

#298

AGREEMENT

Value-\$2000.00

AGREEMENT OF LEASE between NAOMI HORTON McCAULEY and her husband, CHARLES H. McCAULEY, parties of the first part (herein referred to as "lessors"), and LITTLE GEM COAL COMPANY, an Alabama corporation, party of the second part (herein referred to as "lessee").

In consideration of the respective agreements of the parties hereinafter set out, lessors do hereby grant and let to lessee, and lessee does hereby lease from lessors, the right and privilege of mining coal from what is commonly known as the "Montevallo seam" in, on and under the following described lands located in Shelby County, Alabama:

That part of the NW $\frac{1}{4}$ of Section 33, Township 21, Range 3 West, lying West of the Montevallo and Elyton public road; excepting therefrom a tract of land which lies East of the right-of-way of the Southern Railway Company as located across said land and south of a private road which, on November 30, 1931, extended from the said Montevallo and Elyton public road to the place where the John Cunningham house was then located; and also excepting therefrom 15 acres located in the southwest corner of the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of said section which was sold to W. J. Hites and wife in 1928.

TO HAVE AND TO HOLD the said right and privilege unto the lessee for a term of ten (10) years from the date hereof, or until such prior time as the merchantable coal located in said seam on said lands shall have been mined and removed therefrom. This agreement is made, however, upon the following terms and conditions which are hereby agreed to by the respective parties:

(1) Lessee shall have and may exercise all rights and privileges in and on said lands which are customarily incident to the mining and removal of coal by the owner thereof, or which may be reasonably necessary for such purpose. Lessee, however, shall be under no obligation whatsoever to mine coal from said lands and once such mining shall have been begun, it may discontinue such mining operations at any time such action may be deemed advantageous to it.

(2) Lessee shall pay to lessors a royalty of 10¢ per ton of 2,000 pounds of run-of-mine coal so mined from said seam in said lands. Such payments shall be made monthly on the 20th day of each month for the coal so mined during the then preceding calendar month, the first of such payments to be made on the 20th day of the month following the calendar month in which such mining operations shall be actually commenced, each subsequent payment to be made on the 20th day of each succeeding calendar month for all of said coal so mined during the calendar month preceding that month in which such payment is so required to be made. Statements verified by affidavit of an officer of lessee shall accompany each remittance, showing the amount of such run-of-mine coal mined from said seam in said lands during the calendar month with respect to which such remittance shall be made.

(3) Lessors shall pay during the term covered hereby and before the same become delinquent all taxes which may be levied upon the said lands and all coal located in said seam in said lands prior to the time the same shall be mined and removed hereunder. Lessee shall pay during the term covered hereby and before the same become delinquent all taxes which may be levied upon the machinery, equipment and other property used by it in conducting mining operations in said lands, and shall also so pay all tonnage, license and privilege taxes heretofore or hereafter levied with respect to any coal so mined.

(4) All coal mined from said seam in said lands shall be weighed at the tippie at the entrance to the mine from which the same shall be removed, and shall be net tippie weights, which weights shall be binding upon the parties. Payment of royalty at the rate herein provided shall be based upon said tippie weights but, at the option of the lessors exercised at any time by giving written notice to lessee, payments of royalty at the rate herein provided shall be based upon the quantity of coal so mined as ascertained by joint surveys made by an engineer appointed by each of the parties hereto, whose decision shall be final. In estimating the quantity of coal so mined, one ton of coal shall be considered as containing 25.0 cubic feet.

(5) Lessee agrees that all mining operations undertaken by it hereunder shall be conducted in

a proper and workmanlike manner and in accordance with the laws of the State of Alabama and the United States of America.

(6) All machinery, railroads, structures and other improvements which shall at any time be placed by lessee in, under or upon said lands, shall remain the property of lessee. If lessee shall have then complied with all the obligations on its part herein contained, it shall have the privilege of removing, within sixty days following the expiration or termination of this agreement, all property theretofore placed, in, on or upon said lands, and in the event lessee shall fail so to remove the same within said period of time, lessee shall thereupon forfeit to lessors all such property.

(7) Lessors shall have the right through their agents, engineers or attorneys, at any time and from time to time to enter upon, examine and survey said lands and the mines thereon, and to inspect, examine and verify all books, accounts, statements, sales records, maps, plans and diagrams of lessee to such extent as may be necessary to ascertain the amount of coal taken from said seam in said lands and the manner in which any mining operations hereunder are being conducted. Lessee shall at all times keep available for inspection by lessors maps indicating the precise locations of the haulageways, air courses, rooms and other workings of all mines opened hereunder, as well as the precise locations of said lands and the boundaries in proximity to said lands. Said maps shall be based upon accurate surveys of engineers employed by lessee.

(8) Lessors reserve the right to make and use slopes, headings and passageways through, over and across any part of said lands that may be worked out or abandoned by lessee for the purpose of giving access to or mining on or under any other lands of lessors or any other seam of coal in said lands which are not covered by this agreement. All rights in, upon or over said lands other than those herein specially granted are expressly reserved to and remain the property of the lessors, but lessors covenant that the same shall not be exercised in any manner as shall interfere with the rights herein granted to lessee.

(9) Lessee hereby releases lessors from and agrees that lessors shall not be liable for any loss, damage, death or injury to any property or person caused by or growing out of the preparation for mining or the mining by lessee in, on or under said lands, or the construction or maintenance by lessee of any improvements or equipment therein or thereon, including damage or injury that may be caused by subsidence of the surface of said lands.

(10) Should there be any difference of opinion or controversy between the parties hereto under any of the provisions hereof except the rate per ton payable for coal mined hereunder, then such difference of opinion shall be settled by arbitration by a board of arbitrators, which shall be composed of one mining engineer or other qualified person appointed by each of the parties hereto and, in the event the two persons so appointed shall not be able to agree on such questions, then they shall appoint a third person as a member of said board. Any decision of a majority of the members of said board shall be final and binding upon the parties hereto with respect to any question submitted to said board. Each of the parties agree that in the event of such difference of opinion or controversy they will promptly appoint a member of said board upon request for such action by the other party, and they will abide by any decision so rendered by said board. Each of the parties shall pay the compensation and expenses of that member of said board respectively appointed by them, and the compensation and expense of the third member of said board so selected by the other two members thereof respectively appointed by the parties hereto shall be paid in equal shares by the parties hereto.

(11) Lessors shall have the right to terminate this agreement by giving thirty days written notice to lessee of lessors' election to terminate the same upon the happening of any of the following events: If two consecutive installments of royalty payable hereunder shall not be paid when due; or if lessee shall conduct its mining operations in any manner other than according to accepted mining practices; or if lessee shall fail to perform any of the covenants on its part herein contained. Failure by lessors to terminate this agreement upon the happening of any one of such events shall not constitute a waiver on the

part of the lessors to terminate this agreement upon the subsequent happening of any of said events.

(12) Lessee shall have and is hereby granted the option of renewing this agreement for an additional period of ten (10) years in the event all of the coal located in said seam in said lands shall not have been mined prior to the expiration of the term covered hereby. Notice of election so to exercise such option shall be given in writing by lessee to lessors not less than thirty (30) days prior to the expiration of the term covered hereby, whereupon this agreement shall thereupon continue for the said additional period of time, subject to all the provisions herein contained.

(13) Reference herein to lessors and lessee shall be construed to include their respective successors and assigns.

(14) The said Charles H. McCauley, one of the lessors, has joined in the execution of this agreement solely for the purpose of enabling the same to be validly executed by his wife, the said Naomi Horton McCauley, and the parties respectively recognize and agree that nothing hereunder shall be construed to impose any liability on him.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed in duplicate under their respective seals this 8th day of April, 1941.

Naomi Horton McCauley (L. S.)

Charles H. McCauley (L. S.)

LITTLE GEM COAL COMPANY,

ATTEST: O. G. Robinson
Secretary

By J. Molton Smith, Jr.
President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, Marion Whelan, a Notary Public in and for said county in said state, hereby certify that Naomi Horton McCauley and her husband, Charles H. McCauley, 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 within instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 28th day of August, 1941.

Marion Whelan, Notary Public

Notarial Seal

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, R. D. Brown, a Notary Public in and for said county in said state, hereby certify that J. Molton Smith, Jr., whose name as President of Little Gem Coal Company, 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 said instrument, he, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 12th day of September, 1941.

R. D. Brown, Notary Public

Notarial Seal

Filed for record in this office on the 16th day of November, 1944, at twelve o'clock noon and duly recorded in Deed Record Vol. 119 on pages 245-247, incl.

STATE OF ALABAMA
SHELBY COUNTY

L. C. Walker, Judge of Probate

I hereby certify that
\$ 2.00 Payment has
been paid on the
instrument as required by
law.

L. C. WALKER
JUDGE OF PROBATE