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3/19/93 JG

0030

## F A X C O V E R S H E E T

FABIAN & CLENDENIN,  
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TO: Lowell Braxton and Tom Mitchell

DATE: March 19, 1993

FAX NUMBER: 359-3940

TIME: 9:39 am

FROM: Denise Dragoo

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COMMENTS:

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AMENDED DEED OF TRUST AND SECURITY AGREEMENT

THIS AMENDED DEED OF TRUST AND SECURITY AGREEMENT (the "Agreement") is made this \_\_\_\_ day of March, 1993, by and among SUNNYSIDE COAL COMPANY, a Colorado corporation authorized to do business in the State of Utah, successor in interest of Sunnyside Reclamation & Salvage, Inc. ("Trustor"), whose address is P.O. Box 99, Highway 123 - Whitmore Canyon, Sunnyside, Utah 84539, SOUTH EASTERN UTAH TITLE COMPANY ("Trustee"), whose address is P.O. Box 855, Price, Utah 84501, and the STATE OF UTAH, DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL, GAS & MINING ("Beneficiary"), whose address is 355 West North Temple, III Triad, Suite 350, Salt Lake City, Utah 84180.

W I T N E S S E T H :

WHEREAS, Trustor, Trustee and Beneficiary (collectively the "Parties") entered into a DEED OF TRUST AND SECURITY AGREEMENT (the "Original Agreement") executed on March 9, 1989 and recorded on or about March 10, 1989 in Emery County, Utah, as Entry No. 023282, Book 176 at Pages 580-639 and in Carbon County, Utah in Book 287 at Pages 96-155; and

WHEREAS, Trustor and Beneficiary entered into a Subordination Agreement on August 28, 1989 (the "Subordination Agreement") which subordinated to Zion First National Bank ("Zions"), Beneficiary's first lien and security interest under the Original Agreement in certain real property and equipment; and

WHEREAS, Trustor and Beneficiary executed an Agreement and Release of Reclamation Contract which released Trustor from certain financial obligations and granted to Beneficiary certain other rights including an "after-acquired" property interest in certain personal property and equipment ("Release"); and

WHEREAS, Trustor and Beneficiary entered into a Memorandum of Understanding dated December 11, 1989 with the federal Office of Surface Mining ("OSM") which included OSM as a co-beneficiary and to the Original Agreement, (the term "Parties" herein includes OSM) set forth OSM's approval to the Release Agreement and Subordination Agreement and specified that OSM claimed no interest in the personal property and tangible equipment described in the Subordination Agreement; and

WHEREAS, on or about February 8, 1993, Sunnyside Cogeneration Associates posted a bond in the amount of \$1.5 million to secure the reclamation liability for the Tailings Reclamation Cost; and

WHEREAS, the Parties desire to amend the Original Agreement to reduce the amount of the reclamation liability; and

WHEREAS, to facilitate the filing of a Form UCC-1 Financing Statement, the Parties desire to update the schedule of equipment and other personal property subject to the Beneficiary's security interest.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties amend the Original Agreement and agree as follows:

1. Except as expressly amended herein, the Parties hereby ratify and affirm the obligations, terms and conditions set forth in the Original Agreement, attached hereto as Exhibit "A", and the Parties agree that, except as expressly amended herein, the obligations, terms and conditions set forth in the Original Agreement shall remain in full force and effect.

2. Sunnyside Reclamation & Salvage, Inc. is replaced by Sunnyside Coal Company as the Trustor. Sunnyside Coal Company hereby assumes all rights and obligations of Sunnyside Reclamation & Salvage under the Original Agreement as herein amended.

3. The address of the Trustee is changed to P.O. Box 855, Price, Utah 84501.

4. Paragraph number two (2) beginning on page four (4) of the Original Agreement is hereby amended to read as follows:

"2. All right, title and interest of Trustor in and to all tangible equipment and personal property (the "Personal Property") owned now or acquired at any time hereafter by Trustor and located now or at any time hereafter in or at the Real Property and used in connection therewith, as further described in Exhibit "B" attached hereto and made a part hereof."

5. Exhibit "B" attached to the Original Agreement is hereby amended and replaced by the asset list attached to this Agreement as Exhibit "B[1]".

6. Trustor is released by Beneficiary and Co-Beneficiary from liability for the Tailings Reclamation Cost described in the Original Agreement.

7. The total reclamation liability described in the Original Agreement shall be \$2,650,000.00 as set forth in the Permit Amendment for ACT/007/007.

8. Paragraph 5.1 (Notice) of Article V of the Original Agreement is amended to provide that written notice to the Trustor shall be to the following address:

SUNNYSIDE COAL COMPANY  
P.O. Box 99  
Highway 123 - Whitmore Canyon  
Sunnyside, Utah 84539  
Attention: Joe Fielder

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

TRUSTOR:

SUNNYSIDE COAL COMPANY

By: \_\_\_\_\_

Its: \_\_\_\_\_

BENEFICIARY:

UTAH DEPARTMENT OF NATURAL  
RESOURCES, DIVISION OF OIL, GAS &  
MINING

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
THOMAS A. MITCHELL, ESQ.  
Assistant Utah Attorney General

CO-BENEFICIARY:

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF SURFACE MINING

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of March, 1993, personally appeared before me \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the \_\_\_\_\_ of SUNNYSIDE COAL COMPANY, and that said document was signed by him in behalf of said corporation by authority of its bylaws, and said \_\_\_\_\_ acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of March, 1993, personally appeared before me \_\_\_\_\_, personally known to me or proved to me on the

basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the \_\_\_\_\_ of THE UTAH DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL, GAS & MINING, and that said document was signed by him in behalf of said corporation by authority of its bylaws, and said \_\_\_\_\_ acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
 NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )

: ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of March, 1993, personally appeared before me \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn, did say that he is the \_\_\_\_\_ of THE UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF SURFACE MINING, and that said document was signed by him in behalf of said corporation by authority of its bylaws, and said \_\_\_\_\_ acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
 NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

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THANK YOU.

**FABIAN & CLENDENIN**A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAWTWELFTH FLOOR  
215 SOUTH STATE STREET  
P. O. BOX 510210  
SALT LAKE CITY, UTAH 84151  
TELEPHONE (801) 531-8900  
FACSIMILE (801) 596-2814RALPH H. MILLER  
GEORGE O. MELLING, JR.  
WARREN PATTEN  
M. BYRON FISHER  
STANFORD B. OWEN  
WILLIAM H. ADAMS  
ANTHONY L. RAMPTON  
PETER W. BILLINGS, JR.  
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ANNA W. DRAKE  
W. CULLEN BATTLE  
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RANDY K. JOHNSONNORMAN J. YOUNKER  
MICHELE MITCHELL  
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ROBERT PALMER REESDIANE H. BANKS  
R. BRUCE SARGER  
JOHN (JACK) D. RAY  
KATHLEEN H. SWITZER  
CRAIG T. JACOBSEN  
BRUCE D. REEMSNYDEROF COUNSEL  
PETER W. BILLINGS  
HELEN J. EDWARDS

March 19, 1993

**HAND DELIVERED**Lowell Braxton  
Acting Director  
UTAH DIVISION OF OIL, GAS & MINING  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180**DRAFT**RE: Office of Surface Mining ("OSM") Ten-Day Notice No. 93-02-250-001  
("TDN"), Division of Oil, Gas & Mining's ("Division's") Letter of  
February 26, 1993, Permit No. ACT/007/007

Dear Lowell:

At the request of Sunnyside Coal Company ("SCC"), this letter responds to questions raised by the Division regarding the adequacy of collateral securing SCC's reclamation liability for the Sunnyside Mine, Permit No. ACT/007/007. On Tuesday, March 16, 1993, SCC met with you and Lowell Braxton to respond to the Division's letter of February 18, 1993 and to OSM's TDN regarding alleged inadequacies in SCC's reclamation bond for Permit No. ACT/007/007 (the "Permit"). This letter responds to questions raised by the Division during that meeting and elaborates on the March 10, 1993 letter which we prepared on behalf of SCC.

First, it was our understanding from the March 16 meeting that the Division does not intend to increase the current bonding liability of the Permit. The Division acknowledged that SCC has secured the reclamation liability pursuant to a Deed of Trust and Security Agreement dated March 9, 1989 ("Original Agreement"). The Division further acknowledged that it holds a reclamation bond from Sunnyside Cogeneration Associates in the amount of \$1.5 million which duplicates the Tailings Reclamation Cost set forth in the Original Agreement. SCC's remaining Mine Reclamation Cost under the Original Agreement is currently estimated as \$2,650,000.00 as set forth in a pending Amendment to the Permit.

LAW OFFICES OF  
FABIAN & CLENDENIN  
A PROFESSIONAL CORPORATION

Lowell Braxton  
March 19, 1993  
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As set forth in the March 10, 1993 letter and in discussions with the Division, the \$2,650,000.00 reclamation liability for the Permit is adequately secured by the original Deed of Trust and Security Agreement and by a \$75,000.00 Certificate of Deposit. SCC assets pledged to secure the reclamation liability are described in Table A attached to our letter of March 10, 1993. As we discussed at our meeting on March 16, the recent appraisals by George Fuji and Jeffery Anderson only address the mountain property and associated water rights. The average appraised value of this portion of the collateral is \$747,500.00. In addition, we have enclosed two exhibits describing real property not included in the 1993 appraisals but secured by the original Deed of Trust. SCC has revised its estimate of the appraised value of this property from \$1,472,595.00 to \$1,147,500.00. This value is based on the 1991 appraisal by Brockbank & Associates. This new estimate deletes the acreage disturbed by construction of the cogeneration facility. The estimated value of water rights pledged under the Deed of Trust and Security Agreement is currently being estimated by Steve Clyde, Esq. A preliminary estimate will be prepared by Mr. Clyde by April 1, 1993. As indicated in Table A of the March 10, 1993 letter, SCC estimates that these water rights are valued at \$725,000.00.

In addition to real property secured by the Deed of Trust, SCC has pledged approximately \$12,108,172.84 worth of personal property to the State of Utah under the Original Agreement. The appraised value of the personal property and equipment was appraised by Mountain States Machinery in early 1992. See enclosed Appraisal. Mountain States Machinery is preparing a Statement of Qualifications and has agreed to allow the State of Utah to rely on its appraisal. Our Uniform Commercial Code ("UCC") records check shows the following encumbrances which SCC confirms are still valid and enforceable as of this date:

UCC-1, Entry No. 341804, filed November 12, 1992, securing Joy Technologies, Inc., affecting one Rebuilt Joy Shearer, Model 3LS, Serial No. LWS235 and one rebuilt Joy Miner, Model 12CM7-10BX, Serial No. JM2554.

UCC-1, Entry No. 277020, filed February 25, 1991, securing Joy Technologies, Inc., affecting one Rebuilt Joy Shearer, Model 3LS, Serial No. LWS225.

UCC-1, File No. 278820, dated March 14, 1991, securing IBM Credit Corporation, encumbering computer equipment.

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Lowell Braxton  
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UCC-1, Entry No. 264896, dated October 30, 1990, securing Zions First National Bank, regarding proceeds derived from an irrevocable letter of credit issued by Tokaibank, Tokyo, in favor of debtor.

UCC-1, Entry No. 217204, dated August 30, 1989, securing Zions First National Bank, encumbering all stockpiled coal inventory, other inventory accounts, accounts receivable, contract rights, instruments, machinery and equipment, specifically including a Halbach & Braun Face Conveyor, 125 Westfalia Two-leg Shields, and Wagner LST-55-20X Diesel Scoop.

Our UCC search also revealed several UCC filings which SCC indicates have been paid in full. SCC will obtain UCC-3 release forms from the following secured parties:

Joy Technologies, Inc. regarding UCC filing No. 293227;  
Wheeler Machinery regarding UCC filing No. 288088;  
J.H. Flescher & Co. regarding UCC filing No. 280387;  
Fairmont Supply Co. regarding UCC filing No. 277105;  
Castle Gate Coal Co. regarding UCC filing No. 275446;  
Long-Airtox Co. regarding UCC filing No. 197675;  
Century Lubricating Oils regarding UCC filing No. 239507;  
Goodyear Glide Conveyor Belt Co. regarding UCC filing No. 277185; and  
EIMCO Machinery, Inc. regarding UCC filing No. 261318.

With respect to the State's concern regarding after-acquired property, please note the Agreement and Release of Reclamation Contract dated August 28, 1989 between the Division and Sunnyside Reclamation & Salvage, Inc. ("SR&S"). Paragraph 5 of this Agreement indicates: "All tangible equipment and personal property acquired by SR&S after the date hereof for the use of Sunnyside Mines shall, immediately upon the acquisition thereof by SR&S, become subject to the lien of the instrument as modified by the Subordination Agreement." This Agreement extends the Division's secured interest to the "after acquired property" listed on the amended Exhibit B.

In addition, enclosed for your review is an Amended Deed of Trust and Security Agreement and UCC-1 Financing Statement which updates the State's security interest in the real property and personal property securing the original Deed of Trust and Security Agreement ("Amended Agreement"). As you will note, the Amended Agreement releases SCC from obligations secured by Sunnyside Cogeneration Associates' bond in the

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amount of \$1.5 million for the Tailings Reclamation Costs. In addition, the Amended Agreement also includes an "after-acquired property" clause.

Please review these documents and give me a call with any suggested changes or revisions to the Amended Deed of Trust and Security Agreement and the UCC-1 form.

Thank you for your assistance in this matter.

Very truly yours,

Denise A. Dragoo

DAD:jmc:8226

Enclosures

cc: Joe Fielder  
Gary Gray  
Bob Burnham  
Thomas Mitchell, Esq.