

AGREEMENT

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THIS AGREEMENT, made and entered into on this the 1 day of April, 1933, by and between G.F. Peter, hereinafter called the Lessor, party of the first part, and the Little Gem Coal Company, hereinafter called the Lessee, party of the second part;

WITNESSETH:

That the Lessor, for the consideration hereinafter named, has demised and let, and by these presents does demise and let, to the said Lessee the right and privilege of mining coal on what is commonly known as the "Montevallo Seam", in the following lands of the Lessor in Shelby County, Alabama, to-wit:

The Northwest Quarter of the Northwest Quarter of Section 32, Township 21 South, Range 3 West.

TO HAVE AND TO HOLD to said Lessee for a term of ten (10) years from the 1st day of April, 1933, upon the terms and conditions hereinafter set forth, with the right of renewal for an additional term of ten (10) years, upon the terms and conditions obtaining during the last seven years of the original term if no provision of the original contract has been violated, to-wit:

FIRST: The Lessee shall have the right to open or sink such shafts, slopes or drifts as may be necessary or proper for mining coal, and shall have the right to build roads over said lands for the convenient transportation of coal from said lands, and the carrying and transportation to and from said lands of all materials, implements, and instruments that may be of use in mining said coal, or preparing the same for market, and shall have the right to use the surface of said lands for erection of coke ovens, tipples, houses for employees, and such stores and office buildings as may be used in the prosecution of the Lessee's business of mining coal from lands herein leased, and for no other purpose whatsoever.

SECOND: The Lessee shall be authorized, as hereinafter limited, to take possession of the lands embraced in this lease, upon the execution and delivery of this agreement and shall begin mining coal on said lands within thirty days after taking possession of said lands hereunder, or as soon thereafter as the coal can be reached through a slope or opening, now existing, or by a slope or opening which the Lessee shall make or drive with promptness and diligence.

THIRD: The Lessee shall pay the Lessor a royalty of 12½ cents per ton of Two thousand (2000) pounds of run of mine coal mined from said lands hereunder. Said run of mine coal mined from said lands shall be weighed at the tipples, and the said weights thereof shall be binding upon the parties and payments of rent or royalty at said rate shall be based upon said tippie weights. But should the Lessor prefer that payments of royalty as herein provided be based upon joint surveys of engineers of each party hereto; In that case in the event of a disagreement between said engineers, a third engineer shall be selected by the engineers of said parties whose decision as to the amount of coal mined on said land shall be final and binding, and in estimating the quantity of coal mined, one ton of coal shall be considered as containing 25.0 cubic feet,

FOURTH: The Lessee must pay to the Lessor the said royalty in monthly installments, the first payment to be made on the 20th day of the month following the month in which actual mining is begun hereunder and the Lessee shall pay at that time royalty at the rate of 12½ cents per ton on all of said run of mine coal mined on said land during the month in which actual mining is commenced and subsequent payments must be made on the 20th day of each succeeding month after that date for all of said run of mine coal mined during the preceding calendar month though such payments may amount to more than the minimum royalty hereinafter required to be paid. No minimum royalty shall be paid for and during the first two years but on and after the 1 day of April, 1935, the Lessee must pay to the Lessor not less than the sum of \$20.00 per month on the 20th day of each month beginning on said date last mentioned and continuing for one year, and from and after the 1 day of April, 1936, the Lessee must pay to the Lessor not less than the sum of \$40.00 on the 20th day of each month beginning on said date last mentioned all as rental or minimum royalty for the preceding month irrespective of the quantity of coal mined from said land and when the royalty amounts to more than said minimum in any one month the royalty must nevertheless be paid at the rate per ton as above provided, but, should the amount of royalty paid during any month of any calendar year beginning the 1 day of April, 1935, or the 1 day of April, 1936, as the case may be, on this basis exceed the said minimum, and should Lessee, during any month or months of any such calendar year, fail to mine sufficient coal to amount to said minimum at said rate per ton, then such excess royalty above said minimum paid during any month or months of said calendar year shall be applied to the payment or satisfaction of said minimum for any such month or months during said calendar year in which Lessee fails to mine sufficient coal to amount to said minimum; it being expressly understood that on the 1 day of each April, of each year beginning in the year 1936, full and final computation and settlement shall be had for the purpose of determining whether or not more than the minimum royalty is then due for the calendar year, then closing. In no event, however, shall less royalty be paid than a sufficient amount to cover the minimum royalty for each and every month in which this lease requires the payment of a minimum royalty during each of the calendar years closing on said 1 day of April, nor shall Lessee be allowed any credit during the succeeding year for any excess minimum royalty paid during the calendar year then closing, nor shall Lessor be required on any such computation and settlement, or at any other time, to repay any royalty previously paid to him by Lessee. Statements, verified by affidavit from the Lessee, shall accompany each remittance, stating and showing the amount of said run of mine coal mined during the preceding month or months, on said land, and payments herein provided for, are to be made to G.F. Peter, the Lessor.

FIFTH: The said Lessor shall have the right to terminate this lease after thirty days' written notice to the Lessee, if royalty or rent be not paid for two consecutive installments thereof, when due, or if the said

Lessee shall fail to work the said mines with reasonable diligence, or for their best development, or if in any way the covenants of this contract be violated, or any injury or damage be inflicted upon the property or interests of the Lessor other than is unavoidable and incident to the provisions herein contained, or for the purpose herein proposed. And failure by the Lessor to forfeit this lease on account of any breach by the Lessee or assigns of any of the covenants of this lease, or for any other grounds of forfeiture permitted by this lease, shall not constitute a waiver on the part of the Lessor to forfeit this lease on any other or future breach of covenant by the Lessee, its successors or assigns, or other or like grounds of forfeiture.

SIXTH: There shall not be any subletting or underletting, or assignment of this lease, or change of the parties thereto, without the written consent and concurrence before-hand of the Lessor. The above provision shall not in any way prohibit the Lessee from subcontracting the mining of coal, the said Lessee being always liable for the royalty.

SEVENTH: The Lessee agrees to mine the coal taken from the said lands in a proper and workmanlike manner in all respects, and in accordance with the laws of the State of Alabama, and of the United States of America, and in such a way as at no time to obstruct the advantageous working of the property or to impair the availability or value of the same, for the future purpose of the Lessor in case of reversion to him. The Lessee shall remove no coal pillars or other roof supports from the mine or mines operated on this land by it pursuant to this agreement without having first given the Lessor thirty days' notice in writing of the intention so to do, and without first having furnished the Lessor a map drawn to a scale of one hundred feet to one inch and showing precise location of coal pillars or other roof supports proposed to be removed; and the Lessee shall not remove any coal pillars or other roof supports after such notice and after said map has been furnished until an agreement has been reached by parties hereto as to the quantity of coal mined by the Lessee either as a result of inspection and surveys of the Lessor or of joint surveys of the parties hereto, or until there has been arbitration as herein provided; and, in the event that the Lessee should fail during the full term of this agreement to mine in accordance therewith all recoverable coal which it is herein granted the right to mine, the entries, air courses and all other workings in the mine of the Lessee shall be kept open, unobstructed and free from water, in order that the Lessor may make such surveys and inspections as may be necessary in order to determine the quantity of unmined recoverable coal; and the Lessee shall pay unto the Lessor the sum of 12½ cents per ton of two thousand pounds on all unmined recoverable coal, and payments of said royalty shall be made by the Lessee unto the Lessor within thirty days after the receipt by said Lessee of bill rendered by Lessor.

EIGHTH: All machinery, coke-ovens, railroads and tram tracks, and all houses, buildings, structures and improvements, except houses for the officers, tenants or employees of the Lessee, placed in, under or upon said lands, shall remain the property of the party placing the same thereupon, and therein, nevertheless, it is agreed that the Lessor shall have a lien on all such machinery, fixtures and other property of every kind whatsoever, for anything due or to become due to the Lessor under this contract, and the Lessor shall have the right and option of purchasing any or all of said improvements, fixtures, machinery or other property at the termination of this lease, either by forfeiture, expiration or from any other cause, and if the parties hereto shall not be able to agree upon the value or price thereof, such price shall be determined by arbitration, as provided by the Statutes of Alabama then in force. If the Lessor declines to nominate a referee he must pay the value put upon said machinery, fixtures, or other property by the Lessee, in case it has determined to exercise the right to purchase and if the Lessee, after the appointment of a referee by the Lessor, refuses or fails to appoint a referee, Lessor shall forfeit all claim to compensation for such improvements, fixtures, and property. And at the expiration of this lease, whether by forfeiture or otherwise, if the Lessor should not purchase or become the owner of such machinery, fixtures or other property named, put upon said lands by said Lessee, then the Lessee, within two months after notice in writing, must remove all such property from said premises, not including the aforesaid buildings or failing therein, shall forfeit to said Lessor all such property of every kind, and be liable to Lessor for such other damages as they may sustain by reason of such failure to remove said property. It is agreed that all houses for the officers, tenants and employees, of the Lessee placed upon said lands by the lessee, shall become the property of the Lessor upon the expiration or termination of this lease.

Ninth: The Lessor shall have the right by agent, agents or attorneys, at any and all times, to enter upon, examine and survey said mines and lands and to inspect, examine and verify all books, accounts, statements, sales, maps, plans, diagrams, etc., of said Lessee so far as pertains to ascertaining the amount of coal taken from said lands. The Lessee shall at all times have available for the inspection of the Lessor maps indicating precise locations of haulageways, air courses, rooms and other workings in each and every mine opened or operated pursuant to this agreement, as well as precise locations of boundaries of land in proximity to said mines; said maps shall be based upon frequent and accurate surveys of engineers employed by the Lessee and shall be in all respects satisfactory to the Lessor, and the Lessee shall at its expense at the end of each calendar year during the period of this agreement, and also at the termination of this agreement from any cause whatsoever, furnish the Lessor copies of said maps, the correctness thereof being duly certified by the engineer in charge of mine surveys.

TENTH: The Lessee agrees to pay all taxes and charges in the nature of taxes upon all machinery, coke-ovens, railroads, tram tracks, houses, buildings, structures, and improvements placed by it upon said lands.

ELEVENTH: The Lessor reserves the right to make and use slopes, headings, entries and passage ways through, over, or across any part of said land and property that may be worked out or abandoned by the Lessee for the purpose of reaching, giving access to, or mining on or under any other lands of the Lessor not included in this lease, and all other rights, in, on, or over, and upon said lands and property other than those herein specially conveyed or granted, are expressly reserved to and remain the property of the Lessor, which covenants, however, to so carefully use the same as not to inflict damage or injury upon the rights of the Lessee. It is distinctly understood and agreed, that the Lessor reserves the right of way over said lands described in this lease for himself, lessees, or assigns, for railroads, tramroads, or other roads, as may be necessary or convenient for the development of any other lands belonging to the Lessor or of other seams in this tract of land which he may hereafter use, sell or lease for mining or other purposes.

TWELFTH: The Lessee shall have the right to use the timber on said land to the extent that it may be needed in the mining of coal on said lands. It is distinctly understood that the said timber is not to be used by the said Lessee in mining coal on any other lands, nor for any other purpose whatsoever.

THIRTEENTH: At any time during the continuance of this contract, should it become necessary to suspend mining operations in said mine or mines caused by labor troubles or strikes among the miners, and participated in by the miners in the mine or mines which are opened or operated under this lease, and by reason of which labor troubles or strikes it becomes necessary to suspend operating said mine or mines to the extent of a ceasing to mine coal therefrom, if such labor troubles or strikes are not superinduced or brought about by the act of the Lessee or Lessee's agents, or officers, or should from any labor troubles or strikes, not produced or brought about by the Lessee, Lessee's agents or officers, it become impossible for said Lessee either to procure cars or railroad facilities for the marketing of the coal taken from said mines, then in said event, during the actual continuance of such preventive troubles, the said Lessee shall not be bound or required to pay a royalty beyond the number of tons of coal actually mined, and the right of the Lessor to forfeit this lease by reason of the failure to mine coal and pay royalty, shall be suspended during the time that the mining or the shipment of coal is impossible by reason of any cause above stated, but it is understood that no strike shall be considered as included in this provision of the thirteenth clause which is of shorter duration than fifteen working days.

FOURTEENTH: In the event that the seam of coal opened or that can be feasibly opened upon said lands shall entirely fail, or be worked out, this contract shall cease and determine; and in case of a continued squeeze out of such seam, or should such seam of coal run into a positive fault, the minimum royalty shall not be claimed or required to be paid to the Lessor during such reasonable time as may be necessary to drive through such squeeze, or fault-provided, the question as to whether such fault is of so serious a nature as to prevent the working of coal, shall be a subject of arbitration, if the Lessor so requires, by mining engineers appointed as provided in clause fifteen of this contract and lease. But the Lessee shall, in any of the aforesaid contingencies, do all that is known to skilful coal operators and mining engineers to remove such of the impediments named in paragraph fourteenth as may occur.

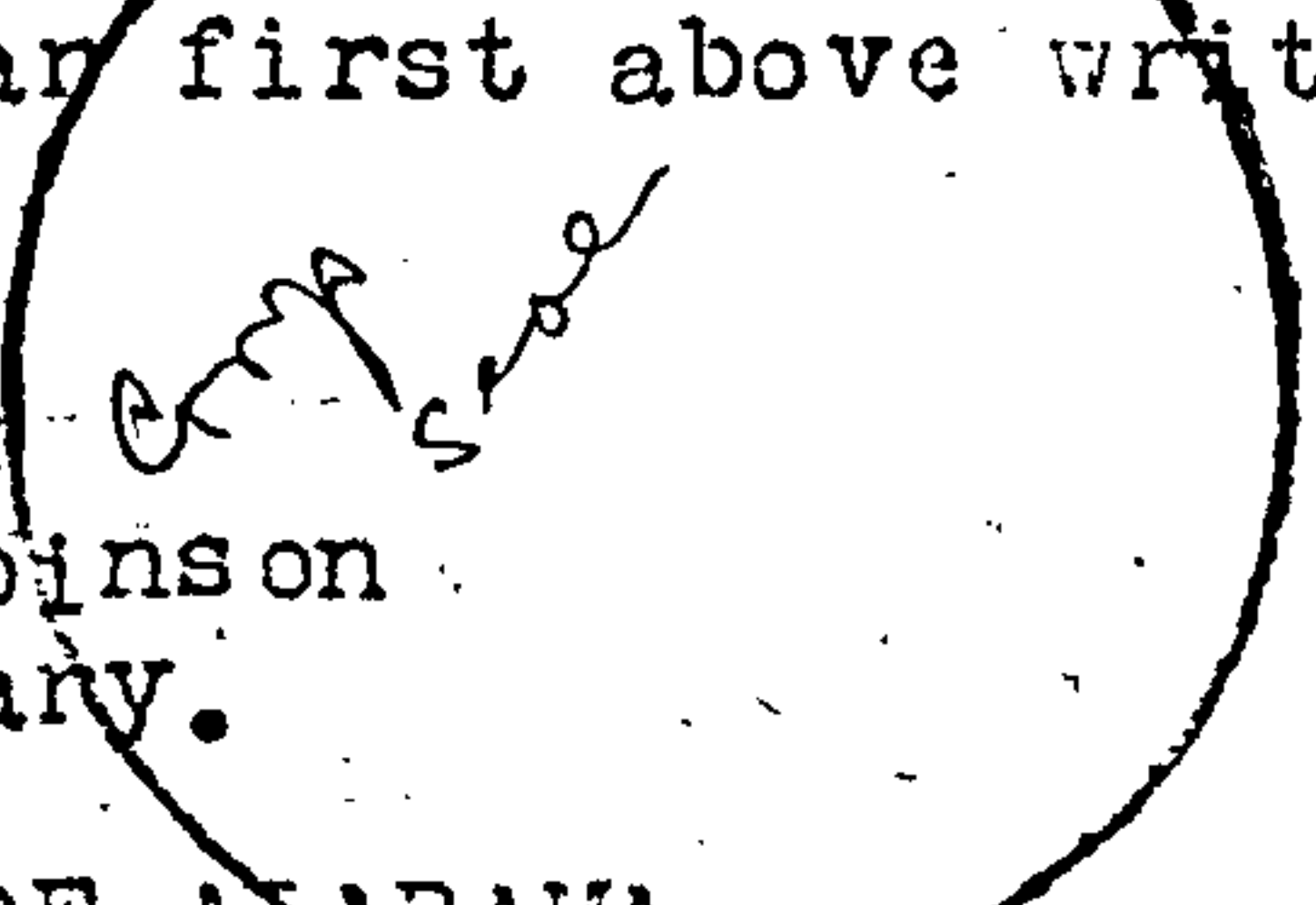
FIFTEENTH: Should there be any difference of opinion or controversy between the parties hereto, as to whether said mining is conducted on mining principles, or regarding any other matter of fact arising from or growing out of this contract, except the amount of minimum rental or royalty payable hereunder, and except the rate per ton payable for coal mined hereunder, each party shall appoint a mining engineer or other qualified person, who shall arbitrate said matter of difference, and if the two shall not be able to agree, then they shall name and call a third, and the decision of the majority shall be final.

SIXTEENTH: It is further agreed and understood that in case of failure of title to all or any part of the premises leased, and the eviction of Lessee by superior title, or compulsion of Lessee to pay damages to any third person or third persons by such failure of title, no covenant herein expressed or implied by law shall impose upon the Lessor any liabilities for damages to Lessee beyond a liability upon each such Lessor, his heirs, executors and administrators, to refund to Lessee such royalties, with interest as may have been received by him or her hereunder, or as may have been paid hereunder to said Agent or Agents for him or her; for coal mined on such portion of the said lands as to which title failed, or as to which the Lessee was compelled to pay damages to a third person or third persons. The Lessor shall not be liable for any claims for damage which may arise from the exercise by the Lessee of the rights herein granted; and the Lessee shall indemnify, protect and hold harmless the Lessor against all claims, suits, demands, judgments and decrees instituted by any third party, because of any act of the Lessee pursuant to this agreement.

SEVENTEENTH: The Lessee shall have the right or option to renew this lease for the additional term of ten (10) years from the 1 day of April, 1943, upon the Lessee's giving to the Lessor written notice directed to him at Boothton, Alabama, of the Lessee's intention to renew this lease 30 days in advance of the expiration of the original term of ten (10) years. Upon any such renewal this lease shall continue in full force and effect for the said additional term of ten (10) years upon and subject to the terms and conditions with respect to payment of minimum royalty as shall obtain during the last seven (7) years of the original term and in all other respects upon and subject to the same conditions as shall obtain during the entire period of the original term.

EIGHTEENTH: Ada H Peter, the wife of the Lessor, joins in the execution of this lease to evidence her release of dower in and to the above described property insofar as the rights of the Lessee therein are concerned. The above described property is not the homestead of either of the Lessors,

WITNESS the signatures and seals of the parties, in duplicate, on the day and year first above written.

ATTEST: 
O. G. Robinson
Secretary.

STATE OF ALABAMA
SHELBY COUNTY)

Little Gem Coal Company,
By J. Molton Smith
President.

G. F. Peter
Ada H. Peter.

I, W. H. Lyman, a Notary Public in and for said County, in

said State, hereby certify that G.F. Peter and his wife, Ada H Peter, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office, this 17th day of April 1933.

W H Lyman, Notary Public

STATE OF ALABAMA-
Shelby County

, I, Cage Head, Judge of Probate hereby certify that the within lease was filed for record in this office April 20th 1933 at 1 o'clock PM and recorded in deed record 95 and page 312, and examined, April 26th 1933.

Cage Head,, Judge of Probate.