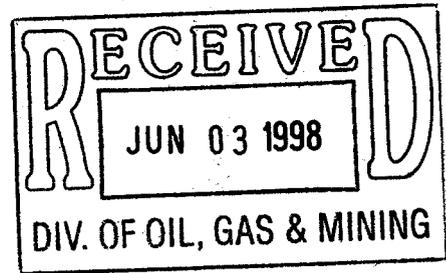




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June 2, 1998

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Re: In re Sunnyside Coal Co. Court Approval of the Stipulated Bankruptcy Court
Order re Proposed Sale of the Footprint Property by the Trustee to Penta Creeks
LLC

Dear Lowell, Mary Ann, Randy, Bob and Deann,

For your file in the above matter, enclosed please find a fully signed copy of the
May 21, 1998 "Order Respecting Trustee's Motion for Approval to Sell Footprint Property and
Water Rights Free and Clear of Claims Encumbrances and Interests Pursuant to Section 363 of
the Bankruptcy Code."

Very truly yours,

Patrick J. O'Hara
Assistant Attorney General

Encl.

Final

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

In re:

SUNNYSIDE COAL COMPANY,

Debtor.

CASE NO. 94-12794 GEM

Chapter 7

~~FILED
BRADFORD L. BOLTON, CLERK
50 MAY 20 PM 3:46
U.S. BANKRUPTCY COURT
DISTRICT OF COLORADO~~

FILED,
BRADFORD L. BOLTON, CLERK
MAY 21 1998
U.S. BANKRUPTCY COURT
DISTRICT OF COLORADO

**ORDER RESPECTING TRUSTEE'S MOTION FOR APPROVAL TO
SELL FOOTPRINT PROPERTY AND WATER RIGHTS FREE AND
CLEAR OF CLAIMS ENCUMBRANCES AND INTERESTS PURSUANT
TO SECTION 363 OF THE BANKRUPTCY CODE**

This matter is before the Court on the motion (the "Motion")¹ of Kenneth A. Rushton, the Chapter 7 trustee appointed in this case (the "Trustee"), pursuant to 11 U.S.C. § 363 to sell certain real property of the estate known as the "Footprint Property" and water rights attendant thereto free and clear of interests to Penta Creek L.L.C. The Court, having reviewed the Motion and the objection filed thereto by the Utah Division of Oil, Gas and Mining ("DOG M"), and finding that the Trustee has settled the objection with DOGM and DOGM has approved the form of this order, and finding that no other written objections have been filed to the Motion, and taking notice of the file in the case, finds that it is appropriate to grant the Motion as set forth below.

IT IS THEREFORE ORDERED that, pursuant to the terms of the Footprint Property sale agreement (the "Agreement"), a true and correct copy of which is attached hereto as Exhibit B), the Trustee may sell the Footprint Property and attendant water rights identified therein to Penta Creek L.L.C. or its designee ("Buyer") under the terms and conditions of the Agreement, but subject to the following modification to such Agreement:

Section 5 of the Agreement is amended to add the following language:

¹The Motion has been corrected and supplemented by the Trustee in that certain document entitled "Trustee's Corrections and Supplement to Motion for Approval to Sell Footprint Property and Water Rights Free and Clear of Claims and Encumbrances and Interests Pursuant to Section 363 of the Bankruptcy Code (filed with the Court May 15, 1998) (the "Technical Correction"), so this Order is based on the Motion subject to the Technical Correction. A copy of the Technical Correction is attached hereto as Exhibit A.

It is expressly recognized by the Buyer and the Seller that the Buyer, after it purchases from Seller, intends to sell and lease and shall sell and lease certain parts of the "Footprint Property", consisting of about 210 acres, which Footprint Property is described more particularly in the Agreement attached hereto as Exhibit B, but subject to the corrected legal description in the Technical Correction attached hereto as Exhibit A, to COVOL Technologies, Inc., a Utah Corporation ("COVOL"). The parties recognize that COVOL is attempting to obtain approval from the Utah Division of Oil, Gas and Mining ("DOGM") of a post-mining land use with respect to certain parts of the Footprint Property. DOGM has expressed concern over the performance of COVOL under its intended post-mining land use. To facilitate the sale of the Footprint Property to Buyer, COVOL, the Buyer, and the Seller agree to the following provisions.

- 5a. Addition of COVOL as Party to Agreement; Recognition of Third Party Beneficiary. COVOL shall execute this Agreement as a party and agrees, by so signing, to be bound by the covenants contained in this section 5 (including all its subparts). COVOL, Buyer and Seller expressly recognize that the terms and covenants in this section are made for the benefit of DOGM and DOGM is accepted as a third-party beneficiary to this Agreement with rights to enforce any provision or covenant in this Agreement and is specifically entitled to enforce the provisions of this section 5 (including all its subparts) against any of the parties hereto by means of equitable remedies including negative or affirmative injunctions including seeking the same from the Bankruptcy Court to the extent such court has or retains jurisdiction over such enforcement action, or the Third District Court in and for Salt Lake County, Utah. It is agreed by the parties that this section 5 shall be binding upon the successors or assigns of the parties. Provided: To encourage and induce DOGM to approve an alternative post-mining land use of light industrial, including but not necessarily limited to that specific light industrial use as proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, hereby certify to that this agreement and the order approving same impose no contractual obligations in their favor vis-a-vis the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, or any of their respective agents, employees and contractors.
- 5b. Asbestos Obligation (Deadline: 11/15/1998).--The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Asbestos Obligation." To encourage and induce DOGM to approve the alternative post-mining land use of light industrial, as proposed by COVOL for the Footprint

Property, by November 15, 1998, COVOL, for itself and its successors and assigns, agrees that, if the approval is made by DOGM, and if COVOL timely closes on its contemplated purchase and lease from Buyer, COVOL shall, at its sole expense, remediate all known potentially hazardous material within the structures and areas to be retained by COVOL. Specifically, COVOL, for itself and its successors and assigns, agrees it shall mitigate the asbestos materials as identified in the pre-demolition asbestos survey conducted by IHI Environmental of Salt Lake City, dated October 20, 1997 (a true and correct copy of which is reproduced as Appendix H in COVOL's filing with DOGM entitled, "Post Mining Land Use Change Application, Sunnyside Property, April 1998", and which is hereby incorporated by this reference). COVOL agrees it shall get all required permits and shall use qualified personnel timely to complete said asbestos remediation work in a workmanlike manner in accordance with all applicable state and federal laws.

- 5c. Site Safety Obligation (Deadline: 11/15/1998) .---The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Site Safety Obligation". To encourage and induce DOGM to approve the alternative post-mining land use as proposed by COVOL for the Footprint Property, by November 15, 1998, COVOL, for itself and its successors and assigns, agrees that, if the approval is made by DOGM, and if COVOL timely closes on its contemplated purchase and lease from Buyer, COVOL, for itself and its successors and assigns, shall, by November 15, 1998, at its sole expense, abate any safety hazards which exist within the areas retained by COVOL. Specifically, COVOL, with regard to the hole in the upper bridge over Grassy Trail Creek, COVOL, for itself and its successors and assigns, agrees that it shall by said deadline repair, gate or otherwise secure said hole so it will not pose a hazard to the public and site workers. Also, with regard to the structures and areas at the Sunnyside site retained by COVOL, COVOL, for itself and its successors and assigns, also agrees it shall by said deadline install reasonable site security measures, including signs and gates to restrict access and to prevent unauthorized entry to the site.
- 5d. Waiver of Rights to Contest Decision of DOGM. COVOL recognizes that there remains certain actions which must be undertaken by COVOL (the "Remaining Actions") prior to the acceptance and approval by DOGM of an alternative post-mining land use of light industrial on the Footprint Property, such as the specific light industrial land use described in COVOL's proposed post-mining land use, including but not limited to delivery of an acceptable letter of credit to DOGM and OSM to guarantee COVOL's performance of

the Asbestos Obligation and the Site Safety Obligation. In particular, the Remaining Actions are set forth more particularly in Paragraph 5e and 5f. COVOL represents that it will be able to complete the Remaining Actions by June 5, 1998 (the "Submission Deadline"). If the Remaining Actions are not completed by the Submission Deadline, the Trustee, COVOL, the Buyer and the Seller irrevocably agree that none of them will:

(1) interfere, hinder or obstruct in any way the Debtor, DOGM or OSM in post-sale reclamation or inspection activities on the Footprint Property including any action such parties may take with respect to the destruction of any buildings or structures on the Footprint Property or the realignment of certain stream channels.

(2) prevent, hinder or interfere with the Debtor, DOGM or OSM, or any of their respective agents, contractors, employees, or legal counsel, in entering upon the Footprint Property to perform any act related to reclamation of such land including to inspect the land, to survey the land, to re-contour the land, to re-vegetate the land, to demolish any buildings or structures used by the Debtor as part of the coal mine, or to otherwise complete any other reclamation activities consistent with the Utah version of the Federal Surface Mining and Control and Reclamation Act of 1977, Public Law 95-87, 11 U.S.C. 1201 et seq. ("SMCRA"), codified at Utah Code Ann. §§ 44-10-1 et seq. (1953, as amended) and Utah Admin. Code R645 et seq. (implementing administrative rules) ("U-SMCRA").

(3) seek any suit in law or equity against DOGM, OSM or the governments of the State of Utah or Federal Government or any branch or agency thereof that alleges recovery under any theory of contract, tort, eminent domain, taking, temporary taking, inverse condemnation, or regulatory taking with respect to any of the reclamation activities of the Debtor, DOGM, OSM or any agents or employees as set forth herein or pursuant to the laws cited above, as this Agreement is intended to provide said agencies and persons a blanket release for all such claims, if any, which may now exist or which may arise hereafter.

5e. Letter of Credit Obligation (Deadline: 6/5/1998).--The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Letter of Credit Obligation." By 4:00 p.m. Salt Lake City time on June 5, 1998, COVOL agrees, for itself and its successors and assigns, that it shall deliver to DOGM a \$100,000 letter of credit for the joint benefit of DOGM and OSM, issued by a federally-insured bank authorized to do business in the

State of Utah, in a form acceptable to DOGM, to secure COVOL's timely and workmanlike performance of the Asbestos Obligation and the Site Safety Obligation. COVOL agrees that the Letter or Credit shall not be released by DOGM (or OSM) unless and until the Director or Acting Director of DOGM (or the Denver Regional Director of OSM) issues a letter certifying that COVOL has, in a timely and workmanlike manner, completed the Asbestos Obligation and the Site Safety Obligation. To call the letter of credit, COVOL, and its successors and assigns, agrees that, upon presentation to the issuing bank of a letter signed by the Director or Acting Director of DOGM (or a letter signed by the Denver Regional Director of OSM) certifying that COVOL, or its successors and assigns, has not timely and satisfactorily performed the Asbestos Obligation and/or the Site Safety Obligation, the issuing bank immediately shall pay DOGM (or OSM, if OSM is the moving agency) \$100,000. DOGM (or OSM, if OSM is the moving agency) shall thereafter be entitled without interference from Buyer, Seller, COVOL, or the Trustee, or any of their respective successors and assigns, to use said Letter of Credit funds to reclaim the portions of the Sunnyside Footprint Property retained by COVOL if DOGM approves COVOL's proposed alternative post-mining land use. If defaults by COVOL require DOGM (or OSM, if OSM is the moving agency) to call the letter of credit in the manner set forth herein, COVOL, Buyer and Seller expressly agree that DOGM (or OSM, if OSM is the moving agency) shall have the right, but not duty, if sufficient funds are available, to use the Letter of Credit funds to demolish the structures at the Sunnyside site previously retained by COVOL, even if it would be less expensive for DOGM (or OSM, if OSM is the moving agency) to only complete the unfinished work on the Asbestos Obligation and/or the Site Safety Obligation. In the event that DOGM (or OSM, if OSM is the moving agency) calls the Letter of Credit in the manner set forth herein, funds shall only be used by DOGM (or OSM, if OSM is the moving agency) within the Footprint Property to reclaim those areas intended to be left for the benefit of COVOL's proposed alternative post-mining land use. Any funds remaining from the Letter of Credit following final reclamation shall be returned by DOGM (or OSM, if OSM is the moving agency) to COVOL, or its successors and assigns. COVOL and its successors and assigns shall not be liable for any reasonable costs or liabilities in excess of the amount of the Letter of Credit.

- 5f. The Deed & Lease Obligation (Deadline: 6/5/1998).---The obligation assumed by COVOL, for itself and its successors and assigns, under this paragraph is referred to herein as the "Deed and Lease Obligation." By June 5, 1998, COVOL shall deliver to DOGM true and correct copies of fully signed leases and deeds from the Buyer for all portions of the

Footprint Property identified in COVOL's proposed alternative post-mining land use. In particular, COVOL, or its successors and assigns, shall deliver to DOGM signed deeds and lease agreements with Buyer substantially in the form attached to COVOL's filing with DOGM entitled, "Post Mining Land Use Change Application, Sunnyside Property, April 1998", which forms are hereby incorporated by this reference). The Deed & Lease Obligation is essential to confirm to DOGM that COVOL, or its successors and assigns, has, in a timely manner, acquired the rights to conduct operations at the site within all or part of the Footprint Property of the Sunnyside site. Provided, the portion of the Footprint Property described more particularly as Parcel 8 in Section 5, Township 15 South, Range 14 East, Salt Lake Base & Meridian (the "Exempt Parcel") is exempt from strict compliance with the Deed and Lease Deadline. With regard to the Exempt Parcel, COVOL shall deliver the applicable deed and/or lease to DOGM within 20 days after the Trustee and Buyer have cleared the existing technical cloud on the title to same.

- 5g. Landowners' Consent to Leave Mining Structures in Place.--To encourage and induce DOGM to approve all or part of the alternative post-mining land use of light industrial, including but not limited to that specific light industrial land use proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, hereby certify to DOGM, that they, as current and prospective future landowners, lessors and/or lessees of record of property interests in the Footprint Property, are aware that any coal mining structures and facilities DOGM approves for retention as part of the proposed light industrial alternative post-mining land use shall become property of said landowners, as their respective interests of record may appear, and that any liability or costs associated with such structures and facilities shall become those of said landowners, as their respective interests of record appear.
- 5h. No Governmental Liability.--To encourage and induce DOGM to approve the alternative post-mining land use of light industrial, including but not limited to the light industrial land use as proposed by COVOL for the Footprint Property, the Seller, the Buyer, and COVOL, on behalf of themselves and their respective successors and assigns, further agree that the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, and their respective agents, employees and contractors, shall not be held liable or accountable to, the Seller, the Buyer, and COVOL, or any of their respective successors and assigns, for any liability or costs associated with such structures DOGM ultimately approves to be retained by COVOL or others if DOGM approves the

proposed light industrial alternative post-mining land use in whole or in part.

- 5i. Right of Entry.--Despite any of the foregoing, COVOL, the Buyer and the Seller agree that they will at all times grant access at no cost to DOGM, the U.S. Office of Surface Mining Reclamation and Enforcement ("OSM") or the Debtor, and their respective employees, agents, and contractors, to enter onto the Footprint Property to undertake reclamation activities and inspections as authorized by applicable law and by the police power of such agencies.
- 5j. Survival Clause.--The Seller, the Buyer, COVOL and the Trustee agree that all of the provisions herein and in other paragraphs of the Agreement for the benefit of the United States of America, the U.S. Office of Surface Mining Reclamation & Enforcement, the State of Utah, DOGM, the Utah Board of Oil, Gas & Mining, and their respective agents, employees and contractors, shall survive the execution, delivery and recording of the various deeds and leases contemplated by and between the Seller, the Buyer, and COVOL, and any of their respective successors and assigns.
- 5k. Time is of the Essence.--The Seller, the Buyer and COVOL are aware that DOGM currently plans to conduct a public meeting at Sunnyside on April 29, 1998 at 6:30 p.m. to discuss the intended reclamation plans for the Sunnyside Reclamation Project, and that DOGM plans that bids for construction of the site will be noticed and available on or about May 4, 1998 with the bid opening and bid award to occur by the end of May. Reclamation construction is anticipated to commence early in June. Therefore, the Seller, the Buyer and COVOL agree that time is of the essence with regard to COVOL's deadlines herein.

IT IS FURTHER ORDERED that the foregoing amendment to section 5 of the Agreement is incorporated by this order and made a part hereof and relate to the sale of the Footprint Property which is described with particularity in Exhibit A attached hereto; and

IT IS FURTHER ORDERED that neither the Buyer nor COVOL shall have, except as expressly provided in the foregoing language, any financial liability with respect to the reclamation of the Footprint Property either by law or by contract; and

IT IS FURTHER ORDERED that neither this order nor the sale of the Footprint Property under section 363 relieves the Debtor of any liability, including financial liability, for the reclamation of the Footprint Property; and

IT IS FURTHER ORDERED that the Trustee shall separately account for and preserve the proceeds from the sale of the Footprint Property, and

IT IS FURTHER ORDERED that the parcel of real property described more particularly in Exhibit A to the Technical Correction constitutes the true and correct final amended description of the Footprint Property for all purposes of this Order and the Agreement; and

IT IS FURTHER ORDERED that, pursuant to the relief requested in the Technical Correction, the entities who obtained any part the Footprint Property by inadvertence and mistake are hereby ordered expunged from the title to the extent such parties voluntarily reconvey the mistakenly transferred acreage to the Sunnyside Trustee and its estate; specifically, Frank Barnes, Sunnyside Land L.L.C. and Sunnyside Timber L.L.C., shall be expunged from the chain of title on the Footprint Property and such expungement may be accomplished by the filing the voluntary reconveyance instrument along with a copy of this Order in the real property records of the applicable county or counties; and

IT IS FURTHER ORDERED that the Trustee be allowed to pay the costs of Sunnyside Land L.L.C. and Sunnyside Timber L.L.C. associated with the reconveyance of the mistakenly transferred portions of the Footprint Property, which costs are not to exceed \$1500, unless adequate documentation is presented to the court for approval and served on creditors explaining the basis of such costs; and

IT IS FURTHER ORDERED that the transfer of Footprint Property as described more particularly in Exhibit A to the Technical Correction and of the water rights identified in the Agreement shall, except as set forth above, be free and clear of all liens, encumbrances, and interests, with valid liens to attach to the proceeds of the sale; and

IT IS FURTHER ORDERED that the Trustee shall, within no more than 30 days after entry of this Order, record a true and correct certified copy of this Order (including its Exhibits) with the County Recorder for Carbon County, UT to impart constructive notice of its contents to all persons interested in the Footprint Property. The Seller, the Buyer, and COVOL shall have a duty to execute any additional documents as may be required to facilitate the recording of the Agreement and this Order.

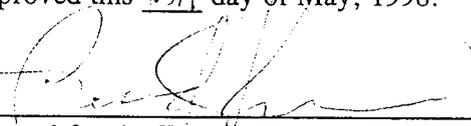
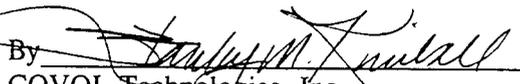
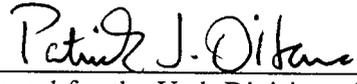
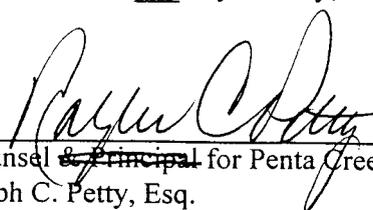
DATED this 21st day of May, 1998.

BY THE COURT

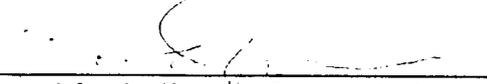
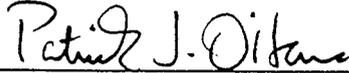
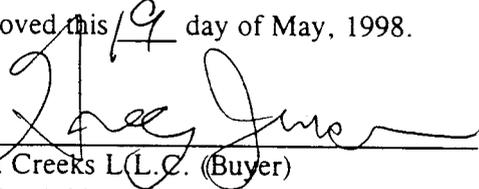


Charles E. Matheson
Chief Bankruptcy Judge

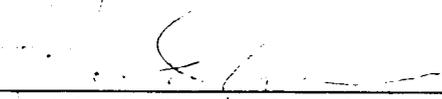
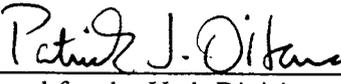
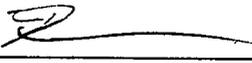
APPROVALS:

<p>Approved this <u>15th</u> day of May, 1998.</p> <p>By <u></u> Counsel for the Trustee Kenneth Rushton Penrod W. Keith Steven J. McCardell Leboeuf, Lamb, Greene & MacRae 136 South Main Street, Suite 1000 Salt Lake City, UT 84101-1645 Telephone: 801-320-6700</p>	<p>Approved this <u>17th</u> day of May, 1998.</p> <p>By <u></u> Kenneth A. Rushton Chapter 7 Trustee of the Estate of Sunnyside Coal Co. (Seller) 99 West Main St., Suite 202 Lehi, UT 84043 Telephone: 801-768-8416</p>
<p>Approved this <u>17th</u> day of May, 1998.</p> <p>By <u></u> COVOL Technologies, Inc. 3280 North Frontage Road Lehi, UT 84043 By Russell Madsen <u>Stanley M. Kimball</u> Its Vice President <u>Chief Financial Officer</u> Telephone: 801-768-4483</p>	<p>Approved this <u>18th</u> day of May, 1998.</p> <p>By <u></u> Counsel for the Utah Division of Oil, Gas and Mining Patrick J. O'Hara Assistant Attorney General Utah Attorney General's Office 160 East 300 South, 5th Floor Salt Lake City, Utah 84114-0857 Telephone: 801-366-0508</p>
<p>Approved this ____ day of May, 1998.</p> <p>By _____ Penta Creeks L.L.C. (Buyer) 140 South Newton Albert Lea, MN 56007 By: Greg Jensen Its: Manager Telephone: _____</p>	<p>Approved this ____ day of May, 1998.</p> <p>By _____ Counsel for the U.S. Office of Surface Mining Reclamation & Enforcement Robert D. Clark, Assistant U.S. Attorney for the District of Colorado 1961 Stout Street, Suite 1100 Denver, CO 80294 Telephone: 303-844-3885</p>
<p>Approved this <u>19</u> day of May, 1998.</p> <p>By <u></u> Counsel & Principal for Penta Creeks LLC Ralph C. Petty, Esq. Weiss, Barrett & Petty 170 South Main Street, Suite 1100 Salt Lake City, UT 84101</p>	<p>Note: This space intentionally left blank.</p>

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<p>Approved this <u>19</u> day of May, 1998.</p> <p>By <u></u> Penta Creeks L.L.C. (Buyer) 140 South Newton Albert Lea, MN 56007 By: Greg Jensen Its: Manager Telephone: <u>507-373 5660</u></p>	<p>Approved this ___ day of May, 1998.</p> <p>By _____ Counsel for the U.S. Office of Surface Mining Reclamation & Enforcement Robert D. Clark, Assistant U.S. Attorney for the District of Colorado 1961 Stout Street, Suite 1100 Denver, CO 80294 Telephone: 303-844-3885</p>
<p>Approved this ___ day of May, 1998.</p> <p>By _____ Counsel & Principal for Penta Creeks LLC Ralph C. Petty, Esq. Weiss, Barrett & Petty 170 South Main Street, Suite 1100 Salt Lake City, UT 84101</p>	<p>Note: This space intentionally left blank.</p>

APPROVALS:

<p>Approved this <u>15th</u> day of May, 1998.</p> <p>By  Counsel for the Trustee Kenneth Rushton Penrod W. Keith Steven J. McCardell Leboeuf, Lamb, Greene & MacRae 136 South Main Street, Suite 1000 Salt Lake City, UT 84101-1645 Telephone: 801-320-6700</p>	<p>Approved this ___ day of May, 1998.</p> <p>By _____ Kenneth A. Rushton Chapter 7 Trustee of the Estate of Sunnyside Coal Co. (Seller) 99 West Main St., Suite 202 Lehi, UT 84043 Telephone: 801-768-8416</p>
<p>Approved this ___ day of May, 1998.</p> <p>By _____ COVOL Technologies, Inc. 3280 North Frontage Road Lehi, UT 84043 By Russell Madsen Its Vice President Telephone: 801-768-4483</p>	<p>Approved this <u>18th</u> day of May, 1998.</p> <p>By  Counsel for the Utah Division of Oil, Gas and Mining Patrick J. O'Hara Assistant Attorney General Utah Attorney General's Office 160 East 300 South, 5th Floor Salt Lake City, Utah 84114-0857 Telephone: 801-366-0508</p>
<p>Approved this ___ day of May, 1998.</p> <p>By _____ Penta Creeks L.L.C. (Buyer) 140 South Newton Albert Lea, MN 56007 By: Greg Jensen Its: Manager Telephone: _____</p>	<p>Approved this <u>20</u> day of May, 1998.</p> <p>By  Counsel for the U.S. Office of Surface Mining Reclamation & Enforcement Robert D. Clark, Assistant U.S. Attorney for the District of Colorado 1961 Stout Street, Suite 1100 Denver, CO 80294 Telephone: 303-844-3885</p>
<p>Approved this ___ day of May, 1998.</p> <p>By _____ Counsel & Principal for Penta Creeks LLC Ralph C. Petty, Esq. Weiss, Barrett & Petty 170 South Main Street, Suite 1100 Salt Lake City, UT 84101</p>	<p>Note: This space intentionally left blank.</p>

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

FRED
BRADFORD L. BOLTON,
CLERK

95 MAY 15 PM 4:01

U.S. BANKRUPTCY COURT
DISTRICT OF COLORADO
CASE NO. 94-12079-4
Chapter 7

_____)
In re:)
)
SUNNYSIDE COAL COMPANY,)
)
Debtor.)
_____)

TRUSTEE'S CORRECTIONS AND SUPPLEMENT TO MOTION FOR APPROVAL TO
SELL FOOTPRINT PROPERTY AND WATER RIGHTS FREE AND CLEAR OF CLAIMS
ENCUMBRANCES AND INTERESTS PURSUANT TO SECTION 363 OF THE
BANKRUPTCY CODE

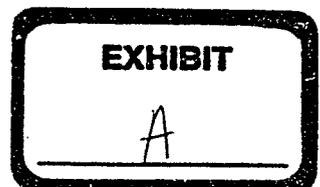
Kenneth A. Rushton, the chapter 7 trustee (the "Trustee") of the debtor Sunnyside Coal Company (the "Debtor") in the above-captioned case, has by prior motion ("Motion") moved this Court to enter an Order approving the Debtor's sale of certain real property ("Footprint Property") and attendant structures on such property, and certain Water Rights (the "Sale Assets") to Penta Creek LLC or its assignees ("Penta Creek" or "Purchaser" as the context requires), free and clear of all liens, interests, encumbrances, and claims pursuant to section 363(b) and (f) of title 11, United States Code (the "Bankruptcy Code"). By this supplement to the Motion, the Trustee makes certain technical corrections to that Motion and asks the Court for additional relief in connection with the transfer of the Footprint Property.

Technical Corrections

1. Typographical Error Respecting Amount of Acreage. In the Motion at paragraph 6, the representation was made that the Footprint Property consisted of 110 acres. This representation was incorrect. The actual acreage associated with the Footprint Property is approximately 220 acres. The legal description of the Footprint Property attached to the original Motion indicated that the acreage was significantly more than the representation made in the Motion.

Request for Additional Relief

2. At the time the Trustee sold the bulk of the estate's real property (the "Mountain Property") to Penta Creek, the Trustee excepted from that sale what is referred to as the Footprint Property -- the property upon which Sunnyside Coal conducted the majority of its above-ground mining operations.



3. In his original deed to Penta Creek conveying the Mountain Property, the Trustee used a description of the Footprint Property which had been created from plats and aerial photographs and not from an actual survey of the disturbed area which constituted the Footprint Property.

4. Recognizing that such a description might not be completely accurate, the Trustee contracted, in his original purchase/sale agreement with Penta Creeks, to allow for technical corrections of the description of the Footprint Property to allow the Trustee to obtain back from Penta Creeks, if erroneously transferred, any portion of the the disturbed mining operation area which should constitute the Footprint Property. Penta Creek did not intend, at that point, to own any portion of the disturbed Footprint Property.

5. Shortly after completing the sale of the Mountain Property (and due to the interest of certain proposed purchasers), the Trustee decided to clarify the boundaries and description of the Footprint Property by means of a survey. The Trustee hired Echoff, Watson and Preator ("EWP") to complete the survey. Shortly after beginning the survey, EWP disclosed to the Trustee that there existed certain errors in the legal description of the Footprint Property used to except such property from the sale to Penta Creeks. In essence, such Footprint Property description did not match the area outlined various operational maps as the boundaries of the Footprint Property and it did not encompass the entire area traditionally recognized as the Footprint Property including certain buildings which were used in the Debtor's above ground mining operations. EWP noted that certain parts of the description described the same piece of property twice and it left holes in areas recognized as Footprint Property. In the survey process, the Trustee was provided by EWP with a correct description of the Footprint Property.

6. As a result of using the incorrect legal description for the Footprint Property, Penta Creek had become the record owner of certain parts of the disturbed property when it acquired the Mountain Property.

7. The Trustee immediately notified Penta Creek of the error in the description and provided the correct description of the Footprint Property to Penta Creek. The Trustee was informed that Penta Creek intended to sell a portion of the Mountain Property to a subsequent purchaser -- Mr. Barnes. Accordingly, the Trustee asked Penta Creek to except from its sale to Mr. Barnes, the correct description of the Footprint Property and to, at the same time, reconvey to the estate any parts of the disturbed property which had been erroneously transferred to it in the sale of the Mountain Property.

8. Penta Creek complied with the Trustee's request by executing a deed of reconveyance and by attempting to use the correct description of the Footprint Property in reserving the Footprint Property from its sale to Mr. Barnes. Unfortunately, Penta Creek made a typographical error in describing certain property -- it transcribed a "SW" to an "NW" in the legal description. As a result of this erroneous description, a certain part of the Footprint Property passed to Mr. Barnes. Mr. Barnes then sold his interest to two entities: Sunnyside Land L.L.C. and Sunnyside Timber L.L.C. These two entities, as of the date of this filing, show as the owner of certain acreage (approx. 5 acres) of land which is encompassed in the description of "Footprint Property."

9. Sunnyside Land and Sunnyside Timber have both agreed to reconvey to the estate any interest they may have in the Footprint Property. But these entities have asked that the Trustee obtain an order from the Bankruptcy Court "expunging" them from the chain of title on the mistakenly transferred land and that the estate pay their costs (estimated at less than \$1,500) associated with their reconveyance of the Footprint Property.

10. The Trustee has agreed to these concessions subject to Bankruptcy Court approval of the same. Thus, the Trustee requests that this court, as part of the sale order on the Footprint property sale motion, order that

a. The Property described in Exhibit A attached hereto constitutes the correct description of the Footprint Property;

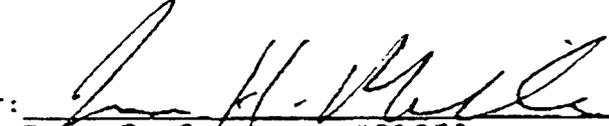
b. That the entities who obtained any part of this property by inadvertance and mistake be expunged from the title: specifically Frank Barnes, Sunnyside Land L.L.C. and Sunnyside Timber L.L.C., and that such expungement may be accomplished by a recorded document filed by the Trustee noting the inadvertant transfer of portions of the Footprint Property which includes this Court's order that such persons be expunged from the chain of title;

c. That the Trustee be allowed to pay the costs of Sunnyside Land L.L.C. and Sunnyside Timber L.L.C. associated with the reconveyance of the Footprint Property not to exceed \$1500 unless adequate documentation is presented to the court and served upon creditors explaining the basis of such costs.

WHEREFORE, the Trustee prays that this Court enter an Order as set forth in the preceding three paragraphs and such other and further relief as the Court deems appropriate.

DATED this 15th day of May, 1998.

LEBOEUF, LAMB, GREENE & MacRAE
L.L.P.

By: 

Bart B. Burnett, #21258
James H. Millar, #26178
633 Seventeenth Street, #2000
Denver, Colorado 80202
Telephone (303) 291-2600

Steven J. McCardell (Utah Bar No. 2144)
Penrod W. Keith (Utah Bar No. 4860)
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101
Telephone No: (801) 320-6700

Counsel for Kenneth A. Rushton,
Chapter 7 Trustee

EXHIBIT A
(Sunnyside Coal Company Footprint Property)

Section 32, Township 14 South, Range 14 East, SLB&M:

S $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$; SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;
 W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 33, Township 14 South, Range 14 East, SLB&M:

S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 4, Township 15 South, Range 14 East, SLB&M:

N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$

Section 5, Township 15 South, Range 14 East, SLB&M:

NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$; NE $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$; W $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 E $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$; SW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 W $\frac{1}{2}$ E $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into this 30 day of November, 1997 by and between KENNETH A. RUSHTON, in his capacity as chapter 7 trustee of Sunnyside Coal Company ("Seller") the debtor in In re Sunnyside Coal Company, Case No. 94 12794 CEM (the "Bankruptcy Case") pending in the United States Bankruptcy Court for the District of Colorado (the "Court"), and PENTA CREEK, LLC, a Utah limited liability company, or any designee, affiliate or successor of Penta Creek, LLC specified at or before the closing of the sale of property contemplated herein ("Buyer").

1. Purchase and Sale. Subject to all the terms and conditions hereof, and for the consideration herein stated, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, all of the land, mineral rights and water rights of Debtor in Carbon County, Utah described in Exhibits A and B attached hereto, subject to the easements, access rights, restrictive covenants, encumbrances and reservations described therein (the "Property") and below. Buyer and Seller agree that their intent is for Seller to convey all of its right, title, interest, and claim to the so-called "footprint" property, more particularly described in Exhibit A attached hereto (the "Footprint"), and water rights 91-362 and 91-367 (the "Water Rights"), more particularly described in Exhibit B hereto, which sale of Water Rights is subject to proof by Buyer that the volume of water represented by these rights is necessary for its uses on the Footprint property or, alternatively, that it has obtained a release of such requirement from the party holding the right to enforce the restrictive covenant described below or, alternatively, that it is the party holding such right described below. The parties agree to sign any and all documents necessary to accomplish the intent of the parties.

a. Seller shall convey all of its right, title, interest and claim to the Property including the Footprint property and the Water Rights. The Water Rights are transferred to Buyer subject to the following restrictive covenants and conditions:

(1) Seller's conveyance of the Water Rights is made in connection with the conveyance of the Footprint property; nothing in this Agreement shall be construed to allow the separate conveyance of the Water Rights from the Footprint property. In connection with the conveyance of the Water Rights, Buyer is required to sign a restrictive covenant/right of first refusal which covenant requires that the water obtained pursuant to the Water Rights be used on the Footprint property in such volume as is necessary for the proposed use on the Footprint Property and shall not be conveyed, transferred, devised, or

EXHIBIT

B

otherwise transferred from the Footprint property except as hereinafter set forth. Buyer shall execute a right of first refusal in favor of Penta Creek L.L.C. or its successor or assignee ("Covenant Holder"), requiring that in the event Buyer receives an acceptable offer (under the restrictions, terms and covenants set forth above) from a third party to purchase the Water Rights, Buyer will notify the Covenant Holder and offer the Water Rights to the Covenant Holder for the same sum accepted from the third party. To the extent Buyer can represent and warrant that it is the Covenant Holder, Buyer is relieved from all the obligations set forth in this paragraph. Buyer may also be relieved from the obligations set forth in this paragraph if it can obtain a written release from the Covenant Holder, prior to the closing of the sale of property contemplated in this Agreement, stating that the Trustee is not required to sell the Water Rights subject to the obligations set forth in this paragraph.

(2) Seller also assigns and grants to Buyer the rights set forth in paragraph 1.a.2 of that Purchase and Sale Agreement between Seller and Penta Creek L.L.C. Dated December 21, 1995, attached hereto in relevant part as Exhibit C ("Penta Creek Purchase and Sale Agreement"). As set forth therein, Seller, by purchasing the Footprint property, has the right to obtain from Penta Creek or its successors or assigns, and Penta Creek has the duty to provide, additional water for Purchaser's use on the Footprint property at a cost equivalent to the lowest commercial industrial cost of water found in the State of Utah between an unrelated water provider and industrial user. Penta Creek is not required or obligated to deliver to Buyer more than 10% of the total amount of water acquired from Kenneth A. Rushton under the Penta Creek Purchase and Sale Agreement.

(3) Seller also conveys to Buyer an easement in the Grassy Trail Creek for the delivery of the Water Rights to the Footprint property from Grassy Trail Reservoir.

b. Buyer covenants to grant reasonable and necessary access to Department of Oil Gas & Mining officials ("DOGM"), employees, and contractors to undertake reclamation activities on the Property as may, in the sole discretion of DOGM, be necessary.

2. Purchase Price; Payment; Deposit. The total purchase price (the "Purchase Price") for the Property shall be Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) payable in cash at the closing of this sale which shall occur no later than 30 days after the approval of this sale by the United States Bankruptcy Court for the District of Colorado.

3. Bankruptcy Court Authorization. The execution, delivery and performance of this Agreement by Seller and the consummation of the transactions contemplated hereby are subject to Seller's having obtained an order from the Court authorizing the transaction contemplated by this Agreement and ordering the sale of the Property to Buyer free and clear of recorded liens and encumbrances but subject to all other claims, disputes, rights, and interests asserted by other entities (the "Order"). Seller agrees to promptly file a motion seeking the Order (the "Motion") upon execution hereof by Buyer and upon confirmation of receipt of the Deposit.

4. Condition of Title; Security Interest; Disclaimer; Waiver and Release.

a. Seller will deliver to Buyer, at closing, a quit claim deed (the "Deeds") to the Footprint property in the form of Exhibit A hereto and to the Water Rights in the form of Exhibit B hereto. If title insurance is desired by the Buyer, Buyer shall obtain title insurance at its own expense.

b. Buyer acknowledges and understands that Seller is a chapter 7 trustee in the Bankruptcy Case, that Sunnyside Coal Company itself acquired the Property through a bankruptcy proceeding, and that Seller has little, if any, knowledge of the actual status of title to the Property. Seller disclaims any warranty, guaranty or representation, oral or written, past, present or future, concerning:

(1) the nature and condition of the Property or the suitability thereof for any use which Buyer may elect to conduct thereon;

(2) the status of title to the Property or the nature and extent of the rights of way, leases, possessions, liens, encumbrances, licenses, reservations or conditions in connection with the Property;

(3) compliance with any laws, ordinances or regulations of any government or other body, including without limitation, compliance with environmental laws, rules, ordinances and regulations regarding the Property;

(4) actual amount of acreage or errors or discrepancies in legal descriptions.

d. The Property is sold by Seller and purchased by Buyer "as is" and without warranties of any nature, including, but not limited to, warranties of conditions, habitability, merchantability or fitness for a particular purpose.

e. Except for the specific exceptions set forth herein, Buyer hereby waives and releases any and all claims and causes of action that it has or may have, now or in the future, against Seller or any of its agents or attorneys, for any and all liabilities, obligations, losses, damages, fines, penalties or consequential damages it may incur as a result of or in relation to its purchase or subsequent ownership, operation, sale or disposal of the Property, including, but not limited to, those arising from environmental contamination of the Property.

5. Reclamation of Property. The State of Utah, Division of Oil, Gas and Mining, through the police power and other statutory rights, holds the right to enter on to the Footprint property to complete reclamation which is an obligation of Sunnyside Coal Company (the "Reclamation Obligation"). Buyer shall have no obligation with respect to the Reclamation Obligation. The Order approving the sale of the Property shall provide that the Buyer is not liable for any reclamation of the Property.

6. Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows:

a. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Utah, and has full power and authority to own, lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted. Buyer has taken all action necessary to authorize its execution, delivery and performance of this Agreement and all other agreements and instruments reasonably necessary to complete the transactions contemplated by this Agreement and has full power and authority to enter into such agreements and carry out the terms hereof and thereof. Buyer has duly executed and delivered this Agreement and this Agreement is a valid and binding obligation of Buyer enforceable in accordance with its terms, except as enforceability may be limited by or subject to any bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, relating to creditors' rights generally or by the availability of equitable remedies.

b. The execution, delivery and performance of this Agreement by the Buyer, the compliance by Buyer with the provisions of this Agreement and the consummation of the transactions described in such agreements will not conflict with or result in the breach of any of the terms or provisions of or constitute a default under: (a) the articles of organization, or operating agreement of the Buyer; (b) any note, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which Buyer is a party or by which Buyer is bound; or (c) any statute or any order, rule or regulation or any

decision of any court or regulatory authority or governmental body applicable to Buyer.

c. No consent, approval, authorization, order, designation or declaration of any court or regulatory authority or governmental body, federal or other, or third person is required to be obtained by Buyer nor is any filing or registration required to be made therewith by Buyer for the consummation of the transactions described in this Agreement and all other agreements and instruments reasonably necessary to complete the transactions contemplated by this Agreement. Buyer has obtained, or shall have obtained prior to the Closing, all consents, authorizations or approvals of any third parties required in connection with the execution, delivery or performance of this Agreement. Buyer has made all registrations and filings with any governmental authority required for the execution or delivery of this Agreement and the consummation of the transactions contemplated hereby.

d. There are no claims, actions, suits, inquiries, investigations or proceedings pending against Buyer relating to the transactions contemplated hereby before any federal, state or local court or other governmental or regulatory body, United States or foreign, except with respect to a law suit instituted by the Cities of Sunnyside and East Carbon, Utah.

7. Solicitation of Bids and Bidding Procedure.
Nothing in this Agreement shall prohibit or restrict Seller in any manner from advertising the Property for sale or from soliciting bids for the Property from third parties. The obligation of Seller to sell the Property to Buyer for the Purchase Price is subject to Seller's receipt, no later than the date of the final hearing (the "Hearing") of the Court on the Motion, of an offer, which in Seller's sole judgment produces a greater benefit to the estate of Sunnyside Coal Company than Buyer's offer, from a third party (a "Qualified Bidder") who has proven to Seller's satisfaction that such third party has the capability of paying the offered purchase price. In the event of the receipt of such an offer, Seller shall have the right to accept such offer subject to Seller's causing an auction or some other form of bidding procedure designated by Seller (the "Auction") to be conducted in such manner and at such time and place as shall be designated by Seller (which time and place may be at the Hearing). The Buyer and each Qualified Bidder shall have the opportunity to increase its bid for the Property at the Auction. Seller shall have the right to select the bid which in Seller's sole judgment produces the greatest benefit to the estate of Sunnyside Coal Company and to sell the Property to the offeror of such bid pursuant to an order of the Court authorizing such sale.

8. Closing.

a. The closing of the transactions contemplated by this Agreement shall take place at the offices of Seller's counsel, LeBoeuf, Lamb, Greene & MacRae, L.L.P., 136 S. Main Street, Salt Lake City, Utah, unless any other location is agreed to in writing by the parties, 30 days after the entry of the Order of the Bankruptcy Court, that has not been stayed, approving the sale of the Property to Buyer or such other date as shall be agreed to by the parties.

b. At the closing, Seller shall deliver or cause to be delivered the following documents, and take such other actions as are identified below:

(1) the Deed; and

(2) all other documents and instruments as may be necessary to consummate the transactions contemplated by this Agreement including the warranty contemplated by paragraph described above or the restrictive covenant and right of first refusal relating to the Waters Rights as described above.

c. At the closing, Buyer shall deliver or cause to be delivered the following documents, and take such other actions as are identified below:

(1) the sum of \$225,000 in cash or certified funds as set forth above;

(2) a company resolution allowing the purchase of the Property and the consummation of this transaction;

(3) an opinion of counsel to Buyer with regard to the matters set forth in Section 6 hereof in a form acceptable to Seller and the Seller's counsel; and

(4) all other documents and instruments as may be necessary to consummate the transactions contemplated by this Agreement including those which may be relevant set forth in paragraph 2 above.

9. Prorations and Closing Costs. All real property taxes shall be prorated as of the date of the closing. There will be no proration or adjustment for any assessments for water rights or mineral rights. Buyer shall pay costs of recording the Deeds.

10. Access to Environmental Engineers. Prior to the closing, Seller shall make available to the Buyer its engineering firm, JBR Environmental, who has performed environmental studies and remediation on the Footprint property. Buyer will be entitled to obtain any and all information known by or in the possession of such engineering firm with respect to work it has performed or studies conducted on the Footprint property. Buyer may use this information, to the extent permissible, to assert that it is a "good faith purchaser" with respect to the Property and the Water Rights.

11. Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Seller and Buyer.

12. Notices. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by overnight express mail or courier service or wire or facsimile to the parties at the following addresses (or at such other addresses as shall be given in writing by either party to the other) and shall be deemed complete upon receipt or refusal to accept delivery as indicated in the return receipt or in the receipt of such express mail or courier service or in the confirmation of receipt of wire or facsimile:

To Seller: Kenneth A. Rushton
 99 West Main Street, #202
 P.O. Box 212
 Lehi, Utah 84043
 Phone: 801-768-8416
 Fax: 801-768-4353

with a copy to: Penrod W. Keith, Esq.
 LeBoeuf, Lamb, Greene & MacRae, L.L.P.
 136 South Main, Suite 1000
 Salt Lake City, Utah 84101
 Phone: 801-320-6700
 Fax: 801-359-8256

To Buyer: Penta Creek L.L.C.
 Greg Jensen
 140 South Newton Street
 Albert Lea, MN 56007
 Phone: 507-373-5660
 Fax: 507-377-0344

with a copy to: Ralph C. Petty
Weiss Berrett Lloyd & Petty
170 South Main Street, Suite 1100
Salt Lake City, UT 84101

Phone: 801-531-7733

Fax: 801-531-7711

13. Attorneys' Fees. If any suit or action is instituted to enforce the rights of either Seller or Buyer under this Agreement, the successful party shall be entitled to receive from the other reasonable attorneys' fees and court costs.

14. Further Assurances. Seller and Buyer shall execute, acknowledge and deliver such instruments, do such things and perform such acts as may be reasonably necessary to complete the purchase and sale of the Property and Water Rights in accordance with this Agreement.

15. Brokerage Commission. Buyer and Seller each warrants and represents that it has not dealt with any broker in connection with this Agreement, and that no broker negotiated this Agreement or is entitled to any commission in connection herewith. Buyer and Seller each shall indemnify and hold the other party harmless from and against all claims, demands, costs and expenses (including without limitation reasonable attorney's fees) incurred by the other party as a result of a breach of the foregoing representation and warranty.

16. Survival. All representations, warranties, covenants, waivers, releases and agreements of Buyer made in this Agreement or any agreement or document delivered in accordance with this Agreement shall survive the execution and delivery of this Agreement and the closing of the transactions contemplated hereby.

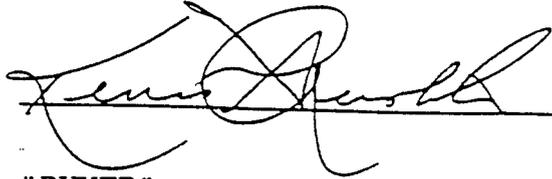
17. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.

18. Governing Law and Jurisdiction This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. The Court shall have exclusive jurisdiction with regard to all matters relating to the interpretation and enforcement of this Agreement for a period of two years following the closing. Thereafter, jurisdiction shall lie in any court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement as of the day and year first above written.

"SELLER"

Kenneth A. Rushton, chapter 7 trustee
for Sunnyside Coal Company



"BUYER"

Penta Creek L.L.C.

By: 
Its: Manager

WHEN RECORDED RETURN TO:
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
1000 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101
Attention: Penrod W. Keith

QUITCLAIM DEED
(Sunnyside Coal Company Footprint Property)

Kenneth A. Rushton, as Chapter 7 trustee of Sunnyside Coal Company, a Colorado Corporation (collectively "Grantors"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby quitclaims and releases, without warranty or representation of any kind or nature, to Penta Creek, LLC, a Utah limited liability company, all of Grantors' right, title and interest in and to the real property located in Carbon County, State of Utah, described in Exhibit A attached hereto.

GRANTORS: KENNETH A. RUSHTON
SUNNYSIDE COAL COMPANY

By: _____
Their: _____

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

PERSONALLY appeared before me, the undersigned authority in and for the aforesaid jurisdiction, the within named Kenneth A. Rushton, who is the trustee of Sunnyside Coal Company who acknowledged to me that he signed and delivered the above and foregoing instrument in said capacity personally and as trustee of Sunnyside Coal Company on the date and date therein written, after having been first duly authorized to do so.

GIVEN UNDER my hand and official seal this the ____ day of _____, 1997.

Notary Public
Residing in _____

My Commission Expires:
