

5394

STATE OF ALABAMA }
SHELBY COUNTY }

THIS INDENTURE, made the 24 day of August, 1961, by and between SHELBY CLAY, SHALE & MINERAL COMPANY, INC., hereinafter called the Lessor, of the first part; and S. C. WARD, hereinafter called the Lessee of the second part, WITNESSETH:

L. That the Lessor, in consideration of the rents, royalties, covenants and agreements hereinafter reserved and expressed, to be paid and performed by the Lessee, hereby lets and demises unto the Lessee the following described land and premises situated in Shelby County, Alabama, to-wit:

The SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 32, Township 21 South, Range 2 West.
All that part of the SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 33, Township 21 South, Range 2 West lying West of L & N Railroad right of way.
All that part of the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, Township 21 South, Range 2 West lying West of L & N Railroad right of way.

which premises are leased to Lessee for the purpose of exploring for, mining, taking out, processing and removing therefrom sand mixed with clay, with or without gravel, pebble or crushed stone, and merchantable clay which is or which may hereafter be found on, in, or under said land, together with the right to construct all buildings and to make all excavations, openings, ditches, drains, railroads, roads or other improvements upon said premises which are or may become necessary or suitable for the mining or processing or removing said material from said premises.

TO HAVE AND TO HOLD to Lessee the premises hereby demised, for an initial term of 15 years, from the date hereof, expiring on the 23 day of August, 19 76.

In consideration of said grant and demise, the Lessee does hereby covenant to pay the Lessor, during the continuance of this lease as rental for said premises the following royalties, to-wit: 25¢ per ton of 2,000 pounds of the above described material mined or removed from the said demised premises with a minimum of \$400.00 to be paid in any given year; except that if the royalties in any given year amount to less than \$400.00, Lessee shall pay the difference in the amount of royalties so paid and the sum of \$400.00; it being further understood, however, that should the rent and royalties amount in any given year to more than \$400.00, the over-plus thereof may be carried forward as a credit by the Lessee to apply against the \$400.00 minimum for rents and

BOOK 216 PAGE 961

royalties for the following year, which Lessee shall be obligated to pay.
(This privilege of carrying the overplus forward shall be limited to one year).

The above rents and royalties to be accounted for and paid on the 10th day of each month for all material mined or removed from above premises during the next preceding month as per weights of railway companies or other standard scales.

It is further agreed that the Lessee shall keep books of account for recording the amount of material mined and removed and said books shall be open for inspection of the lessor, its agents or attorneys, at the office of the said Lessee, upon the premises during the business hours of the day, for the purpose of comparing and verifying the accounts rendered.

2. Lessee covenants with Lessor as follows:

(a) To maintain in a good state of repair all roads or other ways of ingress and egress which Lessee shall use over other property.

(b) To completely remove all marketable material from any given area of operation once work is started in such area, and it is covenanted and agreed that if Lessee, upon abandoning any work, shall leave any available, as described above which, in the opinion of a competent engineer representing the Lessor, is practicable to remove, the Lessor shall give the Lessee notice thereof with directions to remove the same and if Lessee shall refuse to mine and remove the same within a reasonable time after receiving said notice, Lessor shall forthwith submit the question whether the materials so left could be practicably removed to arbitrators to be chosen, one by the Lessor and one by the Lessee, and in case the two thus chose cannot agree they shall appoint a third, and in case either party hereto neglects to nominate an arbitrator for a period of ten days after receiving notice from the other party to do so, then the other party shall name two and in case the two thus appointed cannot agree, they shall appoint a third to determine and report on all materials in dispute between the Lessor and Lessee.

3. Lessor covenants with Lessee as follows:

(a) To allow Lessee to have the right to have power lines and gas mains extended across property upon which Lessor holds a lease from Alexander Schoettlin.

(b) To grant to Lessee the right of egress, ingress and regress over and across the existing roadways upon which the Lessor holds a lease from Alexander Schoettlin.

(c) To keep Lessor in peaceable possession of the premises during the continuance of this lease.

It is agreed and mutually covenanted that the said party of the second part, his legal representatives or assigns, may at any time during the continuance of this agreement move or cause to be removed from the demised premises any buildings, fixtures, machinery, or materials, which he shall have placed upon the said premises.

It is agreed and understood by and between the parties that Lessee, as a part of the consideration of this lease, expressly releases the Lessor, or any stockholder or officer in the Shelby Clay, Shale & Mineral Company from any and all liability by reason of defects known or unknown, latent or patent which may now exist or which may exist within the continuance of this lease, and Lessee hereby expressly agrees to indemnify the said Lessor, and all officers or stockholders of said corporation from any loss or damages of every kind and description which may result from any accident which may occur on the leased premises during the continuance of this lease.

It is further agreed and understood by and between the parties that should the Lessee fail to pay the rent and rental royalties as the same shall become due or violate any of the other terms and conditions of this lease, and such breach of covenant or default in agreement shall continue more than 30 days after notice is given Lessee by Lessor, Lessor shall have the right and option to re-enter the premises and annul this lease.

It is agreed and understood that Lessee shall have the option of renewing this lease on the same terms and conditions as herein stated for an additional period of 15 years, but in no event shall the original term and the extension extend beyond the 23 day of August 19 91.

It is further agreed and understood that Lessee shall have the right and option to terminate this lease agreement by giving Lessor 30 days written notice and by paying to Lessor the then due rents and royalties. It being understood that said \$400.00 annual minimum should be prorated as of the date of termination.

It is agreed and understood that the Lessee shall have no right to sublet all or any portion of the land herein leased, nor assign said lease to any person, firm or corporation, without first obtaining the written consent of the Lessor.

It is agreed and understood that this lease shall be binding upon the heirs, executors, successors and assigns of the parties hereto.

IN TESTIMONY WHEREOF, the said parties hereunto set their hands and seals the day and year first above written.

WITNESSES:

Walter E. ...

SHELBY CLAY, SHALE & MINERAL COMPANY, INC.

By *Alexander ...*

LESSOR

Walter E. ...

S.C. Ward

LESSEE

STATE OF ALA. SHELBY CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON *10/27*
1964
RECORDED & \$... LITG TAX
& \$... HAS BEEN
PD OR ...

Conrad M. ...
JUDGE OF PROBATE

BOOK 216 PAGE 964