

0065

Sunnyside
Coal Company

FAXED
9-27-93

Operations • Highway 123 • P.O. Box 99 • Sunnyside, Utah 84539

September 27th, 1993

Mr. James Carter
Director
Division of Oil, Gas and Mining
State of Utah Natural Resources
3 Triad Center, Ste. 350
Salt Lake City, Utah 84180

ACT/003/003 #4

Copy Jim

Dear Mr. Carter,

Per our discussion, SCA and Sunnyside Coal are substantially in agreement on submission of the Operating Agreement. Final documentation of the water rights and escrow agreement should be completed today, Monday, September 27th. I will be in Salt Lake on Tuesday, Wednesday and Thursday and will insure that the you are informed by SCA that the Operating Agreement is in place and that we are operating thereunder.

Attached is a letter from Sunnyside Coal outlining the two land and water sales which are pending.

Regards,

David B. Corman
David B. Corman

Corporate Offices
The Registry
1113 Spruce Street
Boulder, CO 80302
303-938-1506
FAX: 303-938-5050

Operations
Highway 123
P.O. Box 99
Sunnyside, UT 84539
801-888-4421
FAX: 801-888-2581

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#4

RECEIVED

SEP 29 1993

OPERATING AGREEMENT

DIVISION OF
OIL, GAS & MINING

This Operating Agreement (this "Agreement") is made and entered into this ____ day of June, 1993 between SUNNYSIDE COGENERATION ASSOCIATES, a Utah joint venture ("Owner" or "SCA") and SUNNYSIDE COAL COMPANY, a Colorado corporation ("Operator").

R E C I T A L S:

WHEREAS, Owner is engaged in planning, developing, constructing and operating a waste coal fired electric generating plant (the "Plant") near the Sunnyside mine and coal washing facilities ("Sunnyside Mine") in Carbon County, Utah, and Owner desires to utilize existing and future waste coal from the Sunnyside Mine for use as fuel for the Plant; and

WHEREAS, Operator is the owner and operator of Sunnyside Mine in Carbon County, Utah and desires to have future waste coal from the Sunnyside Mine utilized as fuel for the Plant; and

WHEREAS, Kaiser Coal Corporation ("Kaiser") by a Deed, Assignment and Bill of Sale dated as of December 28, 1987, (the "Deed") conveyed to Sunnyside Fuel Corporation ("SFC"), then affiliate of Owner, and SFC further conveyed and assigned to Owner the following:

1. The gob, coal tailings and slurry discharge associated with the Sunnyside Mine located or to be deposited on certain real property (the "Real Property") more particularly described in Exhibit "A";

2. The Real Property;

3. Ingress and egress across other real property associated with the Sunnyside Mine to Real Property for the purpose of transporting and removing Tailings as defined below ("Access"); and

4. Environmental permits associated with the Real Property including the state of Utah Coal Mining and Reclamation Permit now designated No. ACT/007/035 which relates to the Real Property. (Such permit and any modified reclamation permit which may be issued with respect to Owner's Real Property shall be referred to herein as the "Reclamation Permit"); and

WHEREAS Kaiser, as lessor, and Owner, as lessee, entered into a Land Lease Agreement dated as of March 30, 1987 and amended as of December 28, 1987 (the "Lease") to provide an area for use as a site for the Plant on properties described at Exhibit "B" (the "Plant Site") and to provide the right to use 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 purchased the Plant Site from Kaiser subject to the Lease; and

WHEREAS, Operator, as owner of the Sunnyside Mine and successor in interest to Kaiser, has the benefit of all of the rights reserved to Kaiser under the Deed; and

WHEREAS, Owner and Operator desire to enter into this Operating Agreement to further evidence their respective rights and obligations with respect to the Real Property, the Plant Site and the Reclamation Permit.

NOW THEREFORE, in consideration of \$10.00, the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I: ENVIRONMENTAL RESPONSIBILITY

1.1 Environmental Responsibility.

(a) Subject to the terms of this Agreement, Owner shall be responsible for obtaining and maintaining in good standing 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, excavate and reclaim Tailings as defined below transported and deposited on the Real Property or the Plant Site.

(b) Owner shall be responsible and liable, except as provided for below, for any condition or situation that creates a violation of any permit, license, rule, regulation or statute, if that condition or situation occurs on the Real Property. SCA shall be responsible and liable for any condition or situation that creates a violation of any permit, license, rule, regulation or statute, or causes damage regarding the area as set forth in

the Operator's Utah Coal Mining and Reclamation Permit No. APT/007/007, a description of which will be provided in Exhibit "C" as soon as available but in any event, not later than 18 months after the execution date of this Agreement (such area hereinafter being defined as the "Mine Area"), to the extent that condition or situation is caused or contributed to by SCA.

(c) Notwithstanding the foregoing, Operator shall be responsible and liable for any condition or situation that creates a violation of any permit, license, rule, regulation, or statute, if that condition or situation occurs on the Real Property or causes damage regarding the Real Property to the extent that condition or situation is caused or contributed to by the Operator or agents of the Operator. Operator shall be responsible for all outstanding DOGM violations given to Operator regarding the Real Property.

(d) Title to the Tailings as defined below shall transfer to the Owner at the boundary of the Real Property (it being agreed and understood that prior to such transfer the Operator shall have all of the responsibility, liability and duties with respect to such Tailings).

(e) Operator shall indemnify and hold harmless Owner, its employees, contractors, agents, successors, assigns, partners and representatives from and against any losses or liability including any claims, damages, necessary costs or expenses, including, without limitation, reasonable legal, consulting,

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engineering and other expenses, or any fines or penalties arising out of or resulting from any hazardous waste, substance, pollutant or contaminate arising or occurring in, on, or at the Real Property due to or occasioned by the acts or omissions of the Operator, its agent, employees or contractors subsequent to the date of this Agreement; provided however, this provision shall not relate to Tailings, as defined below, from the Sunnyside Mine. This provision shall survive the termination of this Agreement and shall remain in full force and effect until amended or terminated in writing by the Owner and Operator.

1.2 Reclamation Permit. On February 4, 1993, Owner received a Reclamation Permit for the Real Property from the State of Utah Division of Oil, Gas and Mining ("DOGGM") which allows for (a) excavation, transportation and use of Tailings, as defined below, deposited on the Real Property as fuel in the Plant, (b) delivery of Tailings, as defined below, directly from the Sunnyside Mine to the Plant site for use as fuel in the Plant, (c) postponement of reclamation on those portions of the Real Property which are proposed to be excavated as fuel for the Plant, and (d) designation of additional areas on the Real Property for deposit of Tailings from the Sunnyside Mine. Owner shall forthwith amend the Reclamation Permit to provide that DOGM and the U.S. Office of Surface Mining shall furnish copies directly to Operator of all written communications from such agencies to Owner regarding the Reclamation Permit, including,

without limitation, notices of violation, cessation orders, modifications of the Reclamation Permit and notifications of new or modified requirements of law or regulation affecting the Reclamation Permit.

ARTICLE II: DEPOSIT OF TAILINGS; OPERATIONS

2.1 Deposit of Tailings; Obligations:

(a) Without limiting the generality of the reservation of rights contained in the Deed, Owner hereby agrees that Operator shall have the continuing right during the term of this Agreement, subject to and in compliance with the Reclamation Permit, UPDES Permit, State of Utah Division of Air Quality Approval Order ("Air Permit") and all other applicable permits, to transport and deposit on the Real Property, gob, coal tailings, and slurry discharge ("Tailings") and Rock, as defined in Section 2.5 below, which come from the Sunnyside Mine. Owner shall have the right to direct the placement of Tailings and Rock on the Real Property, which placement shall allow for reasonable access for Operator. Notwithstanding the rights set forth herein, Operator shall not deposit industrial waste, such as hazardous materials or substances (including but not limited to, asbestos, chemicals, pollutants, contaminants, or toxic substances), construction waste, petroleum products and byproducts, garbage, refuse, junk, mining machinery, lumber or other materials of a similar nature (collectively "Industrial

Waste") on the Real Property; provided, however, this provision shall not relate to Tailings from the Sunnyside Mine. The Operator hereby agrees that it shall at its sole cost and expense immediately remove any prohibited Industrial Waste transferred to the Real Property after the execution date of this Agreement by the Operator's acts or omissions. The Industrial Waste Disposal Area located on the Real Property, previously utilized by the Operator, shall not be utilized after execution of this Agreement.

(b) Operator agrees that it will transport and deposit all Tailings produced from or generated by the Sunnyside Mine to the extent the Sunnyside Mine produces or generates the same and to the extent Owner is authorized by the terms of the Reclamation Permit, UPDES Permit and applicable permits to receive the same; provided, that nothing in this Agreement shall impose any obligation on Operator to continue operations at the Sunnyside Mine or affect mining practices at the Sunnyside Mine or Operator's coal washing facilities. Decisions as to whether particular products or materials are waste to the Sunnyside Mine and, therefore, to be deposited on the Real Property (or the Plant Site) pursuant to the terms hereof, shall rest solely with Operator as owner of the Sunnyside Mine, subject to the Industrial Waste prohibition set forth above and applicable laws.

(c) If in the event it shall reasonably appear to Operator that the actions or inactions of Owner have created an imminent

threat that the Reclamation Permit will be cancelled or that Operator will otherwise be barred by the governmental agencies having jurisdiction from continuing to exercise its rights to deposit Tailings from the Sunnyside Mine on the Real Property, and Owner shall have received written notice from the governmental agency having jurisdiction and failed to take appropriate action to remedy any such condition or default set forth in such notification, then Operator, subject to the rights and interest of the Bondholders' Trustee and Utah Power and Light, an assumed business name of PacifiCorp, ("UP&L") shall have the right, but not the obligation, to assume full and complete custody and control of the Real Property including slurry ponds and all other sites and areas on the Real Property reasonably required by Operator for the disposal of Tailings from the Sunnyside Mine.

In such event Operator, subject to the rights and interest of the Bondholders' Trustee and UP&L, shall have the further right, but not the obligation, to take such actions as shall be necessary to remedy the conditions or defaults associated with the Real Property which caused the Reclamation Permit or Operator's rights to deposit Tailings on the Real Property to be so jeopardized.

Notwithstanding the foregoing, Operator shall have no right to remedy any condition or default if Owner is proceeding with due diligence to remedy any such condition or default set forth

in the proper notice which is the cause of such condition or default or if Owner is by proper proceedings appealing the action by DOCM or other governmental agency having jurisdiction over the Real Property.

2.2 Operations and Maintenance Plan. Owner, in conjunction with the operator of the Plant, shall prepare for review by Operator, at least 3 months prior to the beginning of each calendar year during the term of this Agreement, an operation and maintenance plan ("O&M Plan") for the Real Property for such succeeding calendar year, except for 1993. Owner shall update the O&M Plan on a quarterly basis. Owner shall make reasonable attempts to incorporate comments by Operator in the O&M Plan so as to accommodate Operator concerns. The O&M Plan shall set forth, in reasonable detail, Owner's plans for excavation of Tailings during such succeeding year. The O&M Plan shall also demonstrate that areas of sufficient size are permitted and available on the Real Property for Operator to deposit all Tailings produced and generated by the Sunnyside Mine during such ensuing calendar year regardless of whether Owner's excavation operations are conducted as planned or are suspended or curtailed due to Force Majeure or other causes. It is the intent of Owner and Operator, and the O&M Plan shall provide, that Owner and Operator shall plan, schedule and conduct their respective operations on the Real Property during the term of this Agreement in such manner that areas of sufficient size to allow operator

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during each calendar year to deposit at least twelve months worth of Tailings produced and generated by the Sunnyside Mine.

2.3 Notice.

(a) Owner shall provide Operator with the following written notifications:

(i) Owner shall provide Operator with at least ninety (90) days advance notice, or as soon as reasonably possible, of the proposed submission of any modification or amendment of the Reclamation Permit. Owner shall make reasonable attempts, but not be obligated, to incorporate Operator's concerns submitted in writing to the Owner. Owner shall conform such proposed amendment to the requirements of this Agreement.

(ii) Owner shall provide Operator with at least twelve (12) months written advance notice, or, if less than twelve (12) months, as soon as reasonably possible, of any planned temporary or permanent cessation of operations at the Plant and shall provide Operator with immediate telephonic or written notice of any unscheduled temporary or permanent cessation of operations at the Plant.

(iii) Owner shall provide Operator with notice of the receipt of any notice of violation or cessation order relating to the Reclamation Permit within twenty-four (24) hours, or as soon as reasonably possible, of the receipt of any such notice or order by Owner.

(iv) Owner shall provide Operator with immediate notice of any other notifications, regulatory changes or other matters affecting the Reclamation Permit, Owner's operations on the Real Property, or Owner's operation of Plant.

(v) Owner shall provide Operator with reasonable dumping and disposal instructions in writing for Tailings consistent with Owner's Reclamation Permit for each calendar month at least thirty (30) days in advance of the beginning of such month or as soon as reasonably possible. Operator shall have five (5) business days after receipt of instructions from Owner to approve or propose reasonable changes in writing. If Owner does not receive Operator's proposed changes in writing within five (5) business days, the instructions shall be deemed approved. Owner shall incorporate Operator's proposed changes unless the proposed changes are deemed by Owner to be unreasonable under the circumstances.

(b) Operator shall provide Owner with the following written notifications:

(i) Operator shall provide Owner with at least twelve (12) months advance written notice, or if less than twelve (12) months, as soon as reasonably possible, of any planned temporary or permanent cessation of operations at the Sunnyside Mine and shall provide Owner with immediate telephone or written notice of any unscheduled temporary or permanent cessation of operation at the Sunnyside Mine.

(ii) Operator shall provide Owner with notification and a copy thereof of any notice it may receive relating to the Reclamation Permit including notifications regarding regulatory changes or matters relating to the operations of the Sunnyside Mine or the use of the Real Property.

2.4 Coarse Refuse. Operator will deliver gob and coal tailings from the Sunnyside Mine wash plant generally characterized as larger than 28 mesh ("Coarse Refuse") to either the Plant Site or the Real Property, as directed by Owner. Without limiting Section 1.1, Owner shall be responsible for obtaining all permits, licenses and authority required on the Real Property and/or Plant Site for Operator to transport, deposit, stockpile and store coarse refuse on the Real Property and/or Plant Site. Operator shall cooperate with the Owner in obtaining and maintaining all such permits, licenses and authority. Owner shall level the Coarse Refuse so that Operator can continue to deliver Coarse Refuse to the Real Property. Operator agrees to drive over the Coarse Refuse in such a manner as to compact the Coarse Refuse which will prevent fires and allow additional Tailings to be placed on top of the lift in accordance with the Reclamation Permit, UPDES Permit, Air Permit, and other permits.

2.5 Rock. Owner will designate an area or areas for disposal on the Real Property for rock from the Bradford breaker at the Sunnyside Mine wash plant ("Rock") from development at the

Sunnyside Mine or expansions thereof or new mines developed on lands now owned or hereafter acquired by Operator which utilize the Sunnyside Mine facilities for the processing and shipment of Tailings and Rock, and Owner shall provide Operator with access to the designated area(s) for purposes of transporting and depositing Rock within such area(s). Operator shall make best reasonable efforts to deliver Rock which is substantially free from Industrial Waste.

2.6 Coal Slurry. Operator shall be responsible for delivery of refuse slurry which is comprised of water and fine waste coal generally characterized as smaller than 28 mesh ("Coal Slurry") from the Sunnyside Mine to the Real Property pursuant to the O&M Plan, Owner's instructions and in accordance with all permits, via the Operator's slurry ditch to the slurry ponds (cells) located on the Real Property. Owner shall be responsible for maintaining slurry ditches and for cleaning out and maintaining the slurry ponds on the Real Property in accordance with applicable laws, licenses, authorizations and permits. Operator will be responsible for maintaining slurry ditches and obtaining and maintaining all permits, licenses and authorization associated with the coal slurry until delivery to the slurry ditch on the Real Property. Owner shall be responsible for maintaining sufficient capacity in the slurry ponds for receipt of slurry from Operator's slurry ditch.

2.7 Site Security. The parties hereto agree that Owner shall not be responsible for the loss or damage to any property of Operator and/or its agents or subcontractors, if any, except if such loss or damage results from the willful or grossly negligent acts of Owner, its contractors or subcontractors, including Main, as defined in Section 6.1, Savage Industries Inc. ("Savage") or Tampella Services Inc. ("Tampella"). Consistent with the rights and obligations of each party hereto, Operator shall, at its sole cost and expense, furnish whatever security it finds necessary to adequately protect its property.

2.8 Roads and Access. It shall be the sole responsibility of Owner to construct and maintain such roads, ways and transportation facilities required for the transportation of the Tailings on the Real Property and/or to the Plant Site in accordance with applicable laws, licenses, authorizations and permits. Operator shall coordinate its activities with the Owner so as to promote efficiency of effort and to comply with the regulatory requirements imposed on the Real Property and the use, operation, and maintenance of the Plant. Owner shall be responsible for dust control, in compliance with the Air Permit, for roads and working areas on the Real Property.

2.9 Structures and Improvements. Notwithstanding the reservation of rights of Operator contained in the Deed, the construction of roads or conveyors on the Real Property by the Operator shall be subject to the reasonable approval of the Owner

or its designated agent; further, in no event shall operator in its exercise of such rights, impair the transportation of persons and materials to, or the use, operation and maintenance of the Plant, or Owner's use of or access to the so-called Tonka Road. The Operator agrees that as part of its duties hereunder it shall notify Owner of any areas of, or structures located on, the Real Property which may need repair or alteration.

2.10 Sedimentation Ponds. Owner shall be responsible for maintaining the sedimentation ponds, basins, silt fences, ditches, culverts and related items on the Real Property.

2.11 Reclamation Soil Borrow Area. The Reclamation Soil Borrow Area, located on the Real Property, is owned by Owner and Owner shall utilize this material in the Owner's DOGM reclamation plans.

2.12 Revegetation Test Plot and Boundary Demarcation. Owner shall be responsible for the Revegetation Test Plot and for maintaining the boundary markers between the Real Property and the Sunnyside Mine permit area for the term of this Agreement. Owner shall provide Operator with copies of all reports or studies which are conducted on the Revegetation Test Plot.

2.13 Power Lines. Operator shall be responsible and liable for all costs associated with maintaining power lines in accordance with applicable laws that provide power to the Sunnyside Mine which touch or cross the Real Property.

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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 provided, however, that the parties may mutually agree in writing to extend this Agreement for subsequent five (5) year terms at any time after any date which is ninety (90) days prior to the expiration or termination of this Agreement.

ARTICLE IV: FORCE MAJEURE

4.1 Force Majeure. Neither party shall be liable to the other for any failure to perform such party's obligations hereunder to the extent and for the period that such failure is due to any cause beyond its reasonable control which cannot be remedied through exercise of due diligence or expenditure of reasonable sums of money (all of which causes are called "Force Majeure" herein), including but not limited to civil disturbances, war, fires, climatic conditions not reasonably foreseeable, acts of God, acts of public enemy, or acts or failures to act by any governmental entity; and with respect to SCA, if Utah Power & Light ("UP&L") (or its successors or assigns) shall not be required to purchase electrical power generated at the Plant as a result of an event of Force Majeure or otherwise under that certain Power Purchase Agreement between SCA and UP&L dated January 30, 1987, as amended. Without

limiting the foregoing, any such act, event or occurrence resulting from the negligence of such party shall not constitute a Force Majeure under this Agreement.

4.2 Obligations of Affected Party. The affected party shall (a) notify the other party promptly in writing of the occurrence of any Force Majeure which may hamper or impair the performance of such affected party, (b) give full information concerning such Force Majeure, (c) promptly exercise all due diligence and expend all reasonable sums of money to remove or lessen the effect of such Force Majeure, and (d) promptly notify the other party of the ending date of such Force Majeure. No suspensions or reduction due to Force Majeure shall invalidate the remainder of this Agreement; provided, however, on removal or remedy of the Force Majeure event in whole or in part, the parties shall resume their performance as provided for herein.

ARTICLE V: FEES AND TAXES

5. Fees and Taxes. Owner will pay all fees, taxes and royalties, if applicable, assessed and levied directly on the Real Property, including 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. Operator agrees to

promptly forward to Owner any notifications it receives regarding the Real Property, the Plant Site or the Plant.

ARTICLE VI: OWNER'S RIGHTS AND OBLIGATIONS

6.1 Other Agreements. Owner has entered into an Operations and Maintenance Agreement with Chas. T. Main Inc., now doing business as Parsons Main, Inc. ("Main") attached as Exhibit "D" and certain other agreements with third parties relating to the use, operation and maintenance of the Plant (collectively, the "Plant Operation Agreements"). Operator further acknowledges that Owner may assign or delegate certain of its rights and responsibilities to Main, Savage, Tampella and other parties through the Plant Operation Agreements, however, such agreements shall not relieve Owner of any responsibilities or obligations under this Agreement.

6.2 Cooperation and Notices. Operator agrees to cooperate with Owner's agents including Main, Savage and Tampella in their exercise of any of Owner's rights and responsibilities under this Agreement assigned or delegated under the Plant Operation Agreements. Operator shall accept any authorized communication from Owner's agents pursuant to such Plant Operation Agreements as though the same were given by Owner. Owner shall provide Operator with a list of authorized agents, which list shall be amended from time to time to reflect current conditions.

ARTICLE VII: INDEPENDENT CONTRACTOR

7. Independent Contractor. It is agreed and understood that Operator is in all respects an independent contractor, and nothing contained in this Agreement shall make Operator an agent or employee of Owner, its partners, parent corporation or affiliates. Operator shall be solely responsible for selecting the manner and method of its obligations under this Agreement, Operator shall cooperate with Owner, Main and Savage and shall comply with the reasonable requests of Owner, Main or Savage concerning the Operator's activities on the Real Property as provided for herein.

ARTICLE VIII: REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties. Each party to this Agreement represents and warrants to the other party as follows:

(a) such party has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

(b) the execution and delivery by such party of the Agreement and the performance of its obligations hereunder has been authorized by all necessary action (corporate, partnership or otherwise) and, upon execution thereof by the other party, this Agreement will be the legal, valid and binding obligation of such party;

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(c) other than as expressly set forth herein, no consent, approval or other authorization is needed for the execution or delivery by such party of this Agreement or the performance of its obligations hereunder; and

(d) neither the execution or delivery by such party of this Agreement nor the performance by such party of its obligations hereunder conflicts with or causes or will cause a violation of any laws, corporate or partnership documents (as the case may be) or default or breach under any other contracts, agreements or instruments by which it or any of its properties are or may be bound.

8.2 Survival. The representations contained in this Article VIII shall survive the execution and delivery of this Agreement.

ARTICLE IX: DEFAULT

9. Default. If either party defaults in any of its material obligations hereunder and fails to cure such default within thirty (30) days after receiving written notice from the other party of such default (or if a cure cannot be completed within such thirty-day period, then within such longer period as reasonably may be required so long as the defaulting party has commenced its cure within such thirty-day period and is diligently pursuing such cure), then the other party in addition to any other rights it may have at law or in equity may terminate

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this Agreement by giving written notice to the defaulting party of its intention to do so specifying the date on which this Agreement shall be terminated (which shall not be less than ten (10) days after the date such notice of termination is delivered). Such termination shall not relieve any obligation of either party arising or having become due prior to the termination.

ARTICLE X: INDEMNIFICATION

10. Indemnification. Each party agrees to defend at its own cost and expense and to indemnify and hold harmless the other party and its officers, directors, employees, partners, successors and representatives from any loss, damage, liability, demand, claim, damage to property or personal injury or death, legal or administrative proceeding, and costs and expenses (including but not limited to reasonable attorneys' fees and expenses) relating to or arising from any of the same, including those relating to or arising from any Industrial Waste, (each a "Loss"), to the extent any Loss results from or arises directly or indirectly, or in whole or in part from any negligent or willful act or omission or material breach of this Agreement by such party, its agents or its employees.

ARTICLE XI: EXISTING AGREEMENTS

11. Existing Agreements. Owner and Operator acknowledge and agree that each is subject to all of the rights, obligations, terms and conditions imposed or reserved in the Deed and in the Lease in accordance with their terms and that this Agreement does not diminish, limit, enlarge, terminate, supersede or modify the respective rights, obligations, terms and conditions of these agreements.

ARTICLE XII: MISCELLANEOUS

12.1 Notices: 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 mailing by certified United States mail, postage prepaid, or when delivered by personal delivery or sent by telecopy to the parties at their respective addresses, which shall prevail unless notice of a change is given in writing:

TO OWNER:

Local

Sunnyside Cogeneration Associates
Attention: David Pearce
P.O. Box 58087
Salt Lake City, Utah 84158-0087

Boston Office

Sunnyside Cogeneration Associates
Attention: President
c/o Environmental Power Corp.
200 State Street, 13th Floor
Boston, Mass. 02109
Tel: (617) 720-5550
Fax: (617) 720-4546

WITH A COPY TO:

Hunton and Williams
200 Park Avenue
43rd Floor
New York, N.Y. 10166-0136
Attention: Edward B. Koehler
Tel: (212) 309-1000
Fax: (212) 309-1100

AND:

Callister, Duncan and Nebeker
Suite 800 Kennecott Building
Salt Lake City, Utah 84133
Attention: Fred W. Finlinson
Tel: (801) 530-7353
Fax: (801) 364-9127

TO OPERATOR:

Sunnyside Coal Company
Attn: Robert Burnham
1113 Spruce Street
Boulder, Colorado 80302
Tel: (303) 938-1506
Fax: (303) 449-0281

WITH A COPY TO:

Forrest E. Cook, Esq.
Hutchinson, Black and Cook
1215 Spruce Street
Boulder, Colorado 80302
Tel: (303) 442-6514
Fax: (303) 442-6593

AND:

Sunnyside Coal Company
Attn: Joe Fielder
P. O. Box 99
Highway 123 Whitmore Canyon
Sunnyside, Utah 84539
Tel: (801) 888-4421
Fax: (801) 888-2581

Unless otherwise provided herein, any notice given by U.S. mail 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.

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

12.3 Entire Agreement. 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; provided, however, that this Agreement shall in no event be construed as limiting or superseding the reservation of rights contained in the Deed. 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.

12.4 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.

12.5 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 and their respective successors and assigns, subject to the provisions of Sections 3.1.

12.6 Assignment. Except as expressly provided for herein, neither party shall have the right to assign this Agreement to a third person or entity without first receiving the express written consent of the other party, which shall not be unreasonably withheld; provided, however, that this Section 12.6 shall not prevent Owner from assigning this Agreement to secure borrowings by or preexisting indebtedness of Owner, nor shall it prevent Owner from assigning this Agreement in connection with any sale and leaseback or other type of financing of the Plant. Any attempted assignment inconsistent with this Section 12.6 shall be null and void.

12.7 Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance thereof shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

12.8 Captions. The captions contained in the Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

12.9 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which shall be an original but all of which shall be one and the same instrument.

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

SUNNYSIDE COGENERATION ASSOCIATES
a Utah joint venture

By: KAISER SYSTEMS INC.

By: _____
Name: _____
Title: _____

By: KAISER POWER OF SUNNYSIDE, INC.

By: _____
Name: _____
Title: _____

SUNNYSIDE COAL COMPANY

By: Robert M. Burnham
Name: Robert M. Burnham
Title: President

U.S. COMMONWEALTH BANK CONFIDENTIAL

Edward B. Koehler, Esq.
Hunton & Williams
200 Park Avenue, 43rd Floor
New York, NY 10166
Telephone: (212) 309-1000
Telecopy: (212) 309-1100

H. ESCROW

The Parties agree that all documents including the Operating Agreement and funds mentioned herein shall be placed with _____ ("Escrow Agent") to be held until all documents have been executed, title in WRNUM #91-231 has been verified, and regulatory approvals have been obtained, all as set forth in the Escrow Agreement attached in Exhibit A. 

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and date first written above.

SUNNYSIDE COAL COMPANY

By: _____
Its: _____

SUNNYSIDE COGENERATION ASSOCIATES

KAISER SYSTEMS, INC.

By: _____
Its: _____

KAISER POWER OF SUNNYSIDE, INC.

By: _____
Its: _____