

0017

Document Information Form

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Company N/A

Date Sent: N/A

Explanation:

Amendment to Land Lease Agreement

cc:

File in:
C/ 007 , 007 , Incoming

- Refer to:
- Confidential
 - Shelf
 - Expandable

Date _____ For additional information

AMENDMENT TO LAND LEASE AGREEMENT

*ACT 7/007
File # 2 and #5
This document must accompany
the March 1995 complete inspection
report.
J. Paul*

AMENDMENT made this 25th day of December, 1987, by an
between KAISER COAL CORPORATION, a Delaware corporation, with its
principal place of business at 102 South Tejon, Suite 400,
Colorado Springs, Colorado ("Lessor") and SUNNYSIDE COGENERATION
ASSOCIATES, a Utah Joint Venture, with its principal place of
business at 102 South Tejon, Suite 400, Colorado Springs,
Colorado ("Lessee"). Reference is made to a Land Lease Agreement
dated as of March 30, 1987 (the "Lease:), by and between lessor
and Lessee. Capitalized terms used in this Amendment not
otherwise defined herein shall have the meaning given therefor in
the Lease.

RECITAL

Sunnyside Power Corporation is now acquiring all the
assets of Kaiser Power Corporation. Those assets include all the
stock of the corporations which make up Lessee. In conjunction
with the acquisition Lessor and Lessee wish to make modifications
to the Lease.

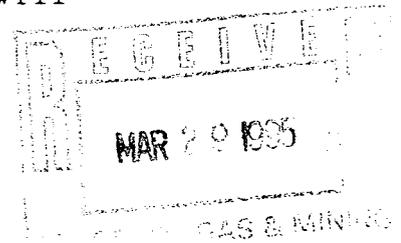
NOW, THEREFORE, it is agreed:

1. The "WITNESSETH" Section
its entirety and the following substi

File in:
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In Cl. 007, 007, Incoming
For additional information

WITNESSE

WHEREAS, Lessee is dev
cogeneration project (the "Project") which will
be located in Carbon county Utah;



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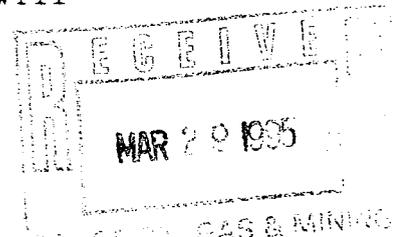
Sunnyside Power Corporation is now acquiring all the
assets of Kaiser Power Corporation. Those assets include all the
stock of the corporations which make up Lessee. In conjunction
with the acquisition Lessor and Lessee wish to make modifications
to the Lease.

NOW, THEREFORE, it is agreed:

1. The "WITNESSETH" Section of the Lease is deleted in
its entirety and the following substituted therefor:

WITNESSETH:

WHEREAS, Lessee is developing a
cogeneration project (the "Project") which will
be located in Carbon county Utah;



WHEREAS, Lessor owns certain real property located in Carbon county, Utah, as more particularly described in Exhibit "A" (the "Property") and desires to lease the Property to Lessee; and

2. Article II of the Lease is deleted in its entirety and the following substituted therefor:

ARTICLE II

DEMISED PROPERTY

- 2.1 Lessor hereby leases the Property to Lessee, and Lessee hereby leases the Property from Lessor, subject, however, to all existing liens and other encumbrances listed on Exhibit "B". During the term of this Lease, Lessee, its employees and agents shall have unrestricted access and right to use the Property for the purposes described in Article V hereof, and shall also have the right to use the Lessor's land adjoining the Property where necessary in connection with such purposes, provided that the use of such adjoining land is calculated to minimize interference with Lessor's property.
- 2.2 The final decisions as to the kind, locations and other details of easements Lessee will need over Lessor's adjoining land for Lessee's purposes have yet to be made. There have been certain preliminary determinations, however, and, without intending to impair the continued effectiveness of the last sentence of Section 2.1 as to such rights as to adjoining land, Lessor grants to Lessee and its successors and assigns, as appurtenant to the Property, and also as appurtenant to the area adjacent thereto being conveyed to Lessee's affiliate, Sunnyside Fuel Corporation, by concurrent deed herewith, the following perpetual easements, to be used in common with Lessor and any others now or hereafter from time to time entitled:
- (a) The right to use for vehicular access and egress and all other uses for which public

and private roads are used in the State of Utah, including installation of utilities, strips of land of suitable width to accommodate two-way industrial traffic (including without limitation necessary grading, bridging and the like) leading from the Property to State Route 123 to the following locations across the Denver and Rio Grande right of way:

- (i) from the general area of the northwesterly most corner of the Property (adjacent to the Railroad) to the general area of the curve in Route 123 near the northwesterly corner of the SW1/4 of Section 6, T15S, R14E, SLBM;
- (ii) in the general area of the line separating the easterly and westerly halves of said Section 6;
- (iii) the "Tonka Road", so-called, which is now in use, and which leads from the northeasterly corner of the southeasterly quarter, and/or the southeasterly corner of the northeasterly quarter, of said Section 6, into Section 5 of T15S, R14E, SLBM, and thence to Route 123 in said Section 5 or Section 6; and
- (iv) commencing at the Property where the Tonka Road commences and following the Tonka Road briefly and thence continuing along an existing roadway in said Section 5 and in Section 32 of T14S R14E, SLBM, to the present main entrance of the Kaiser Coal Company mine and thence continuing by the existing road to Route 123, together (both as to the area referred to in this clause (iv) and the area referred to in clause (iii) of this Section 2.2 with all Lessor's rights to cross railroad land and easements; provided, however that Lessee will release all its rights under subsection (a) of this Section 2.2 as to the area referred to in

this clause (iv) and as to the area referred to in clause (iii) of this Section 2.2 at such time as Lessee has obtained unconditional access satisfactory to Lessee direct from the Property to Route 123.

- (b) The right to install, maintain, repair, replace and use a water line above or below ground and necessary appurtenances thereto to convey water for industrial consumptive use into the Property from diversion points on the Creek in said Section 6 and/or from rights north of said mine main entrance; and
- (c) The right to install, maintain, repair, replace and use aboveground transmission lines and necessary appurtenances thereto for the Lessee's plant to be erected on the Property and leading to the Utah Power & Light Company Columbia Substation in Section 18 T15S, R14E, SLBM, said lines to be in the general location of the line now leading from the Substation to the Sunnyside Mine (which leads through the Property and/or said adjacent area being conveyed to Lessee's affiliate).

3. Section 3.5 is deleted in its entirety.

4. Article V of the Lease is deleted in its entirety and the following substituted therefor:

ARTICLE V

BUSINESS OR ENTERPRISE TO BE CONDUCTED

It is agreed that the Property will be used in connection with the generation, production, distribution and sale and utilization of thermal energy and electric power and all activities in conjunction with or collateral thereto. The Lessee agrees that no other business will be conducted thereon without first obtaining the written consent of Lessor which consent shall not be unreasonably withheld or delayed. Lessee shall operate the Project in compliance with any federal, state or local laws, regulations or other requirements applicable to the Project.

5. Subsection G of Section 14.1 is deleted in its entirety.

6. Section 14.2, subsections E, F and G are deleted in their entirety and the following substituted therefor:

E. If the estate or interest of Lessor in the Property is levied upon or attached in any proceeding and such process is not vacated or discharged within ninety (90) days after such levy or attachment, unless such levy or attachment is being contested pursuant to Section 10.5.

F. Any representation or warranty furnished by Lessor in connection with this Lease is false or misleading in any material respect when made.

7. The following is added to Section 16.2:

Lessor and Lessee will cooperate in an attempt to have the Property and the Project separately assessed with respect to any taxes which are Lessee's responsibility under Section 16.1. Lessor shall in any event pay when due any tax which may become a lien on the Property or the Project (other than the taxes for which Lessee is liable under Section 16.1).

8. Section 19.13 is added to the Lease as follows:

If a prospective mortgagee from Lessee requests modifications of this Lease not materially affecting the economic substance of this Lease to Lessor, Lessor will, on request from Lessee, modify the Lease as requested.

9. Section 19.8 is amended by changing Lessee's address to the following:

Sunnyside Cogeneration Associates
c/o Environmental Power Corporation
53 State Street
Boston, Massachusetts

10. Article XX is added to the Lease as follows:

ARTICLE XX

Rights of Leasehold Mortgagees

20.1 If Lessee shall mortgage this Lease in compliance with the provisions of Article XIII of the Lease, then so long as any such mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Lessor upon serving upon Lessee any notice of default or any other notice under the provisions of or with respect to this Lease, shall also serve a copy of such notice upon the holder of such mortgage, at the address provided for in paragraph (e) of this section, and no notice by Lessor to Lessee shall be deemed to have been duly given as to the holder of such mortgage unless and until a copy thereof has been so served.

(b) Any holder of such mortgage, in case Lessee shall be in default hereunder, shall, within the periods and otherwise as herein provided, have the right to remedy such default, or cause the same to be remedied, and Lessor shall accept such performance by or at the instance of such holder as if the same had been made by Lessee.

(c) For the purposes of this Article, no event of default shall be deemed to exist with respect to the performance of work required to be performed or of acts to be done, or of conditions to be remedied, if steps shall, in good faith, have been commenced within the time permitted therefor to rectify the same and shall be prosecuted to completion with diligence and continuity as in Article XIV hereof provided.

(d) Anything herein contained to the contrary notwithstanding, upon the occurrence of an event of default other than an event of default due to a default in the payment of money, Lessor shall take no action to effect

a termination of this Lease without first giving to the holder of such mortgage written notice thereof and a reasonable time thereafter within which either (i) to obtain possession of the mortgaged property (including possession by a receiver) or (ii) to institute, prosecute and complete foreclosure proceedings or otherwise acquire Lessee's interest under this Lease with diligence; provided, such mortgagee shall have, within sixty (60) days of receipt of notice from Lessor, given Lessor written notice of its intention and submitted to Lessor a plan or alternate plan reasonably acceptable to Lessor and reasonably calculated to remedy the default. A reasonable time shall mean not in excess of one (1) year, as to obtaining possession or instituting foreclosure proceedings and not in excess of such reasonable time as with due diligence is required to prosecute and complete foreclosure proceedings. Such holder, upon obtaining possession or acquiring Lessee's interest under this Lease, shall promptly cure all defaults; provided, however, that such holder shall not be obligated to continue such possession or to continue such foreclosure proceedings after such defaults shall have been cured. It is understood and agreed that such holder, or his designee, or any purchaser in foreclosure proceedings (including, without limitation, a corporation or other entity formed by such holder or by the holder) may become the legal owner and holder of this Lease through such foreclosure proceedings or by assignment of this Lease in lieu of foreclosure.

(e) Any notice or other communication which Lessor shall desire or is required to give to or serve upon the holder of a mortgage on this Lease shall be in writing and shall be served by registered or certified mail, return receipt requested, addressed to such holder at his address as set forth in such mortgage, or in any assignment of the mortgage, or at such other address as shall be designated by such holder by notice in writing given to Lessor by registered or certified mail. The date of

delivery as indicated or the return of receipt shall be deemed to be the date of delivery or service.

Any notice or other communication which the holder of a mortgage on this Lease shall desire or is required to give to or serve on Lessor shall be deemed to have been duly given or served if sent in compliance with Article 19.8.

(f) Anything herein contained to the contrary notwithstanding, the provisions of this Article shall inure only to the benefit of the holder of a leasehold mortgage which is a first lien on the leasehold created hereby and no third party including any other lienholder, shall have any right whatsoever to rely upon the provisions contained herein.

(g) Lessor and Lessee shall not modify or cancel any provision of this Lease affecting any rights of a leasehold mortgage or surrender this Lease without the prior written consent of any first leasehold mortgagee, nor shall Lessor and Lessee modify, amend or cancel any other provision of this Lease without giving such leasehold mortgagee thirty (30) days' prior written notice of the same.

(h) Notwithstanding any language contained herein to the contrary, Lessor may proceed to the extent required by law in a timely fashion to pursue its remedies against any person or entity potentially liable to Lessor other than Lessee and the first leasehold mortgagee.

20.2 If any first leasehold mortgagee or anyone claiming by, through or under such leasehold mortgage shall acquire title to Lessee's interest in this Lease, by foreclosure of a first mortgage thereon or by assignment in lieu of foreclosure or by an assignment from a nominee or wholly-owned subsidiary corporation or other entity of such mortgagee or under a new lease pursuant to this Article, such mortgagee or anyone claiming by, through or under such mortgagee may, subject to Lessor's approval which approval shall

not be unreasonably withheld, assign such lease and shall thereupon be released from all liability for the performance or observance of the covenants and conditions in such lease contained on Lessee's part to be performed and observed from and after the date of such assignment, provided that the assignee from such leasehold mortgagee shall have assumed such lease by documentation reasonably satisfactory to Lessor. A conditional assignment of Lessee's interest in this lease to a leasehold mortgagee as security for the mortgage shall not constitute an assignment the effect of which is to relieve the assignor of liability for the Lessee's obligations under this lease until such time as the leasehold mortgagee exercises its rights under such conditional assignment.

11. Article XXI is added to the Lease as follows:

ARTICLE XXI

OPTION TO PURCHASE

21.1 During the term of this Lease, Lessee shall have the option to purchase the Property. Said option is exercisable by Lessee giving Lessor written notice of the exercise of the option during the term of this Lease. In the event of exercise of this option, Lessor shall, within thirty (30) days after the exercise of this option, convey the Property to Lessee by warranty deed subject to those liens and encumbrances listed on Exhibit "B". The purchase price for the Property shall be equal to the present value of the unpaid balance of the rental provided for in this Lease (assuming an eight percent (8%) interest factor). The purchase price shall be paid by Lessee to Lessor in five (5) equal consecutive annual payments of principal and interest at eight percent (8%) with the first such payment being due at the time of purchase. Lessee shall give to Lessor a promisory note representing said payments at the time of purchase.

The Lease remains in full force and effect, unmodified except as expressly set forth hereinabove and as set forth in paragraph 12 hereinafter.

12. Exhibits "A" and "B" attached hereto are substituted for Exhibits "A" and "B" referenced in the Lease.

EXECUTED under seal as of the date first mentioned above.

KAISER COAL CORPORATION

BY *Paul A. Drago*
ITS *Agent*

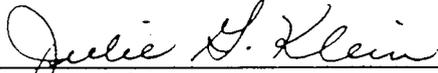
SUNNYSIDE COGENERATION ASSOCIATES

BY *J. S. Sullivan*
ITS *Authorized Management Committee Representative*

BY *Robert E. Barton*
ITS *Authorized Mgmt Committee Rep.*

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 Coal 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.



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 B. G. Godec, who being by me duly sworn did say that he is the Authorized Management Committee Representative of Sunnyside Cogeneration Associates on and that said instrument was signed in behalf of said corporation by authority of its bylaws and said B. G. Godec acknowledged to me that said corporation executed the same.



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 Robert E. Barton, who being by me duly sworn did say that he is the Authorized Management Committee Representative of Sunnyside Cogeneration Associates on and that said instrument was signed in behalf of said corporation by authority of its bylaws and said Robert E. Barton acknowledged to me that said corporation executed the same.



Notary Public
Residing in Davis County

My Commission Expires:

6/22/89

DAD:122787h

EXHIBIT A

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 southwest corner of the SE1/4SW1/4 of Section 6, Township 15 South, Range 14 East, Salt Lake Base and Meridian, which is a brass cap and running 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 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 S 71°27'00" W, 2811.72 feet along the south line of a 50 foot wide right of way for the Denver and Rio Grande Railroad; thence S 0°50'04" W, 153.50 feet to the northwest corner of the SE1/4SW1/4 of said Section 6; thence S 0°50'04" W, 1326.02 feet along the west line of the SE1/4SW1/4 of said Section 6 to the point of beginning.

Containing 72.514 acres, more or less.

EXHIBIT B

LEASE EXCEPTIONS

1. A perpetual and exclusive Easement for railroad right of way crossing Sections 5 and 6 in T15S, R14E, and Sec. 32 in T14S, R14E, SLBM, as granted in the instrument dated July 29, 1912, executed by Utah Fuel Co. in favor of Denver & Rio Grande Railroad Co., recorded September 12, 1912, in Book 3B at page 459. Reference is made to said instrument and the record thereof for further particulars.
2. A Deed dated July 31, 1912, executed by Utah Fuel Co. in favor of the Denver and Rio Grande Railroad Co. recorded September 12, 1912 in Book 3B at page 461 for certain railroad tracks constructed and existing upon Sec. 5 and 6, T15S, R14E, SLBM, as described in said instrument.
3. A Pole Line Easement dated December 29, 1942, executed by Utah Fuel Co. in favor of Utah Power & Light Company recorded June 9, 1943 in Book 3W at page 599, granting a perpetual easement and right of way for the erection and continued maintenance of electric transmission, distribution and telephone circuits with necessary attachments across the SW 1/4 SE 1/4 and the SE 1/4 of the SW 1/4 of Section 6, T15S, R14E, SLBM, as therein described.
4. 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.
5. A Right of Way Grant and Agreement dated November 24, 1950, executed by Utah Fuel Company and Mountain States Telephone and Telegraph Company recorded February 15, 1951 in Book 15-C at page 348 granting the right to construct, operate and maintain telephone and telegraph lines with necessary attachments in the town of Sunnyside, including Sunny Dale and other locations on accompanying plats (not attached or recorded).
6. A Right of Way Grant and Agreement dated December 29, 1950, executed by and between Kaiser and Frazer Parts Corporation and Mountain States Telephone and Telegraph Company, recorded February 15, 1951 in Book 15-C at page 350, granting the right to construct, operate and maintain telephone and telegraph lines with necessary attachments in the town of Sunnyside, including Sunny Dale, and other locations shown on accompanying plats (not attached or recorded).

7. A Grant of Easement dated December 31, 1970, executed by Kaiser Steel Corporation in favor of Utah Power & Light Company, recorded March 1, 1971 in Book 123 at page 329, 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 SE 1/4 SE 1/4 of Sec. 6, T15S, R14E, SLBM, as therein described.
8. 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, 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, SLBM:

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.

9. 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.
10. 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.

11. 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.
12. Any and all railroad rights of way and roadways in real Property. In NE 1/4 SE 1/4 Sec. 6 and SE 1/4 NE 1/4 of Sec. 6.

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