0012

Outgoing
C/007/0011

From: Steve Alder
To: 4merrill@bankofutah.com
CC: Angela Nance; Dana Dean; davidekingston@yahoo.com
Date: 7/3/2008 2:03 PM
Subject: Hiawatha escrow agreement
Attachments: hiawatha escrow agreement changes.doc; hiawatha escrow agreement revised.doc

Bob,

I am advised you are the person to review and execute this proposed escrow arrangement. I have sent the changes to David Kingston, Hiwatha's attorney and he says it is Ok but he is waiting to see if we should just increase the amount of the letter of credit instead. I am waiting for his instructions and for any comments of objections from the Bank. If there are note we can proceed. In any event i would like to have yo confirm that the funds have been sent to you and you will proceed with an escrow subject to execution of the forms.

Since a cessation order has been issued, effectively preventing mining, I am told the mine would like to have this resolved today if possible.

Steve Alder
Assistant Utah Attorney General
1596 West North Temple, #300
Salt Lake City, Utah 84116
tel (801) 538-5348
stevealder@utah.gov

PLEDGE AND ESCROW AGREEMENT
Hiawatha Coal Company Reclamation Bond

This Pledge and Escrow Agreement ("Agreement"), dated as of July 2, is made and entered into by and among Bank of Utah, as escrow agent (the "Escrow Agent"), Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha"), and the State of Utah, Division of Oil, Gas & Mining ("DOGM").

WHEREAS, Hiawatha caused a standby letter of credit for $2.838 million to issue to DOGM as the beneficiary to secure Hiawatha's obligation to reclaim the Hiawatha King Mine Complex pursuant to its Permit No. C/007/0011; and

WHEREAS, Hiawatha desires to incrementally replace said the standby letter of credit with ~~a cash~~ purchase of treasury notes at future dates in an amounts that will eventually be a sufficient amount satisfy the required amount a reclamation surety for the Permit; and

WHEREAS, Hiawatha must now provide DOGM with an additional Reclamation Surety in the ~~initial~~ amount of $167,000 to satisfy an increase in surety amount as required by the Permit's terms and conditions ~~and any subsequent changes thereto,~~ to ensure that adequate funds are available to reclaim the Hiawatha King Mine Complex, pursuant to its Permit No. C/007/0011; and

WHEREAS, Hiawatha and DOGM have agreed that the obligations of Hiawatha under the Permit No. C/007/0011 shall be secured by a first-lien security interest in Escrowed Funds (as defined below) as provided herein; and

WHEREAS, in connection with the grant of the security interest in all of Hiawatha's interests in the Escrowed Funds and all proceeds thereof as provided herein, Hiawatha and DOGM have agreed that the Escrow Agent will hold the Escrowed Funds in escrow in accordance with the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Security Interest. As security for Hiawatha's obligation to reclaim the Hiawatha King Mine Complex in Hiawatha, Utah, pursuant to its Permit No. C/007/0011, Hiawatha hereby pledges, grants, assigns, transfers and sets over to DOGM, and there is hereby created in favor of DOGM, a first-lien security interest in and to all of Hiawatha's right, title and interest in and to the Escrowed Funds and the proceeds thereof as provided herein. DOGM's first lien security interest shall apply to the Escrowed Funds but not to any investment earnings thereon.

2. Representations of Hiawatha. In making the foregoing pledge and assignment, Hiawatha hereby represents and warrants to DOGM, that as of the date hereof:

a. Hiawatha is the owner of the Escrowed Funds, free and clear of all encumbrances, security interests and charges of any kind ~~other than the subordinate lien of Bank of Utah Trust as Trustee (the "Trustee"), in the Escrowed Funds and any interest or other investment earnings thereon and any proceeds thereof~~.

b. Hiawatha has the right and authority to enter into this Agreement and perform its obligations hereunder.

c. The execution and delivery of this Agreement by Hiawatha and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceedings on the part of Hiawatha are necessary to authorize this Agreement or to consummate the transactions so contemplated hereby. This Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of Hiawatha and, assuming due authorization, execution and delivery by DOGM, is enforceable against Hiawatha in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

d. Upon execution of this Agreement, the Operator shall execute an Uniform Commercial Code Financial form (UCC-1) to be recorded by DOGM at the State of Utah Office of the Lieutenant Governor or other offices as provided by law to give notice of the priority interest of DOGM.

3. Appointment of Escrow Agent. Hiawatha and DOGM hereby appoint the Escrow Agent as escrow agent for the purposes set forth in this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties of the Escrow Agent set forth in this Agreement. ~~The Escrow Agent further acknowledges the subordinate lien of the Trustee in the Escrowed Funds and any interest or other investment earnings thereon and any proceeds thereof and agrees that while it is holding such escrowed property under this Agreement, it is holding such escrowed property in trust for the Trustee, and for the purpose of perfecting the Trustee's lien in the Escrowed Funds and any deposit or securities accounts in which the Escrowed Funds may be held, subject to the terms and conditions set forth in this Agreement.~~

4. Deposit of Funds. Upon execution of this Agreement, Hiawatha will initially deposit with the Escrow Agent $167,000.00 and may deposit subsequent funds as required by DOGM (the "Escrowed Funds") to be used primarily to purchase U.S. Government obligations (identified on the attached Exhibit A) in approximately that amount for Hiawatha, and any residual funds will be invested in a Treasury Money Market Fund which is invested in direct obligations of the government of the United States. The Escrow Agent shall hold the Escrowed Funds for the benefit of DOGM and shall invest the Escrowed Funds and hold such investments upon the written direction of Hiawatha within the guidelines set forth in this Agreement. Upon the receipt of the Escrowed Funds and the investment of such funds as provided herein, the Escrow Agent will deliver to Hiawatha, DOGM and ~~the Trustee~~ written notice of its receipt of the Escrowed Funds and the investment thereof and identify the same on the attached Exhibit A. Thereafter, the Escrow Agent shall deliver a statement of the Escrowed Funds to Hiawatha,

DOGM ~~and the Trustee~~ on a quarterly basis. All further investments of the Escrowed Funds, including investments made upon the maturity or sale of previous investments of the Escrowed Funds or the investment earnings thereon, shall be made upon the written direction of Hiawatha within the guidelines set forth in this Agreement. In the absence of such written directions, the Escrow Agent shall invest the Escrowed Funds in a Treasury Money Market Fund. In the event of any additional purchases or substitutionsinvestments held in the Escrowed Funds, the Escrow Agent will provide written notice to Hiawatha and DGM and a revised Exhibit A shall be delivered to DOGM.

5. Disbursement of Funds.

a. Upon the uncured failure of Hiawatha to comply with the terms and conditions of its agreement to reclaim the Hiawatha King Mine Complex as set forth in Permit No C/007/0011, and upon the written instruction and demand of the Director of DOGM, the Escrow Agent shall liquidate or sell all or such portion of the investments of the Escrowed Funds as the Director of DOGM shall designate without any further consent of Hiawatha and shall disburse the proceeds of such sale to DOGM. The Escrow Agent shall not be responsible or liable for any investment losses on investments or sales of investments of Escrowed Funds made in accordance with this Agreement. Hiawatha agrees and irrevocably instructs the Escrow Agent that neither Hiawatha, ~~the Trustee~~, nor any person claiming an ownership interest in the Escrowed Funds, shall have the authority to prevent the Escrow Agent from carrying out the Director of DOGM's instruction to transfer the Escrowed Funds to DOGM. However, DOGM agrees that any disbursement of the Escrowed Funds shall be made pursuant to Hiawatha's obligations set forth in Permit No. C/007/0011 and DOGM shall return or release directly to Hiawatha any Escrowed Funds which are more than the amount necessary to complete reclamation pursuant to the regulations in effect at the time, which regulations are currently set forth in Utah Admin. Code R645-301-800.

b. The Escrow Agent shall, except as provided in Section 6 below, disburse the Escrowed Funds and the investment earnings thereon, if any, to Hiawatha only upon written instruction of the Director of DOGM, or for Hiawatha's use to meet its reclamation obligations, upon Hiawatha's written promise to use such Escrowed Funds for reclaiming the Hiawatha King Mine Complex. The Escrow Agent shall give not less than 10 days written notice to ~~the Trustee at its address set forth in the Consent and Control Agreement~~ DOGM before making any disbursement of Escrowed Funds to Hiawatha pursuant to this paragraph. Upon disbursement of all of the Escrowed Funds and the investment earnings thereon, if any, to DOGM or to Hiawatha, this Agreement shall be deemed to have been terminated.

6. Interest and Other Distributions. All interest and investment earnings, if any, on the investment of the Escrowed Funds shall be disbursed to Hiawatha on each January 15 and July 15 during the term of this Agreement. If DOGM notifies the Escrow Agent in writing that Hiawatha is in default of its obligations under Permit No. C/007/0011, Hiawatha shall no longer be entitled to the distribution of interest and investment earnings on the investment of Escrowed Funds and any such interest and investment earnings shall be retained by the Escrow Agent and

held as part of the Escrowed Funds for the purposes stated herein until such time as DOGM notifies the Escrow Agent in writing that Hiawatha is no longer in default of its obligations.

7. Agent's Duties. All parties hereto understand and agree that the Escrow Agent is not a principal, participant, or beneficiary of the underlying transaction which necessitates this Agreement. The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in acting or refraining from acting on any instrument believed by it to be genuine and to have been signed or presented by the proper party or parties, their officers, representatives, or agents. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or for action taken or omitted by it in accordance with the advice of its counsel, unless such action or omission constitutes willful misconduct or gross negligence.

8. Concerning Escrow Agent. The following provisions shall control with respect to the rights, duties, liabilities, privileges, and immunities of Escrow Agent:

a. Escrow Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Escrow Agreement. All references in this Escrow Agreement to other agreements or permits, including Permit No. C/007/0011, are for the convenience of the parties hereto other than Escrow Agent, and Escrow Agent shall have no duties or obligations with respect thereto. Escrow Agent shall have no implied duties beyond the express duties set forth herein and in the Consent and Control Agreement.

b. Escrow Agent, in acting hereunder, may assume the genuineness of any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

c. It is the intention of the parties to this Escrow Agreement that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

d. In the event of any disagreement between any of the parties (other than Escrow Agent) to this Escrow Agreement, or between them or any of them and any other person or entity resulting in conflicting or adverse claims or demands being made in connection with the escrowed property, or in the event that Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent at its option may refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and, in any such event, Escrow Agent shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and Escrow Agent shall be entitled to either;

i) continue so to refrain from acting until (A) the rights of all parties shall have been determined by a final and unappealable order of a court of competent jurisdiction or by a final and unappealable award of arbitrators, or (B)

all differences shall have been resolved by agreement among all of the interested persons or entities, and Escrow Agent shall have been notified thereof in writing signed by all such persons or entities, or

ii) file an interpleader action in any court of competent jurisdiction.

9. Standard of Care. The Escrow Agent shall have no liability under, or duty to inquire beyond the terms and provisions of this Agreement, and it is agreed that the Escrow Agent's duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever, except for willful misconduct or gross negligence. The Escrow Agent shall not be bound by any modification, amendment, termination, cancellation, recission, or supersession of this Agreement unless the same shall be in writing and signed by all of the other parties hereto and, if the Escrow Agent's duties as escrow agent hereunder are affected thereby, unless the Escrow Agent shall have given prior written consent thereto.

10. Resignation. The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their addresses set forth herein~~, and to the Trustee at its address~~, at least thirty days prior to the date specified for such resignation to take effect. Upon the effective date of such resignation, the escrowed property hereunder shall be delivered to such person as may be designated in joint written instructions to the Escrow Agent from Hiawatha, and DOGM~~ and the Trustee~~, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. The Escrow Agent's sole responsibility during the period after written notice of resignation is given and before the effective date of resignation shall be to keep safely all escrowed property and to deliver the same to such persons designated in such joint written instructions or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

11. Indemnification. Hiawatha agrees to defend, indemnify and hold the Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement or its willful misconduct or gross negligence. DOGM agrees to hold Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement or its willful misconduct or gross negligence.

12. Fees. The fee of the Escrow Agent to serve as escrow agent hereunder will be $2,000 per year payable in advance and due upon execution of this Escrow Agreement. Hiawatha shall pay such fees and all reasonable expenses of the Escrow Agent incurred hereunder, including reasonable attorney's fees incurred in connection with this Agreement and the performance of the Escrow Agent's duties hereunder. Except as otherwise noted, such fee covers account acceptance, set up, and termination expenses plus usual and customary related

administrative services such as safekeeping and distribution of securities specified herein or in the exhibits attached. Activities requiring excessive administrator time or out-of-pocket expenses such as optional substitution of collateral or securities shall be deemed extraordinary expenses for which related costs, transaction charges, and additional fees will be billed (after delivery of prior notice of such charges to Hiawatha) at the Escrow Agent's standard charges for such items. In the event Hiawatha fails to pay such fees, DOGM shall be provided notice in writing and a reasonable opportunity to pay the fees, either directly or from Escrowed Funds to keep this Pledge and Escrow Agreement in full effect.

13. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor Escrow Agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance any further act.

14. Force Majeure. The Escrow Agent shall have no liability for loss arising from any cause beyond its control, including, but not limited to, the following: (a) the act, failure to act, or neglect of any agent or correspondent selected by the Escrow Agent or the parties hereto (unless such selection constitutes willful misconduct or gross negligence on the part of the Escrow Agent); (b) any delay, error, omission, or default connected with the remittance of funds; (c) any delay, error, omission, or default of any mail, telegraph, cable, or wireless agency or operator; or (d) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (without regard to the principles of conflicts of law embodied therein).

16. Notices. Any notice, communication, or other delivery given under this Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, or (c) sent by registered or certified mail, postage prepaid, as follows:

If to the Hiawatha, to:

Elliot Finley, President
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Telephone: 435-637-1778
Facsimile: 435-687-5724

If to DOGM to:

Division Director
Division of Oil, Gas & Mining
State of Utah
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Telephone: 801-538-5326
Facsimile: 801-359-3940

If to the Escrow Agent, to:

Bank of Utah
Trust Services Department
711 South State Street
Salt Lake City, Utah 84111

Attention: Craig Standing
Telephone: 801-924-3616
Facsimile: 801-924-3629

With copies to:

Mark Reynolds
Hiawatha Coal Company, Inc.
P.O. Box 1159
Huntington, Utah 84528

Telephone: 435-687-2450
Facsimile: 435-687-5724

Utah Attorney General's Office
Department of Natural Resources
1594 W North Temple #300
Salt Lake City, Utah 84116

Attention: Steven F. Alder

Telephone: 801-538-5348
Facsimile: 801-538-7440

Each notice or other communication required or permitted under this Agreement that is addressed as provided in this Section will (i) if delivered personally or by overnight express, be deemed given upon delivery; and (ii) if delivered by mail in the manner described above, be deemed given upon delivery. Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

17. Taxpayer Identification. Hiawatha's Employer Identification Number is 84-1418097.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date first written above.

BANK OF UTAH, as Escrow Agent

By: _____
Name: _____
Title: _____

STATE OF UTAH, DIVISION OF OIL, GAS & MINING

By: _____
Name: _____
Title: _____

HIAWATHA COAL COMPANY, INC., a Utah corporation

By: _____
Name: _____
Title: _____

Exhibit A

DESCRIPTION OF SECURITES

Quantity	Issue/Type of Security	CUSIP #

PLEDGE AND ESCROW AGREEMENT
Hiawatha Coal Company Reclamation Bond

This Pledge and Escrow Agreement ("Agreement"), dated as of July 2, is made and entered into by and among Bank of Utah, as escrow agent (the "Escrow Agent"), Hiawatha Coal Company, Inc., a Utah corporation ("Hiawatha"), and the State of Utah, Division of Oil, Gas & Mining ("DOGM").

WHEREAS, Hiawatha caused a standby letter of credit for $2.838 million to issue to DOGM as the beneficiary to secure Hiawatha's obligation to reclaim the Hiawatha King Mine Complex pursuant to its Permit No. C/007/0011; and

WHEREAS, Hiawatha desires to incrementally replace said the standby letter of credit with purchase of treasury notes at future dates in an amounts that will eventually be a sufficient amount satisfy the required amount a reclamation surety for the Permit; and

WHEREAS, Hiawatha must now provide DOGM with an additional Reclamation Surety in the amount of $167,000 to satisfy an increase in surety amount as required by the Permit's terms and conditions to ensure that adequate funds are available to reclaim the Hiawatha King Mine Complex, pursuant to its Permit No. C/007/0011; and

WHEREAS, Hiawatha and DOGM have agreed that the obligations of Hiawatha under the Permit No. C/007/0011 shall be secured by a first-lien security interest in Escrowed Funds (as defined below) as provided herein; and

WHEREAS, in connection with the grant of the security interest in all of Hiawatha's interests in the Escrowed Funds and all proceeds thereof as provided herein, Hiawatha and DOGM have agreed that the Escrow Agent will hold the Escrowed Funds in escrow in accordance with the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Security Interest. As security for Hiawatha's obligation to reclaim the Hiawatha King Mine Complex in Hiawatha, Utah, pursuant to its Permit No. C/007/0011, Hiawatha hereby pledges, grants, assigns, transfers and sets over to DOGM, and there is hereby created in favor of DOGM, a first-lien security interest in and to all of Hiawatha's right, title and interest in and to the Escrowed Funds and the proceeds thereof as provided herein. DOGM's first lien security interest shall apply to the Escrowed Funds but not to any investment earnings thereon.

2. Representations of Hiawatha. In making the foregoing pledge and assignment, Hiawatha hereby represents and warrants to DOGM, that as of the date hereof:

a. Hiawatha is the owner of the Escrowed Funds, free and clear of all encumbrances, security interests and charges of any kind.

b. Hiawatha has the right and authority to enter into this Agreement and perform its obligations hereunder.

c. The execution and delivery of this Agreement by Hiawatha and the consummation by it of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and no other proceedings on the part of Hiawatha are necessary to authorize this Agreement or to consummate the transactions so contemplated hereby. This Agreement has been duly executed and delivered by, and constitutes a valid and binding obligation of Hiawatha and, assuming due authorization, execution and delivery by DOGM, is enforceable against Hiawatha in accordance with its terms, except as enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

d. Upon execution of this Agreement, the Operator shall execute an Uniform Commercial Code Financial form (UCC-1) to be recorded by DOGM at the State of Utah Office of the Lieutenant Governor or other offices as provided by law to give notice of the priority interest of DOGM.

3. Appointment of Escrow Agent. Hiawatha and DOGM hereby appoint the Escrow Agent as escrow agent for the purposes set forth in this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties of the Escrow Agent set forth in this Agreement.

4. Deposit of Funds. Upon execution of this Agreement, Hiawatha will initially deposit with the Escrow Agent $167,000.00 and may deposit subsequent funds as required by DOGM (the "Escrowed Funds") to be used primarily to purchase U.S. Government obligations (identified on the attached Exhibit A) in approximately that amount for Hiawatha, and any residual funds will be invested in a Treasury Money Market Fund which is invested in direct obligations of the government of the United States. The Escrow Agent shall hold the Escrowed Funds for the benefit of DOGM and shall invest the Escrowed Funds and hold such investments upon the written direction of Hiawatha within the guidelines set forth in this Agreement. Upon the receipt of the Escrowed Funds and the investment of such funds as provided herein, the Escrow Agent will deliver to Hiawatha, DOGM and written notice of its receipt of the Escrowed Funds and the investment thereof and identify the same on the attached Exhibit A. Thereafter, the Escrow Agent shall deliver a statement of the Escrowed Funds to Hiawatha, DOGM on a quarterly basis. All further investments of the Escrowed Funds, including investments made upon the maturity or sale of previous investments of the Escrowed Funds or the investment earnings thereon, shall be made upon the written direction of Hiawatha within the guidelines set forth in this Agreement. In the absence of such written directions, the Escrow Agent shall invest the Escrowed Funds in a Treasury Money Market Fund. In the event of any additional purchases or substitutionsinvestments held in the Escrowed Funds, the Escrow Agent will provide written notice to Hiawatha and DGM and a revised Exhibit A shall be delivered to DOGM.

5. Disbursement of Funds.

a. Upon the uncured failure of Hiawatha to comply with the terms and conditions of its agreement to reclaim the Hiawatha King Mine Complex as set forth in Permit No C/007/0011, and upon the written instruction and demand of the Director of DOGM, the Escrow Agent shall liquidate or sell all or such portion of the investments of the Escrowed Funds as the Director of DOGM shall designate without any further consent of Hiawatha and shall disburse the proceeds of such sale to DOGM. The Escrow Agent shall not be responsible or liable for any investment losses on investments or sales of investments of Escrowed Funds made in accordance with this Agreement. Hiawatha agrees and irrevocably instructs the Escrow Agent that neither Hiawatha, , nor any person claiming an ownership interest in the Escrowed Funds, shall have the authority to prevent the Escrow Agent from carrying out the Director of DOGM's instruction to transfer the Escrowed Funds to DOGM. However, DOGM agrees that any disbursement of the Escrowed Funds shall be made pursuant to Hiawatha's obligations set forth in Permit No. C/007/0011 and DOGM shall return or release directly to Hiawatha any Escrowed Funds which are more than the amount necessary to complete reclamation pursuant to the regulations in effect at the time, which regulations are currently set forth in Utah Admin. Code R645-301-800.

b. The Escrow Agent shall, except as provided in Section 6 below, disburse the Escrowed Funds and the investment earnings thereon, if any, to Hiawatha only upon written instruction of the Director of DOGM, or for Hiawatha's use to meet its reclamation obligations, upon Hiawatha's written promise to use such Escrowed Funds for reclaiming the Hiawatha King Mine Complex. The Escrow Agent shall give not less than 10 days written notice to DOGM before making any disbursement of Escrowed Funds to Hiawatha pursuant to this paragraph. Upon disbursement of all of the Escrowed Funds and the investment earnings thereon, if any, to DOGM or to Hiawatha, this Agreement shall be deemed to have been terminated.

6. Interest and Other Distributions. All interest and investment earnings, if any, on the investment of the Escrowed Funds shall be disbursed to Hiawatha on each January 15 and July 15 during the term of this Agreement. If DOGM notifies the Escrow Agent in writing that Hiawatha is in default of its obligations under Permit No. C/007/0011, Hiawatha shall no longer be entitled to the distribution of interest and investment earnings on the investment of Escrowed Funds and any such interest and investment earnings shall be retained by the Escrow Agent and held as part of the Escrowed Funds for the purposes stated herein until such time as DOGM notifies the Escrow Agent in writing that Hiawatha is no longer in default of its obligations.

7. Agent's Duties. All parties hereto understand and agree that the Escrow Agent is not a principal, participant, or beneficiary of the underlying transaction which necessitates this Agreement. The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein and may rely and shall be protected in acting or refraining from acting on any instrument believed by it to be genuine and to have been signed or presented by the proper party or parties, their officers, representatives, or agents. The Escrow Agent shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized hereby or for action taken or omitted by it in accordance with the advice of its counsel, unless such action or omission constitutes willful misconduct or gross negligence.

8. Concerning Escrow Agent. The following provisions shall control with respect to the rights, duties, liabilities, privileges, and immunities of Escrow Agent:

a. Escrow Agent is not a party to, is not bound by, and has no duty to inquire into any agreement other than this Escrow Agreement. All references in this Escrow Agreement to other agreements or permits, including Permit No. C/007/0011, are for the convenience of the parties hereto other than Escrow Agent, and Escrow Agent shall have no duties or obligations with respect thereto. Escrow Agent shall have no implied duties beyond the express duties set forth herein and in the Consent and Control Agreement.

b. Escrow Agent, in acting hereunder, may assume the genuineness of any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney, or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

c. It is the intention of the parties to this Escrow Agreement that the Escrow Agent shall never be required to use or advance its own funds or otherwise incur personal financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

d. In the event of any disagreement between any of the parties (other than Escrow Agent) to this Escrow Agreement, or between them or any of them and any other person or entity resulting in conflicting or adverse claims or demands being made in connection with the escrowed property, or in the event that Escrow Agent, in good faith, shall be in doubt as to what action it should take hereunder, Escrow Agent at its option may refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and, in any such event, Escrow Agent shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and Escrow Agent shall be entitled to either;

i) continue so to refrain from acting until (A) the rights of all parties shall have been determined by a final and unappealable order of a court of competent jurisdiction or by a final and unappealable award of arbitrators, or (B) all differences shall have been resolved by agreement among all of the interested persons or entities, and Escrow Agent shall have been notified thereof in writing signed by all such persons or entities, or

ii) file an interpleader action in any court of competent jurisdiction.

9. Standard of Care. The Escrow Agent shall have no liability under, or duty to inquire beyond the terms and provisions of this Agreement, and it is agreed that the Escrow Agent's duties are purely ministerial in nature, and that the Escrow Agent shall incur no liability whatsoever, except for willful misconduct or gross negligence. The Escrow Agent shall not be bound by any modification, amendment, termination, cancellation, recission, or supersession of this Agreement unless the same shall be in writing and signed by all of the other parties hereto

and, if the Escrow Agent's duties as escrow agent hereunder are affected thereby, unless the Escrow Agent shall have given prior written consent thereto.

10. Resignation. The Escrow Agent may at any time resign hereunder by giving written notice of its resignation to the other parties hereto, at their addresses set forth herein, at least thirty days prior to the date specified for such resignation to take effect. Upon the effective date of such resignation, the escrowed property hereunder shall be delivered to such person as may be designated in joint written instructions to the Escrow Agent from Hiawatha, and DOGM, whereupon all the Escrow Agent's obligations hereunder shall cease and terminate. The Escrow Agent's sole responsibility during the period after written notice of resignation is given and before the effective date of resignation shall be to keep safely all escrowed property and to deliver the same to such persons designated in such joint written instructions or in accordance with the directions of a final order or judgment of a court of competent jurisdiction.

11. Indemnification. Hiawatha agrees to defend, indemnify and hold the Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, including the legal costs and expenses of defending itself against any claim or liability in connection with its performance hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement or its willful misconduct or gross negligence. DOGM agrees to hold Escrow Agent harmless from and against any and all loss, damage, liability, and expense that may be incurred by the Escrow Agent arising out of or in connection with its acceptance or appointment as Escrow Agent hereunder, except to the extent any such loss, damage, liability, or expense is incurred in connection with any breach by the Escrow Agent of its obligations under this Agreement or its willful misconduct or gross negligence.

12. Fees. The fee of the Escrow Agent to serve as escrow agent hereunder will be $2,000 per year payable in advance and due upon execution of this Escrow Agreement. Hiawatha shall pay such fees and all reasonable expenses of the Escrow Agent incurred hereunder, including reasonable attorney's fees incurred in connection with this Agreement and the performance of the Escrow Agent's duties hereunder. Except as otherwise noted, such fee covers account acceptance, set up, and termination expenses plus usual and customary related administrative services such as safekeeping and distribution of securities specified herein or in the exhibits attached. Activities requiring excessive administrator time or out-of-pocket expenses such as optional substitution of collateral or securities shall be deemed extraordinary expenses for which related costs, transaction charges, and additional fees will be billed (after delivery of prior notice of such charges to Hiawatha) at the Escrow Agent's standard charges for such items. In the event Hiawatha fails to pay such fees, DOGM shall be provided notice in writing and a reasonable opportunity to pay the fees, either directly or from Escrowed Funds to keep this Pledge and Escrow Agreement in full effect.

13. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion,

sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor Escrow Agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance any further act.

14. Force Majeure. The Escrow Agent shall have no liability for loss arising from any cause beyond its control, including, but not limited to, the following: (a) the act, failure to act, or neglect of any agent or correspondent selected by the Escrow Agent or the parties hereto (unless such selection constitutes willful misconduct or gross negligence on the part of the Escrow Agent); (b) any delay, error, omission, or default connected with the remittance of funds; (c) any delay, error, omission, or default of any mail, telegraph, cable, or wireless agency or operator; or (d) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah (without regard to the principles of conflicts of law embodied therein).

16. Notices. Any notice, communication, or other delivery given under this Agreement must be in writing and (a) delivered personally, (b) delivered by overnight express, or (c) sent by registered or certified mail, postage prepaid, as follows:

If to the Hiawatha, to:

Elliot Finley, President
Hiawatha Coal Company
P.O. Box 1240
Huntington, Utah 84528

Telephone: 435-637-1778
Facsimile: 435-687-5724

If to DOGM to:

Division Director
Division of Oil, Gas & Mining
State of Utah
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Telephone: 801-538-5326
Facsimile: 801-359-3940

If to the Escrow Agent, to:

Bank of Utah
Trust Services Department
711 South State Street
Salt Lake City, Utah 84111

Attention: Craig Standing
Telephone: 801-924-3616
Facsimile: 801-924-3629

With copies to:

Mark Reynolds
Hiawatha Coal Company, Inc.
P.O. Box 1159
Huntington, Utah 84528

Telephone: 435-687-2450
Facsimile: 435-687-5724

Utah Attorney General's Office
Department of Natural Resources
1594 W North Temple #300
Salt Lake City, Utah 84116

Attention: Steven F. Alder

Telephone: 801-538-5348
Facsimile: 801-538-7440

Each notice or other communication required or permitted under this Agreement that is addressed as provided in this Section will (i) if delivered personally or by overnight express, be deemed given upon delivery; and (ii) if delivered by mail in the manner described above, be deemed given upon delivery. Any party from time to time may change its address for the purpose of notices to that party by giving a similar notice specifying a new address, but no such notice will be deemed to have been given until it is actually received by the party sought to be charged with the contents thereof.

17. Taxpayer Identification. Hiawatha's Employer Identification Number is 84-1418097.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date first written above.

BANK OF UTAH, as Escrow Agent

By: _____
Name: _____
Title: _____

STATE OF UTAH, DIVISION OF OIL, GAS & MINING

By: _____
Name: _____
Title: _____

HIAWATHA COAL COMPANY, INC., a Utah corporation

By: _____
Name: _____
Title: _____

Exhibit A

DESCRIPTION OF SECURITES

Quantity	Issue/Type of Security	CUSIP #