

STATE OF ALABAMA I
COUNTY OF SHELBY I

77³

WITNESS THIS AGREEMENT entered into by and between Wesley West, (being one and the same person as Wesley W. West), and wife, Neva Watkins West, hereinafter collectively referred to as "Party of the First Part", and Claude T. Bryant, and wife, Maude Bryant, hereinafter collectively referred to as "Party of the Second Part";

WHEREAS, Party of the Second Part, jointly or severally, is the owner of the surface rights of certain real property situated in Shelby County, Alabama, and said property being more particularly described as follows, to-wit:

PARCEL I: The S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 33, Township 17 South, Range 1 East, except that part lying South of the right of way of the Central of Georgia Railroad, and except the right of way of the Central of Georgia Railroad, and also except the land sold by J. L. Isbell to Empire Lumber Company, and also except the five (5) acres sold and conveyed to Maude Estelle Bryant by deed recorded in Deed Book 123, Page 120, in the Probate Records of Shelby County, Alabama.

PARCEL II: Thirty-five (35) acres more or less in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 17 South, Range 1 East. It is understood and agreed that a certain right of way has been granted the Alabama Power Company for a right of way for a high tension line across a portion of the within described property and this instrument is given subject to this grant.

WHEREAS, Party of the First Part is the owner of the mineral rights on said above described property; and

WHEREAS, there are large deposits of sand located on said above described property; and

WHEREAS, Party of the Second Part did heretofore on the 6th day of May, 1966, enter into a lease or agreement with Billy H. O'Barr concerning the lease of the rights to said sand, a copy of which said lease is attached hereto as Exhibit "A" and made a part hereof as fully as if set out herein; and

WHEREAS, there exists a dispute by and between Party of the First Part and Party of the Second Part as to whether or not the rights in and to said sand located on said above described

168

500X253

property belongs to Party of the First Part or Party of the Second Part, and in order to resolve said dispute insofar and only insofar as the said lease, of which a copy is attached hereto as Exhibit "A", is concerned the parties hereto agree as hereinafter provided:

NOW, THEREFORE, in consideration of the above premises and the mutual covenants and agreements set out herein, and for and in the further consideration of One Dollar (\$1.00) in hand paid by Party of the Second Part to Party of the First Part, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree, covenant and contract as follows:

1. Party of the First Part, jointly and severally, do hereby relinquish and waive any right, title and interest in and to any rents, royalties and other consideration provided to be paid to Party of the Second Part from Billy H. O'Barr, his heirs, successors or assigns, pursuant to the terms of the above referred to lease, a copy of which is shown on Exhibit "A" attached hereto; it is agreed and understood that any and all royalties paid under said lease shown on Exhibit "A" attached hereto shall be paid to said Party of the Second Part and said Party of the First Part does hereby specifically waive and relinquish any right, claim or interest in and to said rents or royalties, and any sand removed from the surface of the ground pursuant to said lease shown on Exhibit "A" attached hereto; provided, however, Party of the First Part does not waive or relinquish any right, claim or interest to any sand containing commercial quantities of oil, gas, hydrocarbons, coal, sulphur, limestone or other minerals of a similar nature.

2. It is the intent of the parties to this Agreement that the execution hereof shall not be construed as an admission by Party of the First Part that the sands located on said above described property belongs to Party of the Second Part, nor shall this Agreement be construed as an admission by Party of the Second Part that said sand is owned by Party of the First Part. It is further understood and agreed that the sole purpose for the execution of this Agreement is the waiver by Party of the First Part

of any right, claim or interest in and to the royalties paid to Party of the Second Part pursuant to the lease shown on Exhibit "A" attached hereto, and any sand removed from the surface of the ground pursuant to said lease shown on Exhibit "A" attached hereto, except such sand as may contain commercial quantities of oil, gas, hydrocarbons, coal, sulphur, limestone or other minerals of a similar nature.

IN TESTIMONY WHEREOF, we have hereunto placed our hands and seals on this the 10 day of DEC., 1968.

Wesley West
Wesley West

Neva Watkins West
Neva Watkins West

Claude T. Bryant
Claude T. Bryant

Maude Bryant
Maude Bryant

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Claud T. Bryant and wife, Maude Bryant, whose names are signed to the foregoing Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 10 day of DEC., 1968.

Frank Ellis
Notary Public

STATE OF TEXAS)
COUNTY OF)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Wesley West and wife, Neva Watkins West, whose names are signed to the foregoing Agreement, and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 1968.

Notary Public

EXHIBIT "A"

STATE OF ALABAMA)

SHELBY COUNTY)

THIS LEASE, made this the 6 day of May, 1966, by and between Claude T. Bryant and wife, Maude Bryant, hereinafter referred to as "Lessors" and Billy H. O'Barr, hereinafter referred to as "Lessee"

WITNESSETH,

For and in consideration of the rents, royalties and other consideration hereinafter more fully specified and the further consideration of the covenants, agreements, restrictions and stipulations hereinafter expressed, reserved and contained, Lessors do hereby grant, devise, lease and let to Lessee, his heirs and assigns, the exclusive right and privilege to remove and dispose of all sand of every grade or description in or on the following tract of land situated in Shelby County, Alabama:

The S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 33, Township 17, Range 1 East, Except that part lying south of the right of way of the C of Ga. R.R., and except the right of way to the c of Ga. R.R., and also except the land sold by J. L. Isbell to Empire Lumber Company, and also except the 5 acres sold and conveyed to Maude Estelle Bryant by deed recorded in Deed Book 123, Page 120, in the Probate Records of Shelby County, Alabama.

Thirty-five acres (35) more or less, in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 33, Township 17, South, Range 1 East, It is understood and agreed that a certain Right of Way has been granted the Alabama Power Company for a Right of Way for a high tension line across a portion of the within described property and this deed is given subject to said grant.

Also, the right to construct all such works, building, plants, structures, and equipment only as may be necessary or convenient for the removal and preparation of sand removed or gathered from or

on said property; to use so much of the surface as may be reasonably required in the exercise of the rights and privileges herein granted.

In consideration of the rights and privileges aforesaid and hereinafter set out it is hereby mutually covenanted and agreed as follows:

1. The period of this lease shall be for twenty-five years beginning May 1, 1966 and ending April 30, 1991, provided, however, Lessee shall have the right and privilege of having said lease extended for an additional period of fifteen years from May 1, 1991, on the same terms, conditions and agreements as herein set out except the amount of rent or royalties to be paid to Lessors by Lessee shall be computed as follows: during said fifteen year period beginning May 1, 1991 and ending April 30, 2006, Lessee shall pay to Lessors an amount equal to one percent (1%) of the average gross sales price of all tons of sand mined, processed and shipped from said property during a two year period immediately prior to April 30, 1991; in all other respects the parties shall be subject to the same terms, conditions and agreements as govern this lease; provided, however, Lessee give proper written notice of his intention to extend this lease at least ninety days prior to expiration date of said lease.

2. Lessee shall pay to Lessors at the Citizens Bank of Leeds, Leeds, Alabama, royalties or rentals for all sand mined and shipped at the rate of five cents (5¢) per ton (2,000 lbs.) shipping weight. The first such payment shall be made on July 15, 1966, and shall include payment for all sand shipped from May 1, 1966 through June 30, 1966. Thereafter on the 15th day of each month Lessee shall pay to Lessor an amount equal to five cents (5¢) per ton (2,000 lbs.) shipping weight on all tons of sand shipped during the preceding calendar month.

Lessors or their duly authorized agent shall have right of access to all books and records of Lessee's necessary to determine the number of tons so shipped during the life of this lease.

3. Lessee shall not carry on any blasting or removal of sand within a radius of one-hundred fifty (150) feet of the store located on said property. Lessee shall indemnify, protect and hold Lessors harmless from any damage to said store building resulting from Lessee's negligence in and about carrying on his business on said leased property.

4. Lessors shall have no control over the operation, maintenance, use or occupancy of said leased property or business conducted thereon by Lessee. Therefore, Lessee is to indemnify protect and hold Lessors harmless on account of any contract, obligation, suit, claim, liability, statutory requirement, or otherwise, in connection with the operation, maintenance, use or occupancy of any of the premises or considerations set out in or having to do in any manner with this lease or the property herein conveyed be they personal, contractual, statutory or otherwise, and will provide liability insurance covering their operation of said sand business.

5. If the LESSEE shall fail or refuse to comply with any of the terms and covenants of this instrument, including but not limited to the payment of the royalties or rental as heretofore provided, or with any of the other terms, conditions and covenants of this instrument, or if the LESSEE shall become insolvent or be adjudged bankrupt, or if a receiver or trustee be appointed by any Court of competent jurisdiction for the property of LESSEE, or if the rights and privileges herein contained should by operation of law devolve or pass to others, the LESSORS shall forthwith have the right to terminate this lease at any time, after the occurrence of any such event upon giving LESSEE ten days written notice of their intention so to do, such notice shall be sent by registered letter addressed to LESSEE at the premises herein demised.

6. It is expressly understood that any and all works, building, plants, structures and equipment of whatever kind or character shall remain the property of LESSEE and be considered the personal property of LESSEE, and upon the expiration or termination of this

lease LESSEE shall have a period of six months in which to remove said property.

7. It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors, administrators, successors or assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this lease agreement, the day and year first above written.

LESSORS

Claude T. Bryant
Claude T. Bryant

Maude Bryant
Maude Bryant

LESSEE

Billy H. O. Barr
Billy H. O. Barr

Witnesses:

STATE OF ALABAMA

SHELBY, COUNTY

I, Frank Ellis, a Notary Public in and for said County and State, hereby certify that Claude T. Bryant and Maude Bryant, LESSORS, whose names are signed to the foregoing lease, and who are known to me, acknowledged before me this day, that being informed of the contents of the lease, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 6 day of May, 1966.

Frank Ellis
Notary Public

STATE OF ALABAMA

SHELBY, COUNTY

I, Frank E. Ellis, Jr., a Notary Public in and for said County in said State, hereby certify that Billy H. O'Barr whose name is signed to the foregoing lease, and who is known to me, acknowledged before me this day, that being informed of the contents of the foregoing lease, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 6 day of May, 1966.

Frank E. Ellis, Jr.
Notary Public

STATE OF ALABAMA)

SHELBY COUNTY)

ADDENDUM TO FOREGOING LEASE

WHEREAS, the parties to this addendum to the foregoing lease executed said foregoing lease on this the 6th day of May, 1966, and

WHEREAS, certain agreements which were to be incorporated in said foregoing lease were omitted, and

WHEREAS, it is the mutual desire of both Lessors and Lessee that this addendum be executed and attached to and made a part of the original and foregoing lease, now,

THEREFORE, the parties hereto do hereby mutually covenant, agree, and contract as follows:

1. This said addendum shall be attached to and shall become a part of the original and foregoing lease executed on this 6th day of May, 1966, and shall be supported by the consideration therein expressed and the mutual covenants and agreements of the parties contained in said original lease and this addendum.

2. Lessors shall have the right to terminate, cancel, and hold for naught the foregoing lease and any and all rights obtained by Lessee, his successors or assigns thereunder, if, at any time during the term of this said lease or the extension thereof after May 1, 1968, the Lessee shall for any twelve month period fail to pay to Lessors at least Six Hundred (\$600.00) Dollars royalty or rental during said twelve month period; and upon such termination or cancellation by Lessors, Lessee shall be obligated to pay to Lessor the difference in the rental or royalties paid during said twelve month period and Six Hundred Dollars.

3. It is understood and agreed that Lessors lease only such interest as they own in and to the property described in the foregoing original lease, and said Lessors make no warranty as to their right to execute the foregoing lease and this addendum; provided, however, that should Lessee be ousted from the property described in the original and foregoing lease, Lessors would be obligated to return to Lessee the rents and royalties paid by Lessee to Lessor up to the date of said ouster, but Lessors shall incur no other, different, or further liability or responsibility to Lessee in such case.

4. In the event the foregoing lease is assigned or transferred by Lessee to any other party the covenants, agreements, and restrictions to Lessee therein

995
BOOK 255 PAGE

made shall be fully and completely binding on Lessee's said assignee or successor in interest.

IN WITNESS WHEREOF, the parties hereto have executed this addendum and contract on this the 6th day of May, 1966.

Claude T. Bryant
LESSOR

Maude Bryant
LESSOR

Billy H. O'Barr
LESSEE

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Claude T. Bryant and Maude Bryant, LESSORS, whose names are signed to the foregoing lease, and who are known to me, acknowledged before me this day, that being informed of the contents of the lease, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 6 day of May, 1966.

Frank Ellis
Notary Public

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1966 DEC 10 PM 3:07
REC. BOOK AS SHOWN ABOVE
JUDGE OF PROBATE

STATE OF ALABAMA)
SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Billy H. O'Barr whose name is signed to the foregoing lease, and who is known to me, acknowledged before me this day, that being informed of the contents of the foregoing lease, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this the 6 day of May, 1966.

Frank Ellis
Notary Public