## \$5.00 Stamp

THIS AGREEMENT, made and entered into on this the 24th day of November, 1936, by and bwteen THE SOUTHERN MINERAL LAND CORPORATION, of Emporia Kansas, hereinafter called the Lessor, party of the first part, and the LITTLE GEM COAL COMPANY, of Birmingham, Alabama, hereinafter called the Lessee, party of the second part;

## WITNESSETH:

THAT, the Lessor, for the consideration here inafter 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 Northeast 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 24th day of November 1936, 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 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 carryings and transportation to and from said lands of all materials, implements, an instruments that may be of use in mining said coal, or praparing 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, inon 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 son thereafter as the coal can be reached through a clope, ovening or mine workings, which the Lessee shall make or drive with promptness and diligence.

Third: The Lessee shall pay the Lessor a royalty of  $12\frac{1}{2}$  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 weighted at the tipples, and shall be gross tipple weights with no deductions for washer and/or other losses, and the said weights thereof shall be binding upon the parties and payments of rents or royalty at said rate shall be based upon said tipple weights. But at the option of the Lessor at any time on notice in writing by the lessor to the Lessee payments of royalty as herein provided shall be based upon joint/surveys of engineers of each party hereto, and in event of disagreement hetween said engineers, a third engineer shall be selected by the engineers of said parties whose decision as to the amount of coal mined from said land shall be final and binding. In estimating the quantity of coal mined, one ton of coal shall be considered as containing 25.0 cubic feet.

Fourth: The Lessee agrees to pay to the Lessor the said royalty in monthly installments, the first payment to be made on the 20th day of the calender month following the calender month in which actual mining is begun here under and the Lessee shall pay out at that time royalty at the rate of  $12\frac{1}{2}$  cents per ton on all of said run of mine coal mined on said land during the calender month in which actual mining is commenced and subsequent payments shall be made on the 20th day of each succeeding calender month afte r that date for all of said run of mine coal mined during the preceding calender month though such payments may amount to more than the minimum royalty hereinafter required to be paid. In making payments of royalty as herein provided, the sum of money to be paid by the Lessee on the 20th day of each month, after February 1, 1937, shall not be less than Forty Pollars (\$40.00) until all the coal has been exhausted or until the rights herein granted have expired; and, if the total royalty paid, as herein provided, during any six (6) months' period beginning on the 1st day of January, or the 1st day of July of amy year during the term hereof, should be in excess of royalty which would be due for coal actually mined during such six (6) months' period, and if the Lessee should during the next succeeding six (6) months' period mine such quantities of coal as would yield, a greater, royalty than, would be due as a minimum for said succeeding six (6) months' period, have credit for said excess of royalty on account of and to the extent of any excess of sums baid for coal actually mined during said succeeding six (6) months' period over sums due as minimum royalty during said period. Statements, werified. by affidavit from the Lessee, shall accompany each remittance, stating and showing the amount of said run of mine comal mined during the preceding calender month or months, on said land. The payments herein provided for are to bemade to The Southern Mineral Land Corporation, the Lessor, addressed to it at Emporia Kandas.

Fifth: The 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 the covenants of this contract be violated, or any injury or damage be inflicted upon the property or interests of the messor 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 messor to forfeit this lease on anytother or future breach of covenant by the messee, 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 beforehand of the Lessor. The above provision shall not in any way prohibit the Lessee from suncontracting 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 Lesser in case of reversion to it. The Lessee shall remove no coal pillars or other roof supports from the mine or mines operated on said land by it pursuant to this agreement without having first given the Lessor thirty days' notice in writing of the intentions 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 mof supports proposed to be removed; and the Lessee shall not remove any coal billars 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 surveysoof 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 122 cents ber ton of the 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 thereceipt of 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, the Lessee, within two months after notice in writing, must remove all such property from said premises, not including the aforesaid buildings or failling therein, shall forfeit to said Lessor all such property of every kind, and be liable to Lessor for such other damages as it 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 byrthe Lessee, shall become the property of the Lessor upon the expiration or termination of this lease.

Winth: 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 calender wear during the period of this agreement, and also at the termination of this agreement from any cause, what-soever, furnish the Lessor copiew of said maps, the correctness thereof being duly certified by the engineer in charge of mine surveys.

Menth: As additional rental during the term of this lease, the Lessee shall refund to the Lessor, annually all ad valorem taxes assessed to and baid during said term on the land described herein. Payment thereof to be made by the Lessee within fifteen (15) days after rendition of bull therefor by the Lessor. If any of said lands are not assessed separately. but are contained in an assessment along with other land of said Lessorkthen, and in that event the amount of taxes to be paid hereunder by the Lessor shall be calculated on the basis of the assessed value per acre of the Lessor's coal lands of similar character contained in such assessment, in which the Lessor owns all interest, both mineral and surface, Provided, however, when this agreement is in effect for only part of a tax year, the Lessee shall regund to #-ef the Lessor the corresponding portion of such taxes and assessments for said tax year. The Hessee also agrees to pay, during the term of this agreement, as and when due, all taxes levied bn all machinery, improvements, equipment and other property used by it in mining said coal, the Lessee further agrees to pay when due, any and all so-called tonnage, license and privilege taxes, heretofore or hereafter levied, and any tax which may hereafter be levied against this lease.

Eleventh: The Lessor reserves the right to make and use slopes, headings, entries and passageways through, over, or across any part of said land 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 besser not included in this lease, and all other rights, in, on, or over, and upon said lands 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 used the same as mot to inclict damage or injuty upon the rights of the Lessee. The Lessor reserves the right of way over said lands described in this lease for itself, its lessees, successors and assigns, for railroads, tram roads, or other roads, as may be necessary or convenient for the developement bf any other lands belonging to the Lessor or of other seams in this tract of land which it may hereafter use, sell or lease for mining or other purposes.

Welfth: 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.

Thirteenth: At any time during the continuance of this contract, should it become necessary to suspent mining operations in said mine or mines by reason of labor troubles or strikes among the miners, participated in hy the miners in the mine or mines which are opened or openlated under this lease, and by reason of which labor troubles or strikes it become necessary to suspend operating said mine or mines to the extent of a ceasing to mine coal therestrom, if such labor troubles or strikes are not superinduced or brought about by the act of the Lessee or L Lessee's agents or officers, or should, from any labor troubles or strikes not produced br 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 doal and pay rowalty 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 thateno 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 plands 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 duning 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 arbitrations 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 skillful 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 principales, or regarding any other matter of fact arising from or growing out of this contract, 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 see to pay damages to any third person or third mersons by such failure of title, no covenant herein expressed or implied by law shall impose upon the Lessor any liabilities for damages to the Lessee beyond a liability upon each such Lessor, its successors and assigns, to refund to Lessee such royalties, with interest as may have been received by it hereunder, 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 "essor shall not be liable for any claims for damages which may arise from the exercise by the Lessee of the rights herein granted; and the Lessee shall indemnify, protect and hold harmless the Lessoe against all claims, suits, demands, judgments and decrees instituted by any third party, because of any act of the Lessee purauant 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 24th day of November, 1946, upon the Lessee's giving to the Lessor weitten notice directed to it at 224 E. 6th Avenue, Emporia Kansas, of the Lessee's intention to renew this lease thirty days in advance of the expiration of the original term of ten (10) years. Upon such remewal this lease shall continue in full force and effect for the said additional term of ten (10) years upon amd subject to the terms and conditions with respect to payment of minimum royalty as shall obtain during 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: A 11 notices, s tatements, or other information herein authorized or required to be given to The Southern Mineral Land Corporation, shall be given by mail addressed to it in case of A. H. Plumb, President, at Emporia, Kansas, and or such other address as said corporation may, from time to time, in writing designate; and all notices herein authorized or required to be given to the Lessee shall be given to it by latter addressed to it at Birmingham. Alabama.

In Witness Whereof, the parties hereto have hereunto set their hamds and seals, in duplicate, on the day and year first above written, by their respective officers named below, who are hereunto duly authorized.

Attest: [Mabel H. Edwards Secretary.

The Southern Mineral Land Corporation

By H. L. Kendig Vice President.

Attest: J Molton Smith Jra

Tremuen.

Little Gem Coal Company

By O. M. Cross President.

Filed for record in this office December 1st 1936 at 1 PMand recorded in deed record 101 page 477 and examined.L. C. Walker, udge of Probate

State of Alabama, Jefferson County)

I, W W Thomas, a Notary Public in and for said County in said State, hereby certify that H.L.Kendig, whose name as Vice-President of the Pouthern Mineral Land Corporation, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said cornoration.

"iven under my hand and official seal this the 24th day of Movember 1936.

W.W. Thomas, Motery Public./

Filed for record in this office December 1st 1936 at 1 PM and recorded in deed record page 476,476 and 477 and examined.L.C. Walker, Judge of Probate.

> STATE OF ALABAMA SHELBY COUNTY

hereby certify that 500 Privilege Tax has been paid on the within instrument as required by law.

L. C. WALKER, JUDGE OF PROBATE