SLB&M:

N 1/2 of NE 1/4. That portion of the N 1/2 of NW 1/4 lying East of right of way of Carbon County railway.

Section 6:

S 1/2 of SE 1/4 of SW 1/4; S 1/2 of SW 1/4 of SE 1/4; S 1/2 of NE 1/4 of SW 1/4 of SE 1/4; SE 1/4 of SE 1/4.

That portion of NE 1/4 of SE 1/4 lying South of right of way of Denver & Rio Grande Railway. That portion of E 1/2 of NE 1/4 of NW 1/4 of SE 1/4 lying South of right of way of Denver & Rio Grande Railway. AMOUNT OF CLAIM: $7,052.00.

5. A Notice of Lien, recorded February 18, 1987 in Book 269 at pages 758-764, wherein JBR Consultants Group claims and intends to hold a lien against Perma Resources and/or Kaiser Steel Corporation and/or Kaiser Coal Corporation in the amount of $28,646.15, plus interest and attorney's fees.

6. Notice of Intention to Hold and Claim a Lien, recorded February 24, 1987 in Book 270 at pages 61-78, wherein Electrical Contractors, Inc. holds and claims a lien against Kaiser Coal Corporation in the amount of $20,984.22, plus interest and attorney's fees.

7. Notice of Intention to Hold and Claim a Lien, recorded March 19, 1987 in Book 270 at pages 697-699, wherein B & R Reclamation Specialists, a partnership, claims a lien in the amount of $22,985.00, plus interest and attorney's fees.

8. Excepting any portion of the old Carbon County Railway right of way located in Section 7 of T15S, R14E, SLB&M and all oil, gas and minerals located in said right of way.

DAD:122887d

# EXHIBIT C

I. SUNNYSIDE MINE NO. 1

A. Fee Ownership - Kaiser Coal Corporation:

Township 14 South, Range 13 East, SLM
Section 24: N/2

Township 14 South, Range 14 East, SLM
Section 7: SW/4SE/4
Section 17: All
Section 18: All
Section 19: All
Section 20: All
Section 21: W/2
Section 28: N/2
Section 29: N/2, N/2SW/4, SW/4SW/4, N/2SE/4SW/4, N/2SE/4
Section 30: N/2NE/4, SE/4NE/4

II. SUNNYSIDE MINE NO. 3

A. Fee Ownership - Kaiser Coal Corporation:

Township 14 South, Range 14 East, SLM
Section 28: S/2
Section 29: S/2SE/4SW/4, S/2SE/4
Section 32: E/2, NE/4NW/4
Section 33: All
Section 34: W/2

Township 15 South, Range 14 East, SLM
Section 3: NW/4, S/2NE/4
Section 4: N/2, N/2SW/4, N/2NW/4SE/4, N/2SW/4SW/4
Section 5: NE/4, N/2SE/4
Section 6: Lot 7
Section 8: Lots 1,2,3,4, SE¼NE¼; E½SE¼; SW¼SE¼
Section 18: S½S½SE¼; Also, Beg. at the S¼ cor; thence N 89°59' West 526.5 feet; th. N 20°12' East 703.2 feet; th. East 283.20 feet; thence South 660 feet to beg.

# OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made and entered into as of the 28th day of December, 1987 by and between SUNNYSIDE FUEL CORPORATION, a corporation organized and existing under the laws of the State of Utah, and SUNNYSIDE COGENERATION ASSOCIATES, a joint venture organized and existing under the laws of the State of Utah, jointly referred to herein as "Owner", KAISER COAL CORPORATION, a Delaware corporation, referred to herein as "Operator".

W I T N E S S E T H:

WHEREAS, the Owner and its affiliates are proposing to construct a cogeneration plant (the "Plant") on a site (the "Plant Site") near the Sunnyside Mine in Carbon County, Utah, and proposes to acquire waste coal from the Sunnyside Mine and the Owner for use as plant fuel; and

WHEREAS, Operator is the owner and operator of the Sunnyside Mine, Carbon County, Utah, consisting of the Sunnyside Mine Nos. 1, 2 and 3, the "B" Canyon, the North Lease and the South Lease ("Sunnyside Mine"); and

WHEREAS, Operator has entered into a Deed, Assignment and Bill of Sale dated as of December 28, 1987, (the "Deed") conveying to Owner the following:

1. The gob, coal tailings and waste piles associated with the Operator's Sunnyside Mine and located on real property as more particularly described at the attached Exhibit "A" ("Tailings");

2. The real property upon which the Tailings are located, more particularly described at the attached Exhibit "A" ("Real Property");

3. Ingress and egress across the Sunnyside Mine to the Real Property for the purpose of transporting, mining and removing Tailings ("Access"); and

4. Environmental permits associated with the Real Property including that portion of the Utah Coal Mining and Reclamation Permit No. ACT/007/007 which relates to the Real Property (the "Reclamation Permit"); and

WHEREAS, Operator, as Lessor, has entered into a Land Lease Agreement dated as of March 30, 1987 and amended as of December 28, 1987 ("Lease") to provide an area for use as the Plant Site on properties described at Exhibit "B" ("Plant Site") and to provide the right to use the Sunnyside Mine for rights-of-way for power lines and other needs associated with the Plant provided that such use is calculated to minimize interference with Operator's activities at the Sunnyside Mine; and

WHEREAS, Operator currently has an application pending with the State of Utah to modify the Reclamation Permit to expand coarse refuse tailings piles onto a portion of the Plant Site and Operator seeks agreement of Owner concerning expansion of the coarse refuse tailings piles into these areas; and

WHEREAS, Owner desires Operator, as an independent contractor, to monitor environmental compliance of the Real Property, including the Reclamation Permit and other environmental permits associated with the Property; and

WHEREAS, under the Deed, Operator has reserved unto itself, its successors and assigns the right to continue to deposit gob, coal tailings and slurry discharge from the Sunnyside Mine and the right to use the Real Property for any and all purposes necessary to conducting the operation of the Sunnyside Mine in accordance with the terms of the Reclamation Permit and other environmental permits associated with the Real Property subject to an Operating Agreement and an Operating Plan mutually acceptable to Operator and Owner and, if required, approved by permitting authorities; and

WHEREAS, Owner and Operator desire to enter into this Operating Agreement pursuant to the terms of the Deed.

NOW, THEREFORE, for and in consideration of the mutual agreements, covenants, promises and conditions herein stated on the part of each of the parties, to be faithfully kept and performed, it is agreed as follows:

## ARTICLE I

## EMPLOYMENT OF OPERATOR

1.1 Monitoring Environmental Compliance. Operator, upon the terms and conditions hereinafter set forth, hereby agrees, as an independent contractor, to monitor environmental compliance activities with respect to the Real Property and

associated environmental permits including the Reclamation Permit.

1.2 Compliance Activities. Operator agrees to furnish at its own cost and expense the personnel necessary to monitor environmental compliance and to assist the State of Utah or other governmental authority with inspections of the Real Property and to be the contact for such governmental inspections in relation to the Reclamation Permit and other environmental permits associated with the Real Property. In the event that lab fees or additional labor, machinery, tools, supplies and equipment are required to meet any environmental compliance requirements, Operator agrees to contact Owner concerning such requirements and Owner shall assume the responsibility of separately contracting with Operator or a third party for performance of compliance requirements.

1.3 Environmental Responsibility. Owner shall be responsible for obtaining all permits, licenses, reclamation bonds and any other governmental authority needed on the Real Property and the Plant Site to transport, deposit, stockpile, store, use, remine and reclaim gob, coal tailings and slurry discharge on the Real Property. Owner agrees to hold harmless Operator against Operator's non-negligent performance of Operator's obligations under this Agreement.

ARTICLE II

OPERATING PLAN

2.1 Deposit of Gob, Coal Tailings, Coarse Refuse and Slurry Discharge. Owner has agreed to grant to Operator all rights necessary to transport and deposit gob, coal tailings and slurry discharge on the Real Property pursuant to an Operating Agreement; Operator, in turn, agrees that it will transport and deposit such gob, coal tailings and slurry discharge to the extent that the Sunnyside Mine produces the same and to the extent that Owner is authorized by the terms of the Reclamation Permit to receive such gob, coal tailings and slurry discharge. By way of implementing that Agreement, Operator and Owner hereby agree to jointly develop an Operating Plan setting forth the details of use of the Real Property with both the Plant Site and the Sunnyside Mine including, but not limited to, the issues set forth in this Article II. The Plan developed will be mutually acceptable to Operator and Owner and relevant portions will be subject to approval by the State of Utah in conjunction with the transfer of the Reclamation Permit and subject to approval of other governmental entities, if such approval is required.

(a) Coarse Refuse. At Owner's option, Operator will deliver coarse refuse to the Plant Site or the Real Property. Owner is responsible for obtaining all permits, licenses and authority required on the Real Property and/or Plant Site for Operator to transport, deposit, stockpile, store, use, remine and reclaim coarse refuse on the Real Property and/or

Plant Site; and for transportation of Tailings from the Real Property.

(b) Expansion of Coarse Refuse Pile. Operator has submitted an application to the State of Utah requesting modification of ACT/007/007 to expand the coarse refuse pile located on the Real Property to include a portion of the Plant Site. Operator's mining activities necessitate an expansion of the coarse refuse pile by April 1, 1988 and Owner will notify Operator by that date of its decision to either expand the coarse refuse pile, in which event Owner and Operator shall cooperate to (i) complete the pending application to modify ACT/007/007 and (ii) modify the application for partial assignment of ACT/007/007 to retain the portion of the Plant Site on which the coarse refuse pile is located within the Reclamation Permit Area, or modify the existing Reclamation Permit to provide storage for the coarse refuse in some other manner acceptable to Operator and the permitting authorities.

(c) Mine Development Waste. Owner will designate an area for disposal of "Mine Development Waste" (i.e. rock from surface or underground construction at the Sunnyside Mine) on the Real Property and provide Operator with access to the designated area for purposes of transporting and depositing mine development waste within such area. Operator will remain responsible for obtaining all additional permits, licenses and authority required for Operator to transport, deposit, maintain and reclaim the Mine

Development Waste on the Real Property other than the Reclamation Permit, if required, by Owner and permitting authorities.

(d) Coal Slurry. Operator will be responsible for delivery of refuse slurry from the Sunnyside Mine to the Real Property via the Operator's slurry ditch. Upon Operator's delivery of refuse slurry in such manner, Owner is responsible for transporting the slurry from Operator's ditch to the slurry ponds (cells) located on the Real Property to the Plant Site. Owner will be responsible for obtaining and maintaining all permits, licenses and authority required for such operations. Operator will remain responsible for obtaining and maintaining all permits, licenses and authority associated with the coal slurry until delivery to the slurry ditch.

2.2 Site Security. The parties hereto agree that the Owner shall not be responsible for the loss of or damage to the property of the Operator and/or its subcontractors, if any, from any cause. The Operator shall furnish whatever security it finds necessary to adequately protect its property.

2.3 Roads and Access. It shall be the sole responsibility of Operator to construct and maintain such roads, ways and transportation facilities as Operator may require to transport the gob, coal tailings and slurry discharge from the Sunnyside Mine to the Real Property and the Plant Site and to dispose of gob, coal tailings and waste slurry on the Real Property.

2.4 Structures and Improvements. Notwithstanding the reservation of rights of Operator contained in the Deed, the construction of new structures and improvements on the Real Property by the Operator shall be subject to approval of the Owner; further, in no event shall Operator in its exercise of such rights, impair Owner's use of the Tonka Road, so-called, and Owner's access thereto as provided in the Lease.

ARTICLE III

TERM

3.1 Term. The Term of this Agreement shall be effective from the date hereof and shall continue for a period of thirty (30) years from the date hereof or until the Sunnyside Mine is permanently closed, whichever first occurs; provided, however, that the parties may mutually agree in writing as provided herein in Section 7.1 to extend this Agreement for additional five (5) year terms following the occurrence of any of the above-mentioned events.

3.2 Commencement of Plant Operation. The Owner and Operator hereby agree to renegotiate this Agreement no later than sixty (60) days prior to commencement of Plant operation to reflect any changes concerning use of the Plant Site and Real Property necessitated by operation of the Plant.

3.3 Environmental Responsibility Prior to Transfer of Reclamation Permit. Until transfer to Owner of that portion of Permit Number ACT/007/007 which relates to the Real Property is approved by the governmental authority, Operator shall keep in

full force and effect the Reclamation Permit and all other permits required to transport, deposit, stockpile, store, use, remine and reclaim the gob, coal tailings and slurry discharge on the Real Property.

3.4 Failure to Transfer Reclamation Permit. Owner agrees to seek governmental approval of transfer of that portion of the Reclamation Permit which relates to the Real Property from Operator to Owner within one year of the date hereof. In the event that said transfer is not approved or is denied by the governmental authority by December 28, 1988, Owner and Operator agree to renegotiate this Agreement.

ARTICLE IV

FORCE MAJEURE

4.1 Force Majeure. Neither party shall be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform due to causes beyond its reasonable control, all of which causes herein are called "force majeure", including, but without being limited to, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, unusual climatic conditions, acts of God, acts of a public enemy, inability to obtain necessary materials in the open market.

Owner or Operator, as the case may be, (1) shall notify the other party promptly in writing of the occurrence of any such cause which may hamper Operator's ability to perform its environmental monitoring responsibilities or Owner's ability to

receive gob and coal tailings at any time during the Term of this Agreement, (2) shall give full information concerning such cause, (3) shall promptly exert due diligence to remove such cause, and (4) shall notify the other of the ending date of each such period.

No suspension or reduction for reason of force majeure shall invalidate the remainder of this Agreement; but, on removal of the cause, performance shall resume as provided herein.

## ARTICLE V

## FEES AND TAXES

5.1 Fees and Taxes. The Owner will pay all fees, taxes and royalties, if any, assessed and levied on the Real Property, but not limited to, real estate taxes, reclamation fees imposed pursuant to Section 402(a) of the Federal Surface Mining Control and Reclamation Act of 1977 and the excise tax imposed pursuant to Section 4121 of the Federal Black Lung Benefits Revenue Act of 1977.

## ARTICLE VI

## MISCELLANEOUS

6.1 Notices to the Parties. All notices, payments reports, consents and other communications between the parties shall be in writing and shall be sufficient when delivered in person or when mailed by certified United States mail, postage prepaid, to the parties at their respective addresses, which shall prevail unless notice of change is given in writing:

OWNER: Sunnyside Fuel Corporation
c/o Environmental Power Corporation
One Financial Center
53 State Street
Exchange Place, 30th Floor
Boston, Massachusetts 02109
Attention: President

OPERATOR: Kaiser Coal Corporation
P.O. Box 10
Sunnyside, Utah 84539
Attention: General Manager

Unless otherwise provided herein, any notice given by mailing as aforesaid shall be deemed given seventy-two (72) hours after the same is deposited in the mail with sufficient postage attached. Unless otherwise provided, twenty (20) days shall be deemed sufficient notice.

6.2 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Utah.

6.3 Entire Contract. This Agreement sets forth the entire agreement between the Owner and the Operator with respect to the subject matter hereof and supersedes all prior negotiations and dealings. No change in, addition to or modification of any of the provisions of this Agreement shall be binding upon either party unless in writing, signed by an authorized representative of each party.

6.4 No Waiver. No waiver by either party of any breach of the other party of any of the provisions of this Agreement shall be construed as a waiver of any subsequent

breach, whether of the same or of a different provision in this Agreement.

6.5 Successors Bound. It is understood and agreed by and between the parties hereto that all the terms and conditions herein contained shall extend to, inure to the benefit of and bind the parties hereto, their respective heirs and assigns, subject to the provisions of Section 3.1.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first set forth above.

SUNNYSIDE FUEL CORPORATION

BY _____
ITS Vice President

SUNNYSIDE COGENERATION ASSOCIATES

BY Robert E Barton
ITS Authorized Mgmt Committee Mgr.

BY [illegible]
ITS [illegible]

KAISER COAL CORPORATION

BY [illegible]
ITS Agent

DAD:112387d