

0062

# FABIAN & CLENDENIN

GEORGE D. MELLING, JR.  
 WARREN PATTEN  
 M. BYRON FISHER  
 STANFORD B. OWEN  
 WILLIAM H. ADAMS  
 ANTHONY L. RAMPTON  
 PETER W. BILLINGS, JR.  
 THOMAS CHRISTENSEN, JR.  
 DENISE A. DRAGOO  
 JAY B. BELL  
 DANIEL W. ANDERSON  
 GARY E. JUBBER  
 ROSEMARY J. BELESS  
 ANNA W. DRAKE  
 W. CULLEN BATTLE  
 KEVIN N. ANDERSON†  
 RANDY K. JOHNSON

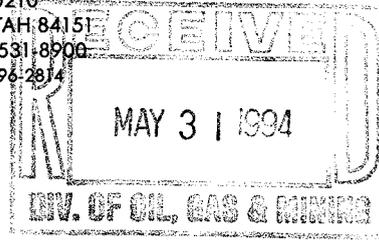
NORMAN J. YOUNKER  
 MICHELE MITCHELL†  
 JOHN E. S. ROBSON†  
 DOUGLAS B. CANNON  
 DOUGLAS J. PAYNE  
 ROBERT PALMER REES  
 DIANE H. BANKS  
 P. BRUCE BADGER  
 JOHN (JACK) D. RAY  
 CRAIG T. JACOBSEN  
 BRUCE D. REEMSNYDER  
 BROCK R. BELNAP  
 DOUGLAS R. BREWER  
 CRAIG E. HUGHES  
 JULIE FORTUNA  
 ELAYNE WELLS HARMER

A PROFESSIONAL CORPORATION  
 ATTORNEYS AT LAW

TWELFTH FLOOR  
 215 SOUTH STATE STREET  
 P.O. BOX 510210  
 SALT LAKE CITY, UTAH 84151  
 TELEPHONE (801) 531-8900  
 FACSIMILE (801) 596-2874

OF COUNSEL  
 PETER W. BILLINGS, SR.  
 RALPH H. MILLER

NEVADA OFFICE  
 2835 SOUTH JONES BLVD., SUITE 5  
 LAS VEGAS, NEVADA 89102  
 TELEPHONE (702) 367-4545  
 FACSIMILE (702) 252-5014



† ALSO MEMBER NEVADA BAR

**HAND DELIVERED**

May 31, 1994

James M. Carter  
 Director  
 UTAH DIVISION OF OIL, GAS & MINING  
 3 Triad Center, Suite 350  
 Salt Lake City, Utah 84180-1203

*Copy Daron*

RE: Sunnyside Coal Company, Debtor-in-Possession, Permit No.  
 ACT/007/007 *Bankruptcy File*

Dear Director Carter:

Enclosed is a revised draft of the Agreement between Sunnyside Coal Company and the Utah Division of Oil, Gas & Mining regarding final reclamation of the Sunnyside Mine. Please give me a call when you have had an opportunity to review this proposal.

Very truly yours,

Denise A. Dragoo

DAD:jmc:35194

Enclosure

cc: Thomas A. Mitchell, Esq. (with enclosure)  
 Randy Hardin (with enclosure)  
 Daron Haddock (with enclosure)

# DRAFT

## AGREEMENT

THIS AGREEMENT (hereinafter "Agreement"), is entered into by and between SUNNYSIDE COAL COMPANY, debtor-in-possession ("Permittee"), and the UTAH DIVISION OF OIL, GAS & MINING ("Division"), as of this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

### RECITALS:

WHEREAS, on January 20, 1986, the Division approved the Permittee's mining and reclamation plan ("Plan") under the Utah Coal Regulatory Program, and issued Permit No. ACT/007/007 ("Permit"). The Plan, as amended or revised in conjunction with Utah Code Ann. § 40-10-1, et seq. (the "Act"), and Utah Administrative Code R645-1-1, et seq. (the "Rules"), and the subsequently renewed permit issued on January 20, 1991, constitute the existing approved plan for reclamation of the Surface Disturbance; and

WHEREAS, in the conduct of reclamation operations within the Permit Area described in the Plan, Permittee is obligated by the Act to file and maintain with the Division a bond insuring the performance of the reclamation obligations in the manner and by the standards set forth in the Plan, the Act and the Rules; and

WHEREAS, Permittee has filed a bond in the amount and in a form acceptable to the Division to perform all obligations imposed by the Division pursuant to applicable laws and regulations relating to the reclamation within the Permit Area. By Corrected Findings dated May 24, 1993, the Division has found that SCC's reclamation liability of \$1,850,184.00 and reclamation of the permit area is adequately secured. This liability is secured by a certificate of deposit held by Zions First National Bank and by a Deed of Trust

and Security Agreement dated March 9, 1989, between Sunnyside Reclamation & Salvage, Inc., as trustor, and the Division, as beneficiary ("Trust Deed"). This Trust Deed was recorded on March 19, 1989 in Book 287 at Page 96 in the office of the County Recorder, Price, Utah; and

WHEREAS, on March 25, 1994, SCC, aka Sunnyside Reclamation & Salvage, Inc., filed a petition for reorganization under Chapter 11 of the federal Bankruptcy Code, as Case No. 94-12794, United States Bankruptcy Court for the District of Colorado; and

WHEREAS, on March 31, 1994, SCC notified the Division of temporary cessation of operations under the Permit in accordance with R645-301-515.300; and

WHEREAS, upon approval of this Agreement by the parties and the Bankruptcy Court, this Agreement will set forth an arrangement between the Division and the Permittee to expedite reclamation of the Disturbed Area in compliance with the Act, the Rules, the approved Plan and within the parameters of the federal Bankruptcy Code.

NOW, THEREFORE, the Division and the Permittee agree as follows:

1. The provisions of the Act and the Rules are incorporated by reference herein and hereby made a part of this Agreement. The Act or Rules shall supersede conflicting provisions of this Agreement or the approved Plan.

2. Permittee agrees to comply with all terms and provisions of the Plan, the Act and the Rules, including the reclamation of all areas disturbed or redisturbed by surface coal mining and reclamation operations after the effective date of the federal Surface Mining Control & Reclamation Act of 1977 ("SMCRA"), 30 U.S.C. § 1201, et seq.

3. In accordance with the provisions of the Bankruptcy Code, the Permittee agrees to maintain in full force and effect public liability insurance policies submitted as part of the Permit application.

4. In the event that the surface disturbance is decreased through partial reclamation, the Division shall reduce the bond as appropriate.

5. The terms and conditions of this Agreement shall remain in effect until such time as the Permittee satisfactorily, as determined by the Division and the Bankruptcy Court, reclaims surface disturbance in accordance with the approved Plan, the Act and the Rules.

6. The timing of and reclamation sequence for the Mine is set forth in the Plan. Within 60 days of Bankruptcy Court approval of this Agreement, Permittee will submit statements to the Division confirming the number of acres within the Disturbed Area and a map showing the Disturbed Areas as of the date of temporary cessation. The Permittee will also submit a more detailed schedule for the sequence and timing of reclamation activities. Permittee will update this schedule on a quarterly basis during Phase I reclamation.

7. The Permittee may, at any time, submit a request to the Division to substitute the bonding method. The Permittee has submitted such a request with respect to sale of certain undisturbed property and water rights to third parties upon replacement of the collateral secured by the Deed of Trust with a letter of credit or certificate of deposit. The Division has approved this substitution. The sale of these properties is subject to the approval of the Bankruptcy Court.

8. This Agreement shall be governed and construed in accordance with the laws of the State of Utah and the federal Bankruptcy Code.

9. The following individuals are principally responsible for coordinating reclamation activities and receiving any notice or written communication regarding matters set forth herein:

For the Division:

Randy Hardin  
Daron Haddock  
UTAH DIVISION OF OIL, GAS & MINING  
3 Triad Center, Suite 350  
355 West North Temple  
Salt Lake City, Utah 84180-1203  
Telephone: (801) 538-5340  
Facsimile: (801) 359-3940

For Permittee:

Robert M. Burnham, President  
1113 Spruce Street  
Boulder, Colorado 80302  
Telephone: (303) 938-1506  
Facsimile: (303) 938-5005

Jim Semborski, Mine Manager  
P.O. Box 99  
Sunnyside, Utah 84539  
Telephone: (801) 888-4421  
Facsimile: (801) 888-2581

10. Prior to taking enforcement action regarding any alleged deficiencies in the Plan or implementation of reclamation in accordance with the Plan the Division agrees to negotiate with the Permittee in an effort to minimize administrative expenses and expedite reclamation.

11. This Agreement may be modified in writing upon approval of both parties and the Bankruptcy Court.

SO AGREED as of the date first set forth above.

STATE OF UTAH, DIVISION OF OIL,  
GAS & MINING

BY: \_\_\_\_\_  
James W. Carter  
Its Director

SUNNYSIDE COAL COMPANY,  
PERMITTEE

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