

03-1805-CD  
THE CTP GROUP/EQUIPMENT FINANCING, INC. vs JOSEPH A. OWENS

**IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL ACTION – LAW**

THE CIT GROUP/  
EQUIPMENT FINANCING, INC., : CASE NO. 2003- 1805-C  
a Delaware Corporation, :  
Plaintiff, : VERIFIED COMPLAINT FOR  
v. : BREACH OF CONTRACT  
JOSEPH A. OWENS, : Filed on behalf of Plaintiff,  
an Individual, : The CIT Group/Equipment Financing, Inc.  
Defendant. : Counsel of record for this party:  
: Gregory L. Taddonio  
: Pa. I.D. No. 88564  
: Nicholas R. Pagliari  
: Pa. I.D. No. 87877  
: REED SMITH LLP  
: Firm No. 234  
: 435 Sixth Avenue  
: Pittsburgh, PA 15219  
: (412) 288-3131



DEC 08 2003

William A. Shaw  
Prothonotary

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OF CLEARFIELD COUNTY, PENNSYLVANIA**

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THE CIT GROUP/ EQUIPMENT FINANCING, INC.,	:	CASE NO. 2003-
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOSEPH A. OWENS,	:	
	:	
Defendant.	:	
	:	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**PENNSYLVANIA LAWYER REFERRAL SERVICE**  
**100 South Street**  
**P.O. Box 186**  
**Harrisburg, Pennsylvania 17108-0186**  
**1-(800) 692-7375**

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OF CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL ACTION – LAW**

THE CIT GROUP/ EQUIPMENT FINANCING, INC.,	:	CASE NO. 2003-
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JOSEPH A. OWENS,	:	
	:	
Defendant.	:	
	:	

**VERIFIED COMPLAINT FOR BREACH OF CONTRACT**

Plaintiff, The CIT Group/Equipment Financing, Inc. (“CIT”), by its undersigned counsel, brings this action in breach of contract against Defendant, Joseph A. Owens (“Owens”), and in support thereof avers as follows:

**I. PARTIES**

1. Plaintiff CIT is a corporation organized and existing under the laws of the State of Delaware, having a place of business at 1540 West Fountainhead Parkway, Tempe, Arizona 85282.
2. Defendant Owens is an individual residing at 5493 State Park Road, Penfield, Pennsylvania, 15849.

## **II. JURISDICTION AND VENUE**

3. This is a civil action for breach of contract.
4. This Court has jurisdiction over this action as Owens is a resident of Clearfield County, Pennsylvania.
5. Venue is appropriate in this Court pursuant to Pa. R. Civ. P. 1006 because the cause of action for breach of contract arose in Clearfield County.

## **III. FACTUAL BACKGROUND**

6. Based on information and belief, Owens is the president of Sky Haven Coal, Inc. ("Sky Haven"), a Pennsylvania corporation principally engaged in coal mining operations.

### **The First Transaction**

7. On or about October 12, 1999, Sky Haven executed and delivered to CIT a security agreement (the "First Agreement") in the original amount of \$1,298,230.20. The proceeds of the First Agreement were utilized to purchase a Hitachi Excavator Model EX1800LD-2, Serial No. 182-0281 (the "Hitachi Excavator"). Pursuant to the terms of the First Agreement, Sky Haven agreed to, *inter alia*, make monthly payments of principal and interest to CIT in the amount of \$21,637.17 for a period of 60 months.<sup>1</sup> A true and correct copy of the First Agreement is attached as **Exhibit A** and incorporated as if fully rewritten herein.

8. To secure its obligations under the First Agreement, Sky Haven granted CIT a security interest in the Hitachi Excavator and in a 1996 Kobelco Model SK22LC Mark IV

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<sup>1</sup> By agreement of the parties, the terms of the First Agreement were modified to permit a payment deferral. As modified, the First Agreement requires 25 monthly payments of \$21,637.17 coming due beginning on February 25, 2003 and continuing thereafter through February 25, 2005, with a final payment of \$75,517.70 plus accrued late charges and other fees due on March 24, 2005.

Excavator, Serial No. LLU1510, together with all additions, substitutions, attachments, replacements, and accessions thereof (collectively, the “First Agreement Collateral”). The First Agreement Collateral also secures any other indebtedness or obligations of Sky Haven to CIT. See First Agreement, §2. CIT’s security interest in the First Agreement Collateral was duly perfected under Pennsylvania law.

9. To further secure Sky Haven’s obligations under the First Agreement, Owens executed and delivered to CIT a Guaranty agreement (the “First Agreement Guaranty”) in his individual capacity. Pursuant to the First Agreement Guaranty, Owens absolutely and unconditionally guaranteed the payment of all present and future liabilities of Sky Haven to CIT. A true and correct copy of the First Agreement Guaranty is attached hereto as **Exhibit B**.

10. Pursuant to Section 9 of the First Agreement, the First Agreement shall be in default if, *inter alia*, Sky Haven shall fail to satisfy any obligation to CIT according to the terms of the First Agreement when due. In the event of a default, CIT is entitled to, among other things, declare all present and future indebtedness then owing to CIT by Sky Haven to be immediately due and payable. See First Agreement at § 9.

11. The First Agreement further provides that in the event a payment is not made by Sky Haven when due, Sky Haven shall be assessed a late charge at the rate of 1 1/2% of the overdue payment due each month until the overdue amount is paid. See First Agreement at § 5. Sky Haven further agreed to pay reasonable attorneys’ fees and other expenses incurred in enforcing any rights against Sky Haven under the First Agreement. Id. at ¶7(b).

### **The Second Transaction**

12. On or about May 28, 2001, Sky Haven executed and delivered to Beckwith Machinery Company (“Beckwith”) a Note and Security Agreement (the “Second

Agreement") in the original amount of \$1,736,753.40. The proceeds of the Second Agreement were utilized to purchase a Caterpillar D11R Track Type Tractor and Caterpillar 777C Off Highway Truck. Pursuant to the terms of the Second Agreement, Sky Haven agreed to, *inter alia*, make monthly payments of principal and interest in the amount of \$28,945.89 for a period of 60 months.<sup>2</sup> A true and correct copy of the Second Agreement is attached as **Exhibit C** and incorporated as if fully rewritten herein.

13. To secure its obligations under the Second Agreement, Sky Haven granted Beckwith a security interest in the following equipment:

Caterpillar D11R Track Type Tractor, Serial No. 7PZ00299  
Caterpillar 777C Off Highway Truck, Serial No. 4XJ00550  
Caterpillar D10N Track Type Tractor, Serial No. 2YD00921  
Caterpillar 773A Off Highway Truck, Serial No. 63G00538  
Caterpillar D9L, Track Type Tractor, Serial No. 14Y01213

(collectively, the "Second Agreement Collateral"). Beckwith's security interest in the Second Agreement Collateral was duly perfected under Pennsylvania law.

14. To further secure Sky Haven's obligations under the Second Agreement, Owens executed and delivered to Beckwith a Guaranty Agreement (the "Second Agreement Guaranty"). Pursuant to the Second Agreement Guaranty, Owens absolutely and unconditionally guaranteed the payment of all liabilities of Sky Haven to Beckwith. A true and correct copy of the Second Agreement Guaranty is attached hereto as **Exhibit D**.

15. On or about June 19, 2001, Beckwith executed and delivered to CIT a Without Recourse Assignment which, *inter alia*, assigned to CIT all of Beckwith's rights, title, and interest in the Second Agreement and Second Agreement Guaranty (the "First Assignment").

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<sup>2</sup> By agreement of the parties, the terms of the Second Agreement were modified to permit a payment deferral. As modified, the Second Agreement requires 40 monthly payments of \$28,945.88 coming due beginning on February 25, 2003 and continuing thereafter through May 26, 2006, with a final payment of \$109,391.73 plus accrued late charges and other fees due on June 25, 2006.

A true and correct copy of the First Assignment is attached as **Exhibit E** and incorporated as if fully rewritten herein.

16. Pursuant to Section 11 of the Second Agreement, the Second Agreement shall be in default if, *inter alia*, Sky Haven shall fail to pay any installment according to the terms of the Second Agreement or shall fail to observe or perform any of the other covenants or agreements contained therein. In the event of a default, the holder of the Second Agreement is entitled to, among other things, declare the unpaid balance immediately due and payable without demand or notice and proceed to exercise one or more of the rights accorded by the Uniform Commercial Code or otherwise by law. See Second Agreement at § 11.

17. The Second Agreement further provides that in the event a payment is not made by Sky Haven when due, Sky Haven shall make an additional payment equivalent to 5% of the overdue payment each month until the overdue amount is paid. See Second Agreement at § 17.

### **The Third Transaction**

18. On or about August 20, 2002, Sky Haven executed and delivered to Beckwith a Note and Security Agreement (the “Third Agreement,” and together with the First Agreement and Second Agreement, the “Security Agreements”) in the original amount of \$864,000.00. The proceeds of the Third Agreement were utilized to purchase a Caterpillar 777D Off Highway Truck. Pursuant to the terms of the Third Agreement, Sky Haven agreed to, *inter alia*, make monthly payments of principal and interest in the amount of \$18,000.00 for a period of 48 months. A true and correct copy of the Third Agreement is attached as **Exhibit F** and incorporated as if fully rewritten herein.

19. To secure its obligations under the Third Agreement, Sky Haven granted Beckwith a security interest in the following equipment:

Caterpillar 777D Off Highway Truck, Serial No. 03PR00790  
Lima 2400 Dragline, Serial No. 3615-1  
Lima 2400B Dragline, Serial No. 712A103  
Lima 2400B Dragline, Serial No. 3479-5

(collectively, the “Third Agreement Collateral,” and together with the First Agreement Collateral and Second Agreement Collateral, the “Collateral”). Beckwith’s security interest in the Third Agreement Collateral was duly perfected under Pennsylvania law.

20. To further secure Sky Haven’s obligations under the Third Agreement, Owens executed and delivered to Beckwith a Guaranty Agreement (the “Third Agreement Guaranty,” and together with the First Agreement Guaranty and the Second Agreement Guaranty, the “Guaranty Agreements”). Pursuant to the Third Agreement Guaranty, Owens absolutely and unconditionally guaranteed the payment of all liabilities of Sky Haven to Beckwith. A true and correct copy of the Third Agreement Guaranty is attached hereto as **Exhibit G.**

21. On or about August 23, 2002, Beckwith executed and delivered to CIT a Without Recourse Assignment which, *inter alia*, assigned to CIT all of Beckwith’s rights, title, and interest in the Third Agreement and Third Agreement Guaranty (the “Second Assignment”). A true and correct copy of the Second Assignment is attached as **Exhibit H** and incorporated as if fully rewritten herein.

22. Pursuant to Section 11 of the Third Agreement, the Third Agreement shall be in default if, *inter alia*, Sky Haven shall fail to pay any installment according to the terms of the Third Agreement or shall fail to observe or perform any of the other covenants or agreements contained therein. In the event of a default, the holder of the Third Agreement is entitled to,

among other things, declare the unpaid balance immediately due and payable without demand or notice and proceed to exercise one or more of the rights accorded by the Uniform Commercial Code or otherwise by law. See Third Agreement at § 11.

23. The Third Agreement further provides that in the event a payment is not made by Sky Haven when due, Sky Haven shall make an additional payment equivalent to 5% of the overdue payment each month until the overdue amount is paid. See Third Agreement at § 17.

### **The Defaults**

24. The Security Agreements are in default because, *inter alia*, Sky Haven has failed to make monthly payments to CIT as required.

25. On or about October 15, 2003, Sky Haven filed a voluntary petition for relief under Chapter 11 of title 11 of the United States Code with the United States Bankruptcy Court for the Western District of Pennsylvania.

26. Neither Sky Haven nor Owens have made any payments to CIT on account of the Security Agreements or Guaranty Agreements since October 2, 2003.

27. As a result of the failure of Sky Haven and Owens to make any of the monthly rental payments required under the Notes and Guaranty Agreements, the amount of \$1,898,468.92 is currently due and payable to CIT as of November 5, 2003.

### **COUNT I** **BREACH OF GUARANTY**

28. CIT restates and incorporates by reference the allegations contained in Paragraphs 1 through 27 of the Complaint as if fully rewritten herein.

29. As set forth above, Sky Haven has breached its obligations under the Security Agreements by, *inter alia*, failing to make monthly payments to CIT as required, and by filing a voluntary petition for bankruptcy relief.

30. Pursuant to the Guaranty Agreements, Owens unconditionally guaranteed to pay to CIT the due, regular, and punctual payment of any sum or sums Sky Haven may owe to CIT now or at any time thereafter, including any amounts due under the Security Agreements.

31. Pursuant to the Guaranty Agreements, CIT is vested with the right and authority to proceed directly against Owens as the guarantor of obligations owed by Sky Haven to CIT.

32. Despite CIT's notice and demand for payment, Owens refuses and continues to refuse to tender payment of all amounts owing to CIT under the Security Agreements and Guaranty Agreements.

33. Owens is without any contractual or other good faith basis to withhold payments due CIT, and in fact is acting in direct contravention of the terms of the Guaranty Agreements.

34. Owens breached his contractual obligations under the Guaranty Agreements by failing to make, or allowing Sky Haven to fail to make, any payments to CIT since October 2, 2003.

35. Pursuant to the Security Agreements and as a result of the failure of Sky Haven and Owens to promptly remit the required monthly payments, CIT has accelerated the debt and declared all obligations under the Security Agreements and Guaranty Agreements to be due and payable in full.

36. As a direct and proximate result of Owens' material breach of the Guaranty Agreements, there is now due and owing under the Security Agreements and Guaranty Agreements the amount of \$1,898,468.92 as of November 5, 2003, plus interest, late fees, and other charges provided by the Security Agreements and Guaranty Agreements.

WHEREFORE, Plaintiff, The CIT Group/Equipment Financing, Inc., respectfully requests that judgment be entered in its favor and against Defendant Joseph A. Owens in the amount of \$1,898,469.92, together with interest from the date any payments were due under the Security Agreements and Guaranty Agreements, all costs and other expenses incurred in pursuit of this action or provided under the Security Agreements and Guaranty Agreements, and such other and further relief as this Court deems just and proper.

Dated: December 5, 2003

Respectfully submitted,



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Gregory L. Taddonio, Pa. I.D. No. 88564  
Nicholas R. Pagliari, Pa. I.D. No. 87877

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3131

Counsel for Plaintiff,  
The CIT Group/Equipment Financing, Inc.

**VERIFICATION**

I, Robert A. Knotts, being the Senior Portfolio Manager for The CIT Group/Equipment Finance, Inc. responsible for administering the promissory notes, security agreements and other related documents with Sky Haven Coal, Inc. and Joseph A. Owens, verify that the facts set forth in the foregoing Complaint for Breach of Contract are true and correct to the best of my knowledge, information and belief. I understand that false statements made therein are made subject to the penalties of 18 Pa. Con. Stat. § 4904 relating to unsworn falsifications to authorities.

Date: 12-3-03



\_\_\_\_\_  
Robert A. Knotts

For Business Loans other than Inventory Loans in all States (except Texas) by The CIT Group/Equipment Financing, Inc. or Dealer. In Louisiana, form 2305 must accompany this Agreement.

#### 1. Grant of Security Interest; Description of Collateral.

Debtor grants to Secured Party a security interest in the property described below, along with all present and future attachments and accessories thereto and replacements and proceeds thereof, including amounts payable under any insurance policy, all hereinafter referred to collectively as "Collateral": (Describe Collateral fully including make, kind of unit, model and serial numbers and any other pertinent information.)

One (1) Hitachi Excavator Model EX1800LD-2, S/N 182-0281.

To further secure the payment and performance of the Debtor, the items listed below are hereby pledged to the Secured Party as additional security.

One (1) 1996 Kobelco Model SK22LC Mark IV Excavator, S/N LLU1510.

And all of the above to include additions, substitutions, attachments, replacements and accessions thereof, plus the proceeds of all the foregoing.

#### 2. What Obligations the Collateral Secures.

Each item of the Collateral shall secure not only the specific amount which Debtor promises to pay in Paragraph 3 below, but also all other present and future indebtedness or obligations of Debtor to Secured Party of every kind and nature whatsoever.

#### 3. Promise to Pay; Terms and Place of Payment.

Debtor promises to pay Secured Party the total sum of \$1,298,230.20 \_\_\_\_\_, which represents principal and interest precomputed over the term hereof, payable in 60 \_\_\_\_\_ (total number) combined principal and interest payments as follows:

##### Equal Successive Monthly Payments

\$21,637.17 beginning on December 24, 1999, and the same amount on the same date of each month thereafter until fully paid, provided, however, that the final payment shall be in the amount of the then unpaid balance of principal and interest.

##### Other Than Equal Successive Monthly Payments

Payment shall be made at the address of Secured Party shown herein or such other place as Secured Party may designate from time to time.

#### 4. Use and Location of Collateral.

Debtor warrants and agrees that the Collateral is to be used primarily for:

- business or commercial purposes (other than agricultural),
- agricultural purposes (see definition on the final page), or
- both agricultural and business or commercial purposes.

Location In The Vicinity Of Address	Penfield City	PA State	15849 Zip Code
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#### **4. Use and Location of Collateral (Continued)**

Debtor and Secured Party agree that regardless of the manner of affixation, the Collateral shall remain personal property and not become part of the real estate. Debtor agrees to keep the Collateral at the location set forth above and will notify Secured Party promptly in writing of any change in the location of the Collateral within such State, but will not remove the Collateral from such State without the prior written consent of Secured Party (except that in the State of Pennsylvania, the Collateral will not be moved from the above location without such prior written consent).

#### **5. Late Charges and Other Fees.**

Any payment not made when due shall, at the option of Secured Party, bear late charges thereon calculated at the rate of 1 1/2% per month, but in no event greater than the highest rate permitted by relevant law. Debtor shall be responsible for and pay to Secured Party a returned check fee, not to exceed the maximum permitted by law, which fee will be equal to the sum of (i) the actual bank charges incurred by Secured Party plus (ii) all other actual costs and expenses incurred by Secured Party. The returned check fee is payable upon demand as indebtedness secured by the Collateral under this Security Agreement.

#### **6. Debtor's Warranties and Representations.**

Debtor warrants and represents:

- (a) that Debtor is justly indebted to Secured Party for the full amount of the indebtedness described in Paragraph 3;
- (b) that, except for the security interest granted hereby, the Collateral is free from and will be kept free from all liens, claims, security interests and encumbrances;
- (c) that no financing statement covering the Collateral or any proceeds thereof is on file in favor of anyone other than Secured Party, but if such other financing statement is on file, it will be terminated or subordinated;
- (d) that all information supplied and statements made by Debtor in any financial, credit or accounting statement or application for credit prior to, contemporaneously with or subsequent to the execution of this Security Agreement with respect to this transaction are and shall be true, correct, valid and genuine; and
- (e) that Debtor has full authority to enter into this Security Agreement and in so doing it is not violating its charter or by -laws, any law or regulation or agreement with third parties, and it has taken all such action as may be necessary or appropriate to make this Security Agreement binding upon it.

#### **7. Debtor's Agreements.**

Debtor agrees:

- (a) to defend at Debtor's own cost any action, proceeding, or claim affecting the Collateral;
- (b) to pay reasonable attorneys' fees (at least 15% of the unpaid balance if not prohibited by law) and other expenses incurred by Secured Party in enforcing its rights against Debtor under this Security Agreement;
- (c) to pay promptly all taxes, assessments, license fees and other public or private charges when levied or assessed against the Collateral or this Security Agreement; and this obligation shall survive the termination of this Security Agreement;
- (d) that, if a certificate of title is required or permitted by law, Debtor shall obtain such certificate with respect to the Collateral, showing the security interest of Secured Party thereon and in any event do everything necessary or expedient to preserve or perfect the security interest of Secured Party;
- (e) that Debtor will not misuse, fail to keep in good repair, secrete, or without the prior written consent of Secured Party, sell, rent, lend, encumber or transfer any of the Collateral notwithstanding Secured Party's right to proceed;
- (f) that Secured Party may enter upon Debtor's premises or wherever the Collateral may be located at any reasonable time to inspect the Collateral and Debtor's books and records pertaining to the Collateral, and Debtor shall assist Secured Party in making such inspection; and
- (g) that the security interest granted by Debtor to Secured Party shall continue effective irrespective of the payment of the amount in Paragraph 3; or in any promissory note executed in connection herewith, so long as there are any obligations of any kind, including obligations under guaranties or assignments, owed by Debtor to Secured Party, provided, however, upon any assignment of this Security Agreement the Assignee shall thereafter be deemed for the purpose of this Paragraph the Secured Party under this Security Agreement.

.All risk of loss, damage to or destruction of the Collateral shall at all times be on Debtor. Debtor will procure forthwith and maintain at Debtor's expense insurance against all risks of loss or physical damage to the Collateral for the full insurable value thereof for the life of this Security Agreement plus breach of warranty insurance and such other insurance thereon in amounts and against such risks as Secured Party may specify, and shall promptly deliver each policy to Secured Party with a standard long-form mortgagee endorsement attached thereto showing loss payable to Secured Party; and providing Secured Party with not less than 30 days written notice of cancellation; each such policy shall be in form, terms and amount and with insurance carriers satisfactory to Secured Party; Secured Party's acceptance of policies in lesser amounts or risks shall not be a waiver of Debtor's foregoing obligations. As to Secured Party's interest in such policy, no act or omission of Debtor or any of its officers, agents, employees or representatives shall affect the obligations of the insurer to pay the full amount of any loss.

Debtor hereby assigns to Secured Party any monies which may become payable under any such policy of insurance and irrevocably constitutes and appoints Secured Party as Debtor's attorney in fact (a) to hold each original insurance policy, (b) to make, settle and adjust claims under each policy of insurance, (c) to make claims for any monies which may become payable under such and other insurance on the Collateral including returned or unearned premiums and (d) to endorse Debtor's name on any check, draft or other instruments received in payment of claims or returned or unearned premiums under each policy and to apply the funds to the payment of the indebtedness owing to Secured Party; provided, however, Secured Party is under no obligation to do any of the foregoing.

Should Debtor fail to furnish such insurance policy to Secured Party, or to maintain such policy in full force, or to pay any premium in whole or in part relating thereto, then Secured Party, without waiving or releasing any default or obligation by Debtor, may (but shall be under no obligation to) obtain and maintain insurance and pay the premium therefor on behalf of Debtor and charge the premium to Debtor's indebtedness under this Security Agreement. The full amount of any such premium paid by Secured Party shall be payable by Debtor upon demand, and failure to pay same shall constitute an event of default under this Security Agreement.

## 9. Events of Default; Acceleration.

A very important element of this Security Agreement is that Debtor make all its payments promptly as agreed and that the Collateral continue to be in good condition and adequate security for the indebtedness. The following are events of default under this Security Agreement which will allow Secured Party to take such action under this Paragraph and under Paragraph 10 as it deems necessary:

- (a) any of Debtor's obligations to Secured Party under any agreement with Secured Party is not paid promptly when due;
- (b) Debtor breaches any warranty or provision hereof, or of any note or of any other instrument or agreement delivered by Debtor to Secured Party in connection with this or any other transaction;
- (c) Debtor dies, becomes insolvent or ceases to do business as a going concern;
- (d) it is determined that Debtor has given Secured Party materially misleading information regarding its financial condition;
- (e) any of the Collateral is lost or destroyed;
- (f) a petition or complaint in bankruptcy or for arrangement or reorganization or for relief under any insolvency law is filed by or against Debtor or Debtor admits its inability to pay its debts as they mature;
- (g) property of Debtor is attached or a receiver is appointed for Debtor;
- (h) whenever Secured Party in good faith believes the prospect of payment or performance is impaired or in good faith believes the Collateral is insecure;
- (i) any guarantor, surety or endorser for Debtor dies or defaults in any obligation or liability to Secured Party or any guaranty obtained in connection with this transaction is terminated or breached.

If Debtor shall be in default hereunder, the indebtedness herein described and all other indebtedness then owing by Debtor to Secured Party under this or any other present or future agreement (collectively, the "Indebtedness") shall, if Secured Party shall so elect, become immediately due and payable and the unpaid principal balance of the indebtedness described in Paragraph 3, or in any promissory note executed in connection herewith, shall bear interest at the rate of 18% per annum (but in no event greater than the highest rate permitted by relevant law) until paid in full. In no event shall the Debtor, upon demand by Secured Party for payment of the Indebtedness, by acceleration of the maturity thereof or otherwise, be obligated to pay any interest in excess of the amount permitted by law. Any acceleration of Indebtedness, if elected by Secured Party, shall be subject to all applicable laws, including laws relating to rebates and refunds of unearned charges.

## 10. Secured Party's Remedies After Default; Consent to Enter Premises.

**Upon Debtor's default and at any time thereafter, Secured Party shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable laws, including the right to any deficiency remaining after disposition of the Collateral for which Debtor hereby agrees to remain fully liable. Debtor agrees that Secured Party, by itself or its agent, may without notice to any person and without judicial process of any kind, enter into any premises or upon any land owned, leased or otherwise under the real or apparent control of Debtor or any agent of Debtor where the Collateral may be or where Secured Party believes the Collateral may be, and disassemble, render unusable and/or repossess all or any item of the Collateral, disconnecting and separating all Collateral from any other property.** Debtor expressly waives all further rights to possession of the Collateral after default and all claims for injuries suffered through or loss caused by such entering and/or repossession. Secured Party may require Debtor to assemble the Collateral and return it to Secured Party at a place to be designated by Secured Party which is reasonably convenient to both parties.

Secured Party may sell or lease the Collateral at a time and location of its choosing provided that the Secured Party acts in good faith and in a commercially reasonable manner. Secured Party will give Debtor reasonable notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition of the Collateral is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid, to the address of Debtor shown herein at least ten days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling and the like shall include reasonable attorneys' fees and other legal expenses. Debtor understands that Secured Party's rights are cumulative and not alternative.

## 11. Waiver of Defaults; Agreement Inclusive.

Secured Party may in its sole discretion waive a default, or cure, at Debtor's expense, a default. Any such waiver in a particular instance or of a particular default shall not be a waiver of other defaults or the same kind of default at another time. No modification or change in this Security Agreement or any related note, instrument or agreement shall bind Secured Party unless in writing signed by Secured Party. No oral agreement shall be binding.

## 12. Financing Statements; Certain Expenses.

If permitted by law, Debtor authorizes Secured Party to file a financing statement with respect to the Collateral signed only by Secured Party, and to file a carbon, photograph or other reproduction of this Security Agreement or of a financing statement. At the request of Secured Party, Debtor will execute any financing statements, agreements or documents, in form satisfactory to Secured Party which Secured Party may deem necessary or advisable to establish and maintain a perfected security interest in the Collateral, and will pay the cost of filing or recording the same in all public offices deemed necessary or advisable by Secured Party. Debtor also agrees to pay all costs and expenses incurred by Secured Party in conducting UCC, tax or other lien searches against the Debtor or the Collateral and such other fees as may be agreed.

## 13. Waiver of Defenses Acknowledgment.

If Secured Party assigns this Security Agreement to a third party ("Assignee"), then after such assignment:

- (a) Debtor will make all payments directly to such Assignee at such place as Assignee may from time to time designate in writing;
- (b) Debtor agrees that it will settle all claims, defenses, setoffs and counterclaims it may have against Secured Party directly with Secured Party and will not set up any such claim, defense, setoff or counterclaim against Assignee, Secured Party hereby agreeing to remain responsible therefor;
- (c) Secured Party shall not be Assignee's agent for any purpose and shall have no authority to change or modify this Security Agreement or any related document or instrument; and
- (d) Assignee shall have all of the rights and remedies of Secured Party hereunder but none of Secured Party's obligations.

## 14. Miscellaneous.

Debtor waives all exemptions. Secured Party may correct patent errors herein and fill in such blanks as serial numbers, date of first payment and the like. Any provisions hereof contrary to, prohibited by or invalid under applicable laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.

Except as otherwise provided herein or by applicable law, the Debtor shall have no right to prepay the indebtedness described in Paragraph 3, or in any promissory note executed in connection with this Security Agreement. Debtor and Secured Party each hereby waive any right to a trial by jury in any action or proceeding with respect to, in connection with, or arising out of this Security Agreement, or any note or document delivered pursuant to this Security Agreement. **Debtor acknowledges receipt of a true copy and waives acceptance hereof.** If Debtor is a corporation, this Security Agreement is executed pursuant to authority of its Board of Directors. Except where the context otherwise requires, "Debtor" and "Secured Party" include the heirs, executors or administrators, successors or assigns of those parties but nothing herein shall authorize Debtor to assign this Security Agreement or its rights in and to the Collateral. If more than one Debtor executes this Security Agreement, their obligations under this Security Agreement shall be joint and several.

**14. MISCELLANEOUS (Continued)**

If at any time this transaction would be usurious under applicable law, then regardless of any provision contained in this Security Agreement or in any other agreement made in connection with this transaction, it is agreed that:

- (a) the total of all consideration which constitutes interest under applicable law that is contracted for, charged or received upon this Security Agreement or any such other agreement shall under no circumstances exceed the maximum rate of interest authorized by applicable law and any excess shall be credited to the Debtor; and
- (b) if Secured Party elects to accelerate the maturity of, or if Secured Party permits Debtor to prepay the Indebtedness, any amounts which because of such action would constitute interest may never include more than the maximum rate of interest authorized by applicable law, and any excess interest, if any, provided for in this Security Agreement or otherwise, shall be credited to Debtor automatically as of the date of acceleration or prepayment.

**15. Special Provisions. (See Special Provisions Instructions.)**

**Year 2000.** The Debtor shall take all action necessary to assure that its computer-based systems are able to effectively process data including dates and date sensitive functions. The Debtor represents and warrants that the Year 2000 problem (that is, the inability of certain computer applications to recognize and correctly perform properly date-sensitive functions involving certain dates prior to and after December 31, 1999) will not result in a material adverse effect on the Debtor's business condition or ability to perform hereunder. Upon request, the Debtor shall provide assurance acceptable to the Secured Party that the Debtor's computer systems and software are or will be Year 2000 compliant on a timely basis. The Debtor shall immediately advise Secured Party in writing of any material changes in the Debtor's Year 2000 plan, timetable or budget.

**Dated:** 10-12-99

**Debtor:**

Sky Haven Coal Inc.

By Joseph A. Deems Title PRESIDENT

If corporation, have signed by President, Vice President or Treasurer, and give official title.  
If owner or partner, state which.

Rd #1, Box 180  
Address

Penfield PA 15849  
City State Zip Code

The CIT Group/Equipment Financing, Inc.

Name of individual, corporation or partnership

By Kidder Peabody

Title Scam

If corporation, give official title. If owner or partner, state which.

P.O. Box 27248

Address

Tempe  
City

AZ 85285-7248  
State Zip Code

If Debtor is a partnership, enter:

Partners' names

Home addresses

**SPECIAL PROVISIONS INSTRUCTIONS** - The notations to be entered in the Special Provisions section of this document for use in ALABAMA, FLORIDA, GEORGIA, IDAHO, NEVADA, NEW HAMPSHIRE, OREGON, SOUTH DAKOTA and WISCONSIN are shown in the applicable State pages of the Loans and Motor Vehicles Manual.

**NOTICE:** Do not use this form for transactions for personal, family or household purposes. For agricultural and other transactions subject to Federal or State regulations, consult legal counsel to determine documentation requirements.

**Agricultural purposes** generally means farming, including dairy farming, but it also includes the transportation, harvesting, and processing of farm, dairy, or forest products if what is transported, harvested, or processed is farm, dairy, or forest products grown or bred by the user of the equipment itself. It does not apply, for instance, to a logger who harvests someone else's forest, or a contractor who prepares land or harvests products on someone else's farm

In LOUISIANA, form 2305 must accompany this Agreement.

# Guaranty

To: The CIT Group/Equipment Financing, Inc.

P.O. Box 27248

Address

Tempe AZ 85285-7248  
City State Zip Code

Each of us severally requests you to extend credit to or to purchase security agreements, leases, notes, accounts and/or other obligations (herein generally termed "paper") of or from or otherwise to do business with

Sky Haven Coal Inc.  
Company

Penfield  
City

PA  
State

hereinafter called the "Company," and to induce you so to do and in consideration thereof and of benefits to accrue to each of us therefrom, each of us, as a primary obligor, jointly and severally and unconditionally guarantees to you that the Company will fully and promptly pay and perform all its present and future obligations to you, whether direct or indirect, joint or several, absolute or contingent, secured or unsecured, matured or unmatured and whether originally contracted with you or otherwise acquired by you, irrespective of any invalidity or unenforceability of any such obligation or the insufficiency, invalidity or unenforceability of any security therefor; and agrees, without your first having to proceed against the Company or to liquidate paper or any security therefor, to pay on demand all sums due and to become due to you from the Company and all losses, costs, attorneys' fees or expenses which may be suffered by you by reason of the Company's default or default of any of the undersigned hereunder; and agrees to be bound by and on demand to pay any deficiency established by a sale of paper and/or security held, with or without notice to us. This guaranty is an unconditional guarantee of payment and performance. No guarantor shall be released or discharged, either in whole or in part, by your failure or delay to perfect or continue the perfection of any security interest in any property which secures the obligations of the Company or any of us to you, or to protect the property covered by such security interest.

No termination hereof shall be effected by the death of any or all of us. No termination shall be effective except by notice sent to you by certified mail return receipt requested naming a termination date effective not less than 90 days after the receipt of such notice by you; or effective as to any of us who has not given such notice; or affect any transaction effected prior to the effective date of termination.

Each of us waives: notice of acceptance hereof, presentment, demand, protest and notice of nonpayment or protest as to any note or obligation signed, accepted, endorsed or assigned to you by the Company; any and all rights of subrogation, reimbursement, indemnity, exoneration, contribution or any other claim which any of us may now or hereafter have against the Company or any other person directly or contingently liable for the obligations guaranteed hereunder, or against or with respect to the Company's property (including, without limitation, property collateralizing its obligations to you), arising from the existence or performance of this guaranty; all exemptions and homestead laws and any other demands and notices required by law; all setoffs and counterclaims; any and all defenses based on suretyship or any other applicable law, including without limitation all rights and defenses arising out of (i) an election of remedies by you even though that election of remedies may have destroyed rights of subrogation and reimbursement against the Company by operation of law or otherwise, (ii) protections afforded to the Company pursuant to antideficiency or similar laws limiting or discharging the Company's obligations to you, (iii) the invalidity or unenforceability of this guaranty, (iv) the failure to notify any of us of the disposition of any property securing the obligations of the Company, (v) the commercial reasonableness of such disposition or the impairment, however caused, of the value of such property, and (vi) any duty on your part (should such duty exist) to disclose to any of us any matter, fact or thing related to the business operations or condition (financial or otherwise) of the Company or its affiliates or property, whether now or hereafter known by you.

You may at any time and from time to time, without our consent, without notice to us and without affecting or impairing the obligation of any of us hereunder, do any of the following:

- (a) renew, extend (including extensions beyond the original term of the respective item of paper), modify (including changes in interest rates), release or discharge any obligations of the Company, of its customers, of co-guarantors (whether hereunder or under a separate instrument) or of any other party at any time directly or contingently liable for the payment of any of said obligations;
- (b) accept partial payments of said obligations;
- (c) accept new or additional documents, instruments or agreements relating to or in substitution of said obligations;
- (d) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of said obligations and the security therefor in any manner;

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- (e) consent to the transfer or return of the security, take and hold additional security or guarantees for said obligations;
- (f) amend, exchange, release or waive any security or guaranty; or
- (g) bid and purchase at any sale of paper or security and apply any proceeds or security, and direct the order and manner of sale.

If a claim is made upon you at any time for repayment or recovery of any amount(s) or other value received by you, from any source, in payment of or on account of any of the obligations of the Company guaranteed hereunder and you repay or otherwise become liable for all or any part of such claim by reason of:

- (a) any judgment, decree or order of any court or administrative body having competent jurisdiction; or
- (b) any settlement or compromise of any such claim,

we shall remain jointly and severally liable to you hereunder for the amount so repaid or for which you are otherwise liable to the same extent as if such amount(s) had never been received by you, notwithstanding any termination hereof or the cancellation of any note or other agreement evidencing any of the obligations of the Company. This guaranty shall bind our respective heirs, administrators, representatives, successors, and assigns, and shall inure to your successors and assigns, including, but not limited to, any party to whom you may assign any item or items of paper, we hereby waiving notice of any such assignment. All of your rights are cumulative and not alternative.

We shall take all action necessary to assure that our computer-based systems are able to effectively process data including dates and date sensitive functions. We represent and warrant that the Year 2000 problem (that is, the inability of certain computer applications to recognize and correctly perform properly date-sensitive functions involving certain dates prior to and after December 31, 1999) will not result in a material adverse effect on our business condition or ability to perform hereunder. Upon request, we shall provide assurance acceptable to you that our computer systems and software are or will be Year 2000 compliant on a timely basis. We shall immediately advise you in writing of any material changes in our Year 2000 plan, timetable or budget.

**By execution of this guaranty each guarantor hereunder agrees to waive all rights to trial by jury in any action, proceeding, or counterclaim on any matter whatsoever arising out of, in connection with, or related to this guaranty.**

Executed 10-12-99

**Individual  
Guarantors** NOTE: Individual guarantors must sign without titles. Sign "John Smith," not "John Smith, President."  
Use street addresses, not P.O. Boxes.

Joseph A. Owens	<u>Joseph A. Owens</u>	Individually	
RD #1, Box 180	PENFIELD, PA	15849	Home Address
<hr/>			Individually
<hr/>			Home Address
<hr/>			Individually
<hr/>			Home Address
<hr/>			Individually
<hr/>			Home Address

**Witness** James R. Sipchak  
Home Address DM Pittsburgh

Name of Corporation

City

State Zip code

By \_\_\_\_\_ Title \_\_\_\_\_

Have signed by President, Vice President or Treasurer.

**CORPORATE SEAL**

Attest

Secretary

Name of Corporation

City

State Zip Code

By \_\_\_\_\_ Title \_\_\_\_\_

Have signed by President, Vice President or Treasurer.

**CORPORATE SEAL**

Attest

Secretary

## NOTE AND SECURITY AGREEMENT

90071292

4565 William Penn Highway  
Murrysville, PA 15668-2016

\$ 1,736,753.40

Agreement No. S13593 &amp; S13594

Date 5/28/01

Debtor: Sky Haven Coal, Inc.

Corporation  Individual  Partnership  Limited Liability Company  Other \_\_\_\_\_ 

R.R. #1 STREET AND NO.	Penfield CITY	15849-9801 ZIP	Clearfield COUNTY	PA STATE
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QUANTITY	SCHEDULE OF COLLATERAL
One (1)	Used Caterpillar D11R Track Type Tractor, S/N: 7PZ00299 Blade, S/N: 07CP00502 Ripper, S/N: 08RP00401
One (1)	Used Caterpillar 777C Off Highway Truck, S/N: 4XJ00550
	<b>ADDITIONAL COLLATERAL</b>
One (1)	Used Caterpillar D10N Track Type Tractor, S/N: 2YD00921
One (1)	Used Caterpillar 773A Off Highway Truck, S/N: 63G00538
One (1)	Used Caterpillar D9L Track Type Tractor, S/N: 14Y01213

Together with all attachments, accessories and parts used or intended to be used with the above equipment, whether now or hereafter installed therein or affixed thereto, as well as all substitutions, replacements and proceeds from the sale thereof (herein collectively called the "Collateral"). Nothing herein shall be considered as permission to sell the Collateral.

FOR VALUE RECEIVED, and intending to be legally bound, the undersigned ("Debtor") promises to pay to the order of BECKWITH MACHINERY COMPANY ("Beckwith") at 4565 William Penn Highway, Murrysville, Pennsylvania 15668-2016, or at such other place as Beckwith may from time to time designate, the sum of

One Million Seven Hundred Thirty-Six Thousand Seven Hundred Fifty-Three and 40/100 Dollars (\$ 1,736,753.40) as follows:

\$ - 0 - upon the execution hereof by Debtor; \$ - 0 - on delivery of the equipment; and  
\$ 1,736,753.40 the balance of said purchase price ("Time Balance"), as follows:

60 Payments in the amount of \$ 28,945.89, first due on June 28th, 2004 and the same day of each subsequent month thereafter.

7-25-01

Debtor agrees that Beckwith shall have, and there is hereby created in favor of Beckwith, a security interest in the Collateral described or mentioned in the above Schedule of Collateral to secure (i) the payment of the debt evidenced hereby, (ii) all costs and expenses incurred by Beckwith in the collection of the same, including without limitation actual expenditures for reasonable attorneys' fees and legal expenses, (iii) all future advances made by Beckwith for taxes, levies, insurance and repairs to or maintenance of the Collateral, and (iv) all other past, present and future direct or contingent liabilities of Debtor to Beckwith. If the debt secured hereby represents funds or credit advanced by Beckwith for the purchase of the Collateral, or any part thereof, then to that extent Beckwith's security interest is a purchase money security interest. In addition to all rights given to Beckwith by this Note and Security Agreement, Beckwith shall have all rights and remedies of a secured party under the Uniform Commercial Code. Risk of loss of, damage to or destruction of the Collateral is on Debtor.

**ATTENTION DEBTOR: THIS NOTE AND SECURITY AGREEMENT IS SUBJECT TO THE REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS ON THE REVERSE SIDE HEREOF AND THIS NOTE AND SECURITY AGREEMENT INCLUDES, IF THE COLLATERAL DESCRIBED ABOVE HAS BEEN PURCHASED FROM SELLER, THE TERMS AND CONDITIONS OF SELLER'S QUOTATION/OFFER TO SELL, INCLUDING DISCLAIMERS OF WARRANTIES (INCLUDING MERCHANTABILITY), DISCLAIMERS OF TORT LIABILITY (INCLUDING NEGLIGENCE AND STRICT LIABILITY), LIMITATIONS OF REMEDIES, INDEMNIFICATION AND EXCLUSIONS OF DAMAGES.**

NOTWITHSTANDING THE FOREGOING, BECKWITH RESERVES THE RIGHT TO CORRECT MINOR ERRORS AND OMISSIONS COMMITTED BY BECKWITH'S EMPLOYEE WHILE COMPLETING THIS SECURITY AGREEMENT. THIS RIGHT TO CORRECT INCLUDES, BUT IS NOT LIMITED TO, SALES TAX, FREIGHT, INSURANCE, FILING FEES, SPELLING, SERIAL NUMBERS, LEGAL NAME, PAYMENT DATES, ETC. SUCH ERRORS WILL BE UNILATERALLY CORRECTED BY BECKWITH.

COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT, ARE TO BE SENT TO EITHER BECKWITH MACHINERY COMPANY, ATTN: TREASURER, 4565 WILLIAM PENN HIGHWAY, MURRYSVILLE PA 15668 OR ASSIGNEE.

This Note and Security Agreement is Subject to the Representations, Warranties, Covenants & Agreements on the Reverse Side

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Debtor represents, warrants, covenants and agrees that:

(1) The Collateral is as described and is being or will be used primarily in Debtor's business, and Debtor will use it for no other purpose.

(2) The Collateral is owned by Debtor and is not subject to any security interest (except that created hereby) or to any liens or encumbrances and Debtor will defend the same against the claims and demands of all persons.

(3) Debtor will not sell, lease, mortgage, pledge or encumber the Collateral, permit its identity to be lost, permit it to be levied upon or attached under any legal process, part with possession thereof either voluntarily or involuntarily, create any security interest therein (except that created hereby), or otherwise dispose of the same or any of Debtor's rights therein or hereunder.

(4) Debtor will maintain the Collateral in good condition and repair, reasonable wear and tear alone excepted, will use and store the same in a safe and prudent manner, and will pay and discharge all taxes, levies and other impositions levied thereon as well as the cost of repairs to or maintenance of the same. If Debtor fails to do so, Beckwith may pay the cost of such repairs and such taxes, levies and impositions for Debtor's account, adding the amount thereof to the debt secured hereby.

(5) Debtor will insure the Collateral against such risks and casualties and in such amounts as Beckwith shall require. All policies of insurance shall be payable to Beckwith as its interest may appear, and such policies or certificates evidencing the same shall be deposited with Beckwith upon request. If Debtor fails to effect and keep in force such insurance or fails to pay the premium thereon, Beckwith may do so for Debtor's account and add the cost thereof to the debt secured hereby. Debtor hereby assigns and sets over to Beckwith any moneys which may become payable on account of any such insurance, including any return or unearned premiums, and directs the insurers to pay Beckwith any amount so due. Beckwith is hereby irrevocably appointed Debtor's attorney in fact to endorse any draft or check which may be payable to Debtor in order to collect such return or unearned premiums or the proceeds of any such insurance. Any balance of insurance proceeds remaining after payment in full of the debt secured hereby shall be paid to Debtor.

\* (6) Debtor will not remove the Collateral from Pennsylvania without the prior written consent of Beckwith and will permit Beckwith to inspect the Collateral at any time.

(7) Debtor will pay all costs of filing any financing, continuation or termination statement with respect to the security interest created hereby, and Beckwith is hereby irrevocably appointed Debtor's attorney in fact to do all acts and things which it may deem necessary to perfect and continue the perfection of its security interest in the Collateral.

(8) If the Collateral or any part thereof is used in Debtor's farming operations, Debtor will promptly notify Beckwith in writing of any change of residence and hereby certifies that Debtor's present residence is at the address set forth on the face hereof. (Paragraph 8 applies only to farm equipment.)

(9) Debtor's chief place of business is at the address set forth on the face hereof. Debtor will promptly notify Beckwith in writing of (i) any change in the location of its chief place of business and (ii) any change in the location of the Collateral.

(10) If the Collateral or any part thereof is a motor vehicle for which a certificate of title has been issued, Debtor concurrently with the execution hereof has delivered, or within ten days from the date hereof will deliver, such certificate of title to Beckwith and hereby authorizes Beckwith to cause a statement of Beckwith's security interest to be noted as a lien or encumbrance on such certificate. Failure of Debtor to so deliver such certificate of title within ten days from the date hereof shall constitute an event of default hereunder.

(11) If any of the following events (herein called "events of Default") shall occur; that is, if Debtor shall fail to pay any installment according to the terms hereof or shall fail to observe or perform any of the other covenants or agreements hereof, or in case any of the representations or warranties of Debtor herein contained shall prove to be false or misleading, or upon any assignment by Debtor for the benefit of creditors, or if any proceeding in bankruptcy, receivership, reorganization or insolvency shall be filed by or against Debtor, or in the event of the death of Debtor, then, and in any such event, Beckwith may declare the unpaid balance hereof immediately due and payable without demand or notice, enter judgment against Debtor as hereinafter provided, and in addition proceed to exercise one or more of the rights accorded by the Uniform Commercial Code or otherwise by law.

(12) Upon the happening of any event of default, Debtor, upon demand by Beckwith, shall assemble the Collateral and make it available to Beckwith at a place to be designated by Beckwith which is reasonably convenient to both parties. Beckwith may, at its election, enforce its rights under this Paragraph 12 by a bill in equity for specific performance. Debtor grants Beckwith the right to enter upon any premises of Debtor at any time for the purpose of recovering possession of the Collateral after the happening of an event of default, or for the preservation of the rights of Beckwith hereunder, all without demand or notice to Debtor and without prior judicial hearing or legal proceedings which Debtor hereby expressly waives, it being specifically agreed between Debtor and Beckwith that upon the occurrence of an event of default Beckwith, its successors or assigns, shall have immediate right to exclusive possession of the Collateral.

(13) If the proceeds of any sale or other lawful disposition of Collateral by Beckwith following repossession thereof after the happening of an event of default are insufficient to pay the amounts required by law, Debtor shall be liable for any deficiency but shall be entitled to any surplus if any results after the lawful application of such proceeds.

(14) LAWS GOVERNING - EXCLUSIVE VENUE - STATUTE OF LIMITATIONS - AND SEVERABILITY: This Note and Security Agreement shall be governed by and construed under the laws of the Commonwealth of Pennsylvania notwithstanding delivery by Beckwith in a state other than Pennsylvania. Any suit

by Beckwith may be brought in the United States District Court for the Western District of Pennsylvania at Pittsburgh or the Court of Common Pleas of Allegheny County, Pennsylvania. The Customer hereby knowingly and for due consideration agrees to the jurisdiction of the United States District Court for the Western District of Pennsylvania at Pittsburgh or the Court of Common Pleas of Allegheny County, Pennsylvania and waives all rights to contest the jurisdiction of these Courts of the Commonwealth of Pennsylvania. Any suit by Customer for breach of contract, for any alleged tortious conduct or any claim whatsoever brought in law or equity must be filed within one year from the date of the cause of action accrued or be forever barred. Any such suit by Customer must be brought in the United States District Court for the Western District of Pennsylvania at Pittsburgh or the Court of Common Pleas of Allegheny County, Pennsylvania. If any provision of this Note and Security Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof, but this Note and Security Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

(15) The rights and privileges of Beckwith hereunder shall inure to the benefit of its successors and assigns, and the duties and obligations of Debtor hereunder shall bind heirs, personal representatives, successors and assigns. If there be more than one Debtor, the representations, warranties, covenants and agreements of Debtor herein contained shall be joint and several.

(16) If the Collateral described above has been purchased from Beckwith, this Note and Security Agreement, together with Beckwith's Quotation/Offer to Sell and the contract resulting therefrom which are incorporated herein, contains the entire contract between the parties relative to the sale of the Collateral. If the Collateral described above has not been purchased from Beckwith, this Note and Security Agreement contains the entire contract between the parties relative to this transaction and it shall not be binding upon Beckwith until executed on Beckwith's behalf by a duly authorized officer of Beckwith. In any case, Beckwith is not bound by any representations or commitments made by any agent or employee of Beckwith unless the same are included herein. The rights and privileges of Beckwith hereunder shall inure to the benefit of its successors and assigns, and the duties and obligations of Debtor hereunder shall bind its heirs, personal representatives, successors and assigns. If there be more than one Debtor, the representations, warranties, covenants and agreements of Debtor herein contained shall be joint and several.

(17) IF ANY PAYMENT HEREUNDER IS NOT PAID WHEN DUE, DEBTOR AGREES TO PAY CONCURRENTLY WITH THE PAYMENT OF SUCH OVERDUE PAYMENT, A CHARGE EQUAL TO 5% OF THE AMOUNT OF THE OVERDUE PAYMENT, PER MONTH.

(18) DEBTOR HEREBY EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR DEBTOR AND, WITH OR WITHOUT ONE OR MORE DECLARATIONS FILED, CONFESS A JUDGMENT OR JUDGMENTS AGAINST DEBTOR IN FAVOR OF THE HOLDER HEREOF AS OF ANY TERM FOR THE UNPAID BALANCE HEREOF WITH COSTS OF SUIT AND REASONABLE ATTORNEY'S FEES FOR COLLECTION, WITH RELEASE OF ALL ERRORS AND WITHOUT STAY OF EXECUTION, AND INQUISITION AND EXTENSION UPON ANY LEVY ON REAL ESTATE IS HEREBY WAIVED AND CONDEMNATION AGREED TO AND THE EXEMPTION OF ALL PROPERTY FROM LEVY AND SALE ON ANY EXECUTION THEREON AND EXEMPTION OF WAGES FROM ATTACHMENT, ARE ALSO HEREBY EXPRESSLY WAIVED, AND NO BENEFIT OF EXEMPTION SHALL BE CLAIMED UNDER OR BY VIRTUE OF ANY EXEMPTION LAW NOW IN FORCE OR WHICH MAY HEREAFTER BE ENACTED.

BY OUR SIGNATURES BELOW, THE UNDERSIGNED HEREBY ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THAT THE IMMEDIATELY PRECEDING PARAGRAPH ENABLES BECKWITH MACHINERY COMPANY TO OBTAIN A JUDGMENT OR JUDGMENTS AGAINST THEM WITHOUT AN OPPORTUNITY FOR A HEARING AND WITHOUT ANY PRIOR NOTICE OR OPPORTUNITY TO RESPOND. UNDERSIGNED FURTHER ACKNOWLEDGE THAT THEY HAVE EXECUTED AND SIGNED THIS NOTE AND SECURITY AGREEMENT AFTER HAVING CONSULTED AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL AND UNDERSIGNED NONETHELESS KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY HAVE AGREED TO WAIVE AND GIVE UP THEIR CONSTITUTIONAL RIGHT TO NOTICE AND HEARING PRIOR TO THE ENTRY OF JUDGMENT OR TO NOTICE AND HEARING WITH RESPECT TO DEFENSES OR VALID OBJECTIONS TO THE JUDGMENT. UNDERSIGNED FURTHER UNDERSTAND THAT AFTER ENTRY OF JUDGMENT BECKWITH MACHINERY COMPANY HAS THE RIGHT TO CAUSE A WRIT OF EXECUTION TO BE ISSUED AND PROPERTY AND ASSETS SEIZED WITHOUT THE OPPORTUNITY FOR A PREDEPRIVATION NOTICE OR HEARING OR JUDICIAL DETERMINATION OF ANY NATURE, AND NONETHELESS, KNOWINGLY VOLUNTARILY AND INTELLIGENTLY AGREE TO WAIVE ANY SUCH HEARING OR PRIOR NOTICE EITHER BEFORE OR AFTER ENTRY OF JUDGMENT.

WITNESS the due execution hereof the day and year first above written.  
DEBTOR:

By Joseph A. Dill President (Title)  
By \_\_\_\_\_ (Title)  
By \_\_\_\_\_ (Title)

Witness: J. Fleury

BECKWITH MACHINERY COMPANY

By J. Fleury  
 Edward A. Dills, Vice President & Chief Financial Officer  
 T. J. Fleury, Treasurer & General Credit Manager

## GUARANTY

Date: 5/28/01

WHEREAS, Sky Haven Coal, Inc. (hereinafter called the "Debtor"), desires to transact business with and to obtain credit or a continuation of credit from Beckwith Machinery Company, a Pennsylvania corporation (hereinafter called "BMCo"), and

WHEREAS, BMCo is unwilling to extend or continue credit to the Debtor unless it receives a guaranty of the undersigned covering the Liabilities of the Debtor to BMCo as hereinafter defined.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration and in order to induce BMCo to enter into a Note and Security Agreement dated 5/28/01 the undersigned hereby guarantees, absolutely and unconditionally, to BMCo the payment of all liabilities of the Debtor to BMCo of whatever nature, whether now existing or hereafter incurred, whether created directly or acquired by BMCo by assignment or otherwise, whether matured or unmatured and whether absolute or contingent, irrespective of any invalidity therein, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefore (all of which are hereinafter collectively referred to as the "Liabilities of the Debtor").

The undersigned agrees that, with notice and demand, the undersigned shall reimburse BMCo, to the extent that such reimbursement is not made by the Debtor, for all expenses (including counsel fees) incurred by BMCo in connection with any of the Liabilities of the Debtor or the collection thereof, and will pay reasonable attorney's fees (15% of the amount then due but not exceeding the maximum, if any, permitted by law) if this Guaranty is placed with an attorney for collection from the undersigned.

All monies available to BMCo for application in payment or reduction of the Liabilities of the Debtor may be applied by BMCo in such manner and in such amounts and at such time or times as it may see fit to the payment or reduction of such of the Liabilities of the Debtor as BMCo may elect.

The undersigned hereby consents that from time to time, before or after any default by the Debtor, with notice to and without assent from the undersigned, any security at any time held by or available to BMCo for any obligation of any other person secondarily or otherwise liable for the Liabilities of the Debtor, may be exchanged, surrendered or released and any obligation of the Debtor, or of any such other person, may be changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or any default with respect thereto waived, and BMCo may release, in whole or in part, any other person, and may extend further credit in any manner whatsoever to the Debtor, and generally deal with the Debtor or any security or other person as BMCo may see fit; and the undersigned shall remain bound under this guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, or other dealing.

This is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action be brought against the Debtor or any other person or to require that resort be had to any security.

Each of the undersigned hereby subordinates any sums now or hereafter due to him from the Debtor (the "Subordinated Indebtedness") to the payment of any sums now or hereafter due to BMCo from the Debtor and assigns, transfers and sets over unto BMCo all of his or its right, title and interest in and to the Subordinated Indebtedness (and agrees to execute any additional assignments and instruments that BMCo may deem necessary or desirable to effectuate, complete, perfect or further confirm such assignment and transfer); provided, however, that, unless and until the Debtor shall default in the payment, performance or discharge of any obligation to BMCo, the undersigned may receive payments of principal of and interest on the Subordinated Indebtedness. In the event of any such default, and for so long thereafter as the Debtor shall be indebted to BMCo, each of undersigned (a) agrees that he or it will not, without the prior written consent of BMCo demand, take steps for the collection of, or assign, transfer or otherwise dispose of the Subordinated Indebtedness or any part thereof or realize upon or enforce any collateral securing the Subordinated Indebtedness or any part thereof and will not demand or accept any property of the Debtor as security for the Subordinated Indebtedness or any part thereof; (b) agrees that he or it will deliver to BMCo upon demand each negotiable or other instrument held by him or it evidencing all or any part of the Subordinated Indebtedness and any security received for or on account of the Subordinated Indebtedness; and (c) authorizes and empowers BMCo or any person BMCo may designate to demand, receive, sue for, collect, receipt for and give full discharge for the Subordinated Indebtedness, to endorse any checks, drafts, notes or other orders and instruments for the payment thereof payable to or to the order of the undersigned that may be Subordinated Indebtedness but for this agreement; and any and all payments made on account of the Subordinated Indebtedness received by the undersigned after any such default shall be held by the undersigned.

The term "undersigned" as used herein shall, if this instrument is signed by more than one party, mean the "undersigned and each of them" and each undertaking herein contained shall be their joint and several undertaking provided, however, that in the next succeeding paragraph hereof the terms "undersigned" shall mean the "undersigned or any of them." If any party hereto shall be a partnership, the agreements and obligations on the part of the undersigned herein contained shall remain in force and applicable notwithstanding any changes in the individuals composing the partnership and the term "undersigned" shall include any altered or successive partnerships but the predecessor partnerships and the partners shall not thereby be released from any obligation or liability.

No delay on the part of BMCo in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of BMCo to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of Pennsylvania and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State; and no defense given or allowed by the laws of any other State or country shall be interposed in any action hereon unless such defense is also given or allowed by the laws of the State of

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Pennsylvania. The words Beckwith Machinery Company and "BMCo" as used herein shall include and this instrument shall apply in favor of successors and assigns of Beckwith Machinery Company.

THE UNDERSIGNED HEREBY EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR THE UNDERSIGNED AND, WITH OR WITHOUT ONE OR MORE DECLARATIONS FILED, CONFESS A JUDGMENT OR JUDGMENTS AGAINST THE UNDERSIGNED IN FAVOR OF HOLDER HEREOF, AS OF ANY TERMS, FOR THE UNPAID TIME BALANCE, TOGETHER WITH COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF 15 PERCENT FOR COLLECTION, WITH RELEASE OF ALL ERRORS AND WITHOUT STAY OF EXECUTION, AND INQUISITION AND EXTENSION UPON ANY LEVY OR REAL ESTATE IS HEREBY WAIVED AND CONDEMNATION AGREED TO AND THE EXEMPTION OF ALL PROPERTY FROM LEVY AND SALE ON ANY EXECUTION THEREON, AND EXEMPTION OF WAGES FROM ATTACHMENT, ARE ALSO HEREBY EXPRESSLY WAIVED, AND NO BENEFIT OF EXEMPTION SHALL BE CLAIMED UNDER OR BY VIRTUE OF ANY EXEMPTION LAW NOW IN FORCE OR WHICH MAY HEREAFTER BE ENACTED.

By our signatures below, the undersigned hereby acknowledge that they have read and understand that the immediately preceding paragraph enables Beckwith Machinery Company to obtain a judgment or judgments against them without an opportunity for a hearing and without any prior notice or opportunity to respond. Undersigned further acknowledge that they have executed and signed this note after having consulted or having had an opportunity to consult with legal counsel and undersigned nonetheless knowingly, voluntarily and intelligently have agreed to waive and give up their constitutional right to notice and hearing prior to the entry of judgment or to notice and hearing with respect to defenses or valid objections to the judgment. Undersigned further understand that after entry of judgment, Beckwith Machinery Company has the right to cause a writ of execution to be issued and property and assets seized without the opportunity for a predeprivation notice or hearing or judicial determination of any nature, and nonetheless, knowingly, voluntarily and intelligently agree to waive any such hearing or prior notice either before or after entry of Judgment.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, executes this Guaranty as of the date first written above.

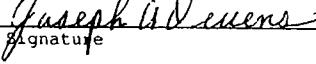
Witness



Joseph A. Owens

Name of Guarantor

By



Signature

Address



FROM: BECKWITH MACHINERY COMPANY (BMCo)

TO: The CIT Group/Equipment Financing (The Assignee)

1. To induce the Assignee to purchase the attached note and security agreement, security agreement, lease agreement or rental agreement (the Agreement) dated 05/28/2001 between BMCo and Sky Haven Coal Inc. (Debtor), without recourse except as provided in paragraph 4 below, BMCo warrants to Assignee that: The Agreement and any accompanying guaranty, waiver or other instrument are genuine and enforceable (except as such enforcement may be limited by the application of bankruptcy, receivership and other laws affecting creditors' rights generally); the Agreement and any accompanying guaranty, waiver or other instrument are free from defenses, setoffs and counterclaims; all names, addresses and other statements contained therein are correct; in the case of a sale, rental or lease, the property described in the Agreement (the Collateral) has been delivered to the Debtor; in the case of a sale, the Debtor has paid the down payment shown in the Agreement in cash, discount or trade allowance, and no part thereof has been loaned by BMCo; the Agreement evidences a prior perfected security interest in or a valid reservation of title to the Collateral; BMCo has properly and timely filed or recorded the Agreement or an appropriate financing statement with respect thereto as required by applicable filing and recording statutes (however, it is understood that any filings which are hereafter required to maintain a priority position, or which may be desirable shall be the exclusive responsibility of the Assignee) BMCo has the right, power and capacity to make this Assignment and this Assignment transfers to Assignee good title to the Agreement and any accompanying guaranty, waiver or other instrument and all rights of BMCo thereunder; the Collateral is free and clear of all liens and encumbrances, except those arising under the Agreement; the balance shown in the Agreement is unpaid and owing as provided in the Agreement free from defenses, setoffs and counterclaims.

2. BMCo hereby sells, transfers and assigns to the Assignee all of BMCo's right, title and interest in and to the Agreement any accompanying guaranty, waiver or other instrument, and the Collateral and all of BMCo's rights and remedies thereunder, and with respect thereto, including without limitation the right to collect all sums due under the Agreement and any such guaranty or other instrument and to take in the name of the Assignee or BMCo any action which BMCo might otherwise take except for this Assignment. BMCo gives express permission to release, compromise and adjust any and all rights against, and to grant extensions of time of payment to the Debtor or to any other person obligated on the contract, and the right to agree to the substitution of a Debtor, all without notice to BMCo and without reducing BMCo's liability under this Agreement.

3. If BMCo receives any payment from the Debtor with respect to the Agreement or the Collateral, BMCo will receive the same in trust for the benefit of the Assignee and will deliver the same to the Assignee without demand or notice.

4. In the event of any material breach by BMCo of the foregoing warranties and any default by the Debtor under the Agreement, BMCo hereby agrees unconditionally to purchase the Agreement and any accompanying guaranty, waiver or other instrument from the Assignee upon demand made by the Assignee at any time following the occurrence of such default for the full amount then unpaid under the Agreement less any unearned finance charge applicable thereto.

5. This Assignment, and any guaranty, waiver or other instrument specifically made a part hereof by a written agreement between BMCo and Assignee, constitutes the only agreement between BMCo and the Assignee relating to the Agreement and the Collateral.

6. This Assignment is made by BMCo for good and valuable consideration, and BMCo intends to be legally bound hereby and to legally bind its successors and assigns.

Dated: June 19, 2001

BECKWITH MACHINERY COMPANY

By \_\_\_\_\_  
T.J. Flury, Treasurer

(Rev. #2-6/80)

EXHIBIT

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BECKWITH MACHINERY COMPANY  
NOTE AND SECURITY AGREEMENT

90093709

4565 William Penn Highway  
Murrysville, PA 15668-2016

\$ 864,000.00 Agreement No. S16350 Date 8/20/02

Debtor: Sky Haven Coal, Inc.

Corporation  Individual  Partnership  Limited Liability Company  Other

R.D. #1 Box 180 STREET AND NO.	Penfield CITY	15849-9801 ZIP	Clearfield COUNTY	PA STATE
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QUANTITY	SCHEDULE OF COLLATERAL
One (1)	Used Caterpillar 777D Off Highway Truck, S/N: 03PR00790
ADDITIONAL COLLATERAL	
One (1)	Used Manitowoc 4600 Dragline, S/N: <del>452700X</del> 45183 <i>released</i>
One (1)	Used Lima 2400 Dragline, S/N: 3433-4 <i>released</i>
One (1)	Used Lima 2400 Dragline, S/N: 3615-1
One (1)	Used Lima 2400B Dragline, S/N: <del>122009X</del> 712A103
One (1)	Used Lima 2400B Dragline, S/N: 3479-5
Together with all attachments, accessories and parts used or intended to be used with the above equipment, whether now or hereafter installed therein or affixed thereto, as well as all substitutions, replacements and proceeds from the sale thereof (herein collectively called the "Collateral"). Nothing herein shall be considered as permission to sell the Collateral.	

FOR VALUE RECEIVED, and intending to be legally bound, the undersigned ("Debtor") promises to pay to the order of BECKWITH MACHINERY COMPANY ("Beckwith") at 4565 William Penn Highway, Murrysville, Pennsylvania 15668-2016, or at such other place as Beckwith may from time to time designate, the sum of

Eight Hundred Sixty Four Thousand and 00/000 Dollars (\$ 864,000.00) as follows:

\$ - 0 - upon the execution hereof by Debtor; \$ - 0 - on delivery of the equipment; and  
\$ 864,000.00 the balance of said purchase price ("Time Balance"), as follows:

48 Payments in the amount of \$ 18,000.00, first due on August 20, 2002 and the same day of each subsequent month thereafter.

Debtor agrees that Beckwith shall have, and there is hereby created in favor of Beckwith, a security interest in the Collateral described or mentioned in the above Schedule of Collateral to secure (i) the payment of the debt evidenced hereby, (ii) all costs and expenses incurred by Beckwith in the collection of the same, including without limitation actual expenditures for reasonable attorneys' fees and legal expenses, (iii) all future advances made by Beckwith for taxes, levies, insurance and repairs to or maintenance of the Collateral, and (iv) all other past, present and future direct or contingent liabilities of Debtor to Beckwith. If the debt secured hereby represents funds or credit advanced by Beckwith for the purchase of the Collateral, or any part thereof, then to that extent Beckwith's security interest is a purchase money security interest. In addition to all rights given to Beckwith by this Note and Security Agreement, Beckwith shall have all rights and remedies of a secured party under the Uniform Commercial Code. Risk of loss of, damage to or destruction of the Collateral is on Debtor.

ATTENTION DEBTOR: THIS NOTE AND SECURITY AGREEMENT IS SUBJECT TO THE REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS ON THE REVERSE SIDE HEREOF AND THIS NOTE AND SECURITY AGREEMENT INCLUDES, IF THE COLLATERAL DESCRIBED ABOVE HAS BEEN PURCHASED FROM SELLER, THE TERMS AND CONDITIONS OF SELLER'S QUOTATION/OFFER TO SELL, INCLUDING DISCLAIMERS OF WARRANTIES (INCLUDING MERCHANTABILITY), DISCLAIMERS OF TORT LIABILITY (INCLUDING NEGLIGENCE AND STRICT LIABILITY), LIMITATIONS OF REMEDIES, INDEMNIFICATION AND EXCLUSIONS OF DAMAGES.

NOTWITHSTANDING THE FOREGOING, BECKWITH RESERVES THE RIGHT TO CORRECT MINOR ERRORS AND OMISSIONS COMMITTED BY BECKWITH'S EMPLOYEE WHILE COMPLETING THIS SECURITY AGREEMENT. THIS RIGHT TO CORRECT INCLUDES, BUT IS NOT LIMITED TO, SALES TAX, FREIGHT, INSURANCE, FILING FEES, SPELLING, SERIAL NUMBERS, LEGAL NAME, PAYMENT DATES, ETC. SUCH ERRORS WILL BE UNILATERALLY CORRECTED BY BECKWITH.

COMMUNICATIONS CONCERNING DISPUTED DEBTS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT, ARE TO BE SENT TO EITHER BECKWITH MACHINERY COMPANY, ATTN: TREASURER, 4565 WILLIAM PENN HIGHWAY, MURRYSVILLE PA 15668 OR ASSIGNEE.

This Note and Security Agreement is Subject to the Representations, Warranties, Covenants & Agreements on the Reverse Side

EXHIBIT

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GUARANTY

Date: August 20, 2002

WHEREAS, Sky Haven Coal, Inc. (hereinafter called the "Debtor"), desires to transact business with and to obtain credit or a continuation of credit from Beckwith Machinery Company, a Pennsylvania corporation (hereinafter called "BMCo"), and

WHEREAS, BMCo is unwilling to extend or continue credit to the Debtor unless it receives a guaranty of the undersigned covering the Liabilities of the Debtor to BMCo as hereinafter defined.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration and in order to induce BMCo to enter into a Note and Security Agreement dated 8/20/02, the undersigned hereby guarantees, absolutely and unconditionally, to BMCo the payment of all liabilities of the Debtor to BMCo of whatever nature, whether now existing or hereafter incurred, whether created directly or acquired by BMCo by assignment or otherwise, whether matured or unmatured and whether absolute or contingent, irrespective of any invalidity therein, the unenforceability thereof or the insufficiency, invalidity or unenforceability of any security therefore (all of which are hereinafter collectively referred to as the "Liabilities of the Debtor").

The undersigned agrees that, with notice and demand, the undersigned shall reimburse BMCo, to the extent that such reimbursement is not made by the Debtor, for all expenses (including counsel fees) incurred by BMCo in connection with any of the Liabilities of the Debtor or the collection thereof, and will pay reasonable attorney's fees (15% of the amount then due but not exceeding the maximum, if any, permitted by law) if this Guaranty is placed with an attorney for collection from the undersigned.

All monies available to BMCo for application in payment or reduction of the Liabilities of the Debtor may be applied by BMCo in such manner and in such amounts and at such time or times as it may see fit to the payment or reduction of such of the Liabilities of the Debtor as BMCo may elect.

The undersigned hereby consents that from time to time, before or after any default by the Debtor, with notice to and without assent from the undersigned, any security at any time held by or available to BMCo for any obligation of any other person secondarily or otherwise liable for the Liabilities of the Debtor, may be exchanged, surrendered or released and any obligation of the Debtor, or of any such other person, may be changed, altered, renewed, extended, continued, surrendered, compromised, waived or released in whole or in part, or any default with respect thereto waived, and BMCo may release, in whole or in part, any other person, and may extend further credit in any manner whatsoever to the Debtor, and generally deal with the Debtor or any security or other person as BMCo may see fit; and the undersigned shall remain bound under this guaranty notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, or other dealing.

This is a guaranty of payment and not of collection and the undersigned further waives any right to require that any action be brought against the Debtor or any other person or to require that resort be had to any security.

Each of the undersigned hereby subordinates any sums now or hereafter due to him from the Debtor (the "Subordinated Indebtedness") to the payment of any sums now or hereafter due to BMCo from the Debtor and assigns, transfers and sets over unto BMCo all of his or its right, title and interest in and to the Subordinated Indebtedness (and agrees to execute any additional assignments and instruments that BMCo may deem necessary or desirable to effectuate, complete, perfect or further confirm such assignment and transfer); provided, however, that, unless and until the Debtor shall default in the payment, performance or discharge of any obligation to BMCo, the undersigned may receive payments of principal of and interest on the Subordinated Indebtedness. In the event of any such default, and for so long thereafter as the Debtor shall be indebted to BMCo, each of undersigned (a) agrees that he or it will not, without the prior written consent of BMCo demand, take steps for the collection of, or assign, transfer or otherwise dispose of the Subordinated Indebtedness or any part thereof or realize upon or enforce any collateral securing the Subordinated Indebtedness or any part thereof and will not demand or accept any property of the Debtor as security for the Subordinated Indebtedness or any part thereof; (b) agrees that he or it will deliver to BMCo upon demand each negotiable or other instrument held by him or it evidencing all or any part of the Subordinated Indebtedness and any security received for or on account of the Subordinated Indebtedness; and (c) authorizes and empowers BMCo or any person BMCo may designate to demand, receive, sue for, collect, receipt, for and give full discharge for the Subordinated Indebtedness, to endorse any checks, drafts, notes or other orders and instruments for the payment thereof payable to or to the order of the undersigned that may be Subordinated Indebtedness but for this agreement; and any and all payments made on account of the Subordinated Indebtedness received by the undersigned after any such default shall be held by the undersigned.

The term "undersigned" as used herein shall, if this instrument is signed by more than one party, mean the "undersigned and each of them" and each undertaking herein contained shall be their joint and several undertaking provided, however, that in the next succeeding paragraph hereof the terms "undersigned" shall mean the "undersigned or any of them." If any party hereto shall be a partnership, the agreements and obligations on the part of the undersigned herein contained shall remain in force and applicable notwithstanding any changes in the individuals composing the partnership and the term "undersigned" shall include any altered or successive partnerships but the predecessor partnerships and the partners shall not thereby be released from any obligation or liability.

No delay on the part of BMCo in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligation of the undersigned or of the right of BMCo to take further action without notice or demand as provided herein; nor in any event shall any modification or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the State of Pennsylvania and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State; and no defense given or allowed by the laws of any other State or Country shall be interposed in any action hereon unless such defense is also given or allowed by the laws of the State of

EXHIBIT

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Pennsylvania. The words Beckwith Machinery Company and "BMCo" as used herein shall include and this instrument shall apply in favor of successors and assigns of Beckwith Machinery Company.

THE UNDERSIGNED HEREBY EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES OR ELSEWHERE TO APPEAR FOR THE UNDERSIGNED AND, WITH OR WITHOUT ONE OR MORE DECLARATIONS FILED, CONFESS A JUDGMENT OR JUDGMENTS AGAINST THE UNDERSIGNED IN FAVOR OF HOLDER HEREOF, AS OF ANY TERMS, FOR THE UNPAID TIME BALANCE, TOGETHER WITH COSTS OF SUIT AND AN ATTORNEY'S COMMISSION OF 15 PERCENT FOR COLLECTION, WITH RELEASE OF ALL ERRORS AND WITHOUT STAY OF EXECUTION, AND INQUISITION AND EXTENSION UPON ANY LEVY ON REAL ESTATE IS HEREBY WAIVED AND CONDEMNATION AGREED TO AND THE EXEMPTION OF ALL PROPERTY FROM LEVY AND SALE ON ANY EXECUTION THEREON, AND EXEMPTION OF WAGES FROM ATTACHMENT, ARE ALSO HEREBY EXPRESSLY WAIVED, AND NO BENEFIT OF EXEMPTION SHALL BE CLAIMED UNDER OR BY VIRTUE OF ANY EXEMPTION LAW NOW IN FORCE OR WHICH MAY HEREAFTER BE ENACTED.

By our signatures below, the undersigned hereby acknowledge that they have read and understand that the immediately preceding paragraph enables Beckwith Machinery Company to obtain a judgment or judgments against them without an opportunity for a hearing and without any prior notice or opportunity to respond. Undersigned further acknowledge that they have executed and signed this note after having consulted or having had an opportunity to consult with legal counsel and undersigned nonetheless knowingly, voluntarily and intelligently have agreed to waive and give up their constitutional right to notice and hearing prior to the entry of judgment or to notice and hearing with respect to defenses or valid objections to the judgment. Undersigned further understand that after entry of judgment, Beckwith Machinery Company has the right to cause a writ of execution to be issued and property and assets seized without the opportunity for a predeprivation notice or hearing or judicial determination of any nature, and nonetheless, knowingly, voluntarily and intelligently agree to waive any such hearing or prior notice either before or after entry of Judgment.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, executes this Guaranty as of the date first written above.

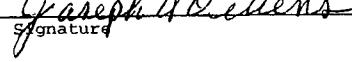
Witness



Joseph A. Owens

Name of Guarantor

By



Signature

Address

WITHOUT REOURSE ASSIGNMENT

FROM: BECKWITH MACHINERY COMPANY (BMC)  
TO: The CIT Group/Equipment Financing (The Assignee)

1. To induce the Assignee to purchase the attached note and security agreement, security agreement, lease agreement or rental agreement (the Agreement) dated 8/20/02 between BMC and Sky Haven Coal Inc. (Debtor), without recourse except as provided in paragraph 4 below, BMC warrants to Assignee that: The Agreement and any accompanying guaranty, waiver or other instrument are genuine and enforceable (except as such enforcement may be limited by the application of bankruptcy, receivership and other laws affecting creditors' rights generally); the Agreement and any accompanying guaranty, waiver or other instrument are free from defenses, setoffs and counterclaims; all names, addresses and other statements contained therein are correct; in the case of a sale, rental or lease, the property described in the Agreement (the Collateral) has been delivered to the Debtor; in the case of a sale, the Debtor has paid the down payment shown in the Agreement in cash, discount or trade allowance, and no part thereof has been loaned by BMC; the Agreement evidences a prior perfected security interest in or a valid reservation of title to the Collateral; BMC has properly and timely filed or recorded the Agreement or an appropriate financing statement with respect thereto as required by applicable filing and recording statutes (however, it is understood that any filings which are hereafter required to maintain a priority position, or which may be desirable shall be the exclusive responsibility of the Assignee) BMC has the right, power and capacity to make this Assignment and this Assignment transfers to Assignee good title to the Agreement and any accompanying guaranty, waiver or other instrument and all rights of BMC thereunder; the Collateral is free and clear of all liens and encumbrances, except those arising under the Agreement; the balance shown in the Agreement is unpaid and owing as provided in the Agreement free from defenses, setoffs and counterclaims.

2. BMC hereby sells, transfers and assigns to the Assignee all of BMC's right, title and interest in and to the Agreement, any accompanying guaranty, waiver or other instrument, and the Collateral and all of BMC's rights and remedies thereunder, and with respect thereto, including without limitation the right to collect all sums due under the Agreement and any such guaranty or other instrument and to take in the name of the Assignee or BMC any action which BMC might otherwise take except for this Assignment. BMC gives express permission to release, compromise and adjust any and all rights against, and to grant extensions of time of payment to the Debtor or to any other person obligated on the contract, and the right to agree to the substitution of a Debtor, all without notice to BMC and without reducing BMC's liability under this Agreement.

3. If BMC receives any payment from the Debtor with respect to the Agreement or the Collateral, BMC will receive the same in trust for the benefit of the Assignee and will deliver the same to the Assignee without demand or notice.

4. In the event of any material breach by BMC of the foregoing warranties and any default by the Debtor under the Agreement, BMC hereby agrees unconditionally to purchase the Agreement and any accompanying guaranty, waiver or other instrument from the Assignee upon demand made by the Assignee at any time following the occurrence of such default for the full amount then unpaid under the Agreement less any unearned finance charge applicable thereto.

5. This Assignment, and any guaranty, waiver or other instrument specifically made a part hereof by a written agreement between BMC and Assignee, constitutes the only agreement between BMC and the Assignee relating to the Agreement and the Collateral.

6. This Assignment is made by BMC for good and valuable consideration, and BMC intends to be legally bound hereby and to legally bind its successors and assigns.

Dated: August 23, 2002

BECKWITH MACHINERY COMPANY

By   
T.J. Fleury, Treasurer

(Rev. #2-6/80)

EXHIBIT

tables

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# In The Court of Common Pleas of Clearfield County, Pennsylvania

THE CIT GROUP/EQUIPMENT FINANCING INC

VS.

OWENS, JOSEPH A.

Sheriff Docket #

14905

03-1805-CD

## VERIFIED COMPLAINT FOR BREACH OF CONTRACT

### SHERIFF RETURNS

NOW JANUARY 2, 2004 AT 2:30 PM SERVED THE WITHIN VERIFIED COMPLAINT FOR BREACH OF CONTRACT ON JOSEPH A. OWENS, DEFENDANT AT RESIDENCE, 5493 STATE PARK ROAD, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ALBERTA OWENS, WIFE A TRUE AND ATTESTED COPY OF THE ORIGINAL VERIFIED COMPLAINT FOR BREACH OF CONTRACT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

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#### Return Costs

Cost	Description
29.89	SHERIFF HAWKINS PAID BY: ATTY Ck# 815235
10.00	SURCHARGE PAID BY: ATTY Ck# 815236

---

Sworn to Before Me This

27<sup>th</sup> Day Of Feb. 2004  
W. A. Shaw

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester Hawkins*  
*by Marilynn Haskin*

Chester A. Hawkins  
Sheriff

FILED  
01/31/2004  
FEB 27 2004  
K20

William A. Shaw  
Prothonotary-Clerk of Courts

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION – LAW

THE CIT GROUP/EQUIPMENT  
FINANCING, INC.,

Plaintiff, : Case No. 2003-1805-CD

vs.

JOSEPH A. OWENS,

Defendant. : **PRAECIPE TO  
DISCONTINUE ACTION**

Filed on behalf of Plaintiff,  
The CIT Group/Equipment  
Financing, Inc.

Counsel of Record for this Party:

Gregory L. Taddonio, Esq.  
PA ID # 88564

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-7102

**FILED**

OCT 05 2004

11:40 am

William A. Shaw  
Prothonotary

2 CIRCUIT

CENT. OF REC. TO

ATTY + COPY TO C/A

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

THE CIT GROUP/EQUIPMENT :  
FINANCING, INC., : Case No. 2003-1805-CD  
: Plaintiff, :  
vs. :  
: **PRAECIPE TO**  
JOSEPH A. OWENS, : **DISCONTINUE ACTION**  
: Defendant, :  
:

TO THE PROTHONOTARY:

Please mark the above-captioned case discontinued as to all defendants.

Dated: October 4, 2004

Respectfully submitted,

  
\_\_\_\_\_  
Gregory J. Taddonio, Esq.  
Counsel for the Plaintiff,  
The CIT Group/Equipment Financing, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on October 4, 2004, a true and correct copy of the foregoing Praecipe to Discontinue Action was served via U.S. First Class Mail on the following:

David K. Rudov, Esq.  
Rudov & Stein  
100 First Avenue, Suite 500  
Pittsburgh, PA 15222

Ann Wood, Esq.  
Bell Silberblatt & Wood  
318 East Locust Street  
P.O. Box 670  
Clearfield, PA 16830

  
\_\_\_\_\_  
Gregory L. Taddonio, Esq.  
Counsel for  
The CIT Group/Equipment Financing, Inc.

**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Cit Group/Equipment Financing, Inc.**

**Vs.** **No. 2003-01805-CD**  
**Joseph A. Owens**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on October 5, 2004, marked:

Discontinued

Record costs in the sum of \$124.89 have been paid in full by Reed Smith LLP.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 5th day of October A.D. 2004.

---

William A. Shaw, Prothonotary