

Document Information Form

Mine Number: C/007/007

File Name: Outgoing

To: DOGM

From:

Person N/A

Company N/A

Date Sent: March 9, 1994

Explanation:

EScrow Agreement

cc:

File in:
C/007, 007, Outgoing

Refer to:

- Confidential
- Shelf
- Expandable

Date _____ For additional information

HAND DELIVERED

March 9, 1994

Mr. David Van Wagoner, CCTS
Second Vice President
Corporate Trust Administrator
ZIONS FIRST NATIONAL BANK
Trust Department
One South Main Street
P.O. Box 30880
Salt Lake City, Utah 84111

RE: Escrow Agreement

Dear Mr. VanWagoner:

This letter is intended to serve as an escrow agreement (the "Agreement") to provide Zions First National Bank ("Zions" or "Escrow Agent") with necessary instructions from Sunnyside Coal Company ("SCC"), Utah Division of Oil, Gas & Mining (the "Division") and the federal Office of Surface Mining ("OSM") as Escrow Agent in connection with the sale of certain property as described in Exhibit "A" to the Deed of Reconveyance (the "Property") and secured by the Deed of Trust and Security Agreement dated March 9, 1989 by and between SCC as successor in interest to Trustor, South Eastern Utah Title Company, Trustee, and the Division, as Beneficiary.

I. CONDITIONS FOR DISBURSEMENT OF FUNDS

1. SCC has accepted an offer of \$750,000.00 for the purchase of the Property (the "Property") and agrees to deposit the net proceeds of the Purchase Price amount of Six Hundred Thousand Dollars (\$600,000.

File in:

- Confidential
- Shelf
- Expandable

Refer to Record No 0062 Date 3-9-94

In C/ 007, 007, Outgoing

For additional information

2. Prior to closing, the Division agrees to reconveyance releasing the Property from the Deed of Trust and deliver the executed Deed of Reconveyance into escrow with Zions.

HAND DELIVERED

March 9, 1994

Mr. David Van Wagoner, CCTS
Second Vice President
Corporate Trust Administrator
ZIONS FIRST NATIONAL BANK
Trust Department
One South Main Street
P.O. Box 30880
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Dear Mr. VanWagoner:

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I. CONDITIONS FOR DISBURSEMENT OF FUNDS

1. SCC has accepted an offer of Seven Hundred-Fifty Thousand Dollars (\$750,000.00) for the purchase of the Property (the "Purchase Price"). At closing, SCC agrees to deposit the net proceeds of the Purchase Price less taxes and closing costs in the amount of Six Hundred Thousand Dollars (\$600,000.00) with Escrow Agent.

2. Prior to closing, the Division agrees to submit to Zions a deed of reconveyance releasing the Property from the Deed of Trust and deliver the executed Deed of Reconveyance into escrow with Zions.

Mr. David VanWagoner
ZIONS FIRST NATIONAL BANK
March 9, 1994
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3. Upon SCC's deposit of the net proceeds of the Purchase Price with Zions, escrow agent agrees that it will issue a letter of credit to the Division and OSM in the amount of Six Hundred Thousand Dollars (\$600,000.00) in the form attached hereto.

4. Upon SCC's deposit of the net proceeds of the Purchase Price and issuance of the letters of credit to the Division, escrow agent agrees to release the Deed of Reconveyance to SCC.

II. TERMINATION OF ESCROW WITHOUT DISBURSEMENT OF FUNDS.

In the event that the above-stated conditions are not met, SCC shall terminate this Escrow Agreement by written notice to Zions and Zions shall return the funds and documents to the respective parties who delivered them to Zions. Zions shall not issue to the Division and OSM the above-referenced letter of credit and shall return the Deed of Reconveyance to the Division.

III. INSTRUCTIONS

1. Zions Only a Depository. Zions acts hereunder as a depository only and is not responsible or liable for the sufficiency, correctness, genuineness or validity or any instrument deposited hereunder or with respect to the form or execution of the same or the identity, authority or rights of any person executing or depositing the same.

2. Notice of Default. Zions shall not be required to take or be bound by notice of any default by the undersigned or to take any action with respect to such default involving any expense or liability unless notice in writing of such default is given to an officer of Zions by the undersigned or any of them, and unless Zions is indemnified in a manner satisfactory to it against any such expense or liability.

3. Reliance Upon Depositor. Zions shall be protected in acting upon any notice, request, waiver, consent, receipt or other paper or document received from the undersigned and believed by Zions to be genuine.

4. Limitation of Liability. Zions shall not be liable for any error of judgment or any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which Zions may do or refrain from doing in connection herewith, except for its own willful misconduct.

5. Adverse Claims. In the event of an adverse claim or demand affecting the net proceeds of the Purchase Price, Zions may refuse to comply with such claim or demand and may refuse to deliver or dispose of the funds until the rights of the adverse claimants have been finally adjudicated in a court of competent jurisdiction or until all differences shall have been adjusted by agreement and Zions shall have been notified thereof in writing signed by all interested parties.

6. Authority for Agreement. Each party represents and warrants that it has full power and authority to enter into this Escrow Agreement and has taken all action necessary to carry out the transaction contemplated hereby so that when executed this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

7. Compensation. The fees for the services of Zions under the terms of this Agreement are set forth below. Zions shall have a first lien on the Property and papers held by it hereunder for its compensation and any costs or expenses incurred.

a. In the event the fees due Zions remain unpaid for a period of one year, Zions shall have the right and is hereby authorized in its sole and absolute discretion to discontinue the escrow, terminate all ties hereunder, close all accounting or other records, obtain payment of its compensation, costs, liability or expense and destroy all documents, records and files or retain such items in a dormant account status subject to the escheat laws of the State of Utah.

b. Zions' fees shall be paid by SCC.

c. The fees of Zions shall be:

- i. Set-up and acceptance, \$500.00
- ii. Additional reasonable compensation for such other and further duties as may be required of Zions in the performance of this Agreement.

d. In addition to the escrow fee paid or agreed upon, the parties agree to pay the Zions' costs and expenses, including a reasonable attorney

Mr. David VanWagoner
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fee, in the event of any dispute or litigation threatened or commenced which requires Zions to refer such matter to its attorneys.

8. Integration. This instrument is the entire agreement of the parties hereto.

We appreciate Zions' continuing cooperation and assistance in this matter.

Very truly yours,

SUNNYSIDE COAL COMPANY
Operations Office
Highway 123
P.O. Box 99
Sunnyside, Utah 84539

Corporate Offices
The Registry
1113 Spruce Street
Boulder, Colorado 80302

BY: _____

Its: _____

Mr. David VanWagoner
ZIONS FIRST NATIONAL BANK
March 9, 1994
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STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS & MINING

3 Triad Center, Suite 350
Salt Lake City, Utah 84180-1203

BY: 
Its: Director

OFFICE OF SURFACE MINING,
RECLAMATION & ENFORCEMENT
505 Marquette, N.W., Suite 1200
Albuquerque, New Mexico 87102

BY: _____
Its: _____

The undersigned acknowledged receipt of the above-stated escrow instructions and agree to proceed in strict accordance therewith.

DATED this ____ day of _____, 1994.

ZIONS FIRST NATIONAL BANK

BY: _____
Its: _____

EXHIBIT A1. REAL PROPERTYTownship 13 South, Range 11, East, S1EM.

- . Section 11: NE1/4SE1/4,
EXCEPTING therefrom all oil, gas and other minerals.
- . Section 16: All,
EXCEPTING therefrom all coal and other minerals.

Township 14 South, Range 13 East, S1EM.

- . Section 1: NE1/4NE1/4 (Lot 1),
EXCEPTING therefrom all coal and other minerals.
- . Section 2: All,
EXCEPTING therefrom all coal and other minerals.
- . Section 12: All,
EXCEPTING therefrom all coal and other minerals.

Township 14 South, Range 14 East, S1EM.

- . Section 6: Lots 1, 2, 3, 4, 5 and 7; S1/2NE1/4;
SE1/4NW1/4; SE1/4SE1/4; W1/2SE1/4;
SE1/4SW1/4.
- . Section 7: Lots 1 and 2; E1/2NW1/4; SW1/4NE1/4;
SE1/4SE1/4; W1/2SE1/4; E1/2SW1/4.
- . Section 8: SE1/4SE1/4,
EXCEPTING therefrom all coal and other minerals.
- . Section 9: W1/2; W1/2E1/2; E1/2SE1/4; SE1/4NE1/4,
EXCEPTING therefrom all coal and other minerals.
- . Section 17: NE1/4; SE1/4NW1/4; S1/2SE1/4.
SW1/4, less the surface only of the following
described portion thereof:

BEGINNING at a point on the West Right-of-Way line of an existing roadway in Whitmore Canyon, said point being 872.20 feet East and 755.80 feet North from the Southwest Corner of said Section 17, and running thence S 80°00' W 240.00 feet; thence N 15°20' W 147.96 feet; thence N 11° 00' E 200.55 feet; thence N 74°40' E 150.00 feet; thence S 15° 20' E along

said road Right-of-Way line 150.00 feet
to the point of beginning.

- . Section 18: Lots 2, 3 and 4; E1/2SW1/4; E1/2.
- . Section 19: All.
- . Section 20: All.
- . Section 21: E1/2,
EXCEPTING therefrom all coal.
- . Section 22: W1/2.
All.
EXCEPTING therefrom all coal.
- . Section 23: W1/2; SE1/4; SW1/4NE1/4,
EXCEPTING therefrom all coal.
- . Section 24: N1/2NE1/4; SE1/4NE1/4.
E1/2NE1/4,
EXCEPTING therefrom all coal, petroleum, gas
nitrogen and phosphate.
SW1/4NW1/4; E1/2SE1/4,
EXCEPTING therefrom all coal.
- . Section 25: NW1/4NW1/4; E1/2NW1/4; SW1/4NE1/4; W1/2SE1/4;
E1/2SW1/4; SW1/4SW1/4.
W1/2NE1/4; NE1/4NW1/4; S1/2NW1/4; W1/2SE1/4;
SW1/4,
EXCEPTING therefrom all coal.
- . Section 26: E1/2NE1/4; E1/2SE1/4,
All,
EXCEPTING therefrom all coal.
- . Section 27: All,
EXCEPTING therefrom all coal.
- . Section 28: All.
- . Section 29: All.
- . Section 30: SE1/4NW1/4; NE1/4SE1/4; S1/2SE1/4,
EXCEPTING therefrom all coal—
NE1/4; NE1/4NW1/4; NW1/4SE1/4.
- . Section 31: NW1/4NE1/4,
EXCEPTING therefrom all coal.
Lot 4, LESS the portion thereof within
Ridgeway Subdivision; NE1/4NE1/4; S1/2NE1/4;
SE1/4; SE1/4SW1/4.
- . Section 32: All.
- . Section 33: All.
- . Section 34: E1/2,
EXCEPTING therefrom all coal.
- . Section 35: W1/2.
All,
EXCEPTING therefrom all coal.
- . Section 36: W1/2; S1/2NE1/4; W1/2SE1/4,
EXCEPTING therefrom all coal.
N1/2NE1/4; E1/2SE1/4.

Township 14 South, Range 15 EAST, SLEM.

Section 19: W1/2SW1/4; SE1/4SW1/4.
Section 30: W1/2.
Section 31: NW1/4SW1/4,
~~EXCEPTING~~ therefrom all coal and other miner-
als.
NW1/4.

Township 15 South, Range 14 East, S18M.

- Section 1: Lots 3 and 4; SW1/4NE1/4; SW1/4SW1/4,
EXCEPTING therefrom all coal.
- Section 2: Lots 1 and 2; SE1/4NE1/4; E1/2SE1/4.
All,
EXCEPTING therefrom all coal.
- Section 3: E1/2,
EXCEPTING therefrom all coal.
W1/2.
- Section 4: All.
- Section 5: All,
EXCEPTING therefrom the portion thereof which
is within Sunnyside No. 1 Plat and State
Highway No. 123.
- Section 6: Lots 1, 2, 3, 4, 5 and 7; S1/2NE1/4;
SE1/4NW1/4; SE1/4; E1/2SW1/4

EXCEPTING therefrom the following described
portions thereof labelled (a) through (j):

- a) The following Subdivisions:
 - Sunnyside Subdivision - Plat "A".
 - Sunnyside Subdivision - Plat "A" (Revised).
 - Sunnyside Subdivision - Plat "B".
 - Sunnyside Subdivision - Plat "C".
 - Sunnyside No. 1 Plat.
 - Sunnyside No. 2 Plat.

EXHIBIT A

Water Rights and Surface Estate

WATER RIGHTS

Grassy Trail Creek

Water Right No.

91-362
91-367
91-368
91-369
91-28
91-84
91-114
91-125
91-144
91-146
91-178

Sewer Effluent

Water Right No.

91-138

SURFACE ESTATE

Emery County, Utah

Township 17 South, Range 16 East

Section 4: NW/4 of SE/4; SW/4 of NE/4