

STATE OF ALABAMA

COUNTY OF SHELBY

2248

19781025000143860 1/9 \$.00
Shelby Cnty Judge of Probate, AL
10/25/1978 12:00:00AM FILED/CERT

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made this 10th day of October, 1978, between Associated Investment Services, Inc., an Alabama Corporation, hereinafter called "Lessor", and Standard Minerals Corporation, Inc., an Alabama Corporation, hereinafter called "Lessee";

WITNESSETH

That for and in consideration of the sum of thirty eight thousand five hundred fifty dollars (\$38,550) paid as advance royalty by the Lessee to the Lessor, and for and in consideration of prompt and punctual payment of the rents, royalties and other sums provided herein to be paid by the Lessee to the Lessor, and in consideration of the performance by the Lessee of the covenants, agreements and undertakings herein provided to be kept and performed by it, the Lessors do hereby LEASE, LET and DEMISE exclusively unto the Lessee, upon the terms, conditions and provisions, and subject to the reservations hereinafter set forth, all of the coal recoverable in, on and underlying the following described real estate in Shelby County, Alabama.

(See Exhibit "A" attached hereto and made a part hereof)

covering 2,280 acres, more or less, hereinafter called the "premises".

1. RIGHTS OF LESSEE

This Agreement covers and includes all present interest of Lessor in the lands, and also covers any reversionary, contingent or future interest owned by Lessor, in the premises, together with all of the mining rights and privileges appurtenant to the aforesaid coal and incident to the ownership thereof and (by way of enlargements, and not by way of restriction) the following rights and privileges to the extent Lessor has the right to convey same;

(a) The exclusive right to enter into, upon, under, over, across and through the premises at such point and in such manner as may be necessary or convenient for the purposes of mining all the merchantable, commercially available and economically mineable coal by the strip mining and/or the underground mining method. Further, the exclusive right to strip and destroy the surface, subsurface and other strata overlying all coal hereby leased. The determination as to what coal is merchantable, commercially available and economically mineable shall rest solely with Lessee;

(b) The exclusive right to enter into, upon, under, over, across and through the premises at such points or in such manner, for the purpose of prospecting, exploring, testing, analyzing and mining said coal with whatever tools, equipment and machinery Lessee shall deem necessary or convenient for such purpose;

(c) The right to enter into, upon, under, over, across and through the premises at such points and in such manner as may be necessary or convenient for the purposes of mining, storing removing, processing, transporting, shipping and marketing the coal mined by Lessee, his successors or assigns, hereunder;

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(d) The right to have and use the free and uninterrupted right of way into, over, under, across and upon said premises at such points and in such manner for the construction, repair and maintenance of such roads, tramways, railroads and other transportation facilities as may be necessary or convenient to the removal, processing and marketing of the coal in, on and underlying the premises, with the right to change the location of any road now existing, or hereafter constructed upon said premises;

(e) The right to construct, erect and maintain such excavations, openings, structures, buildings, shops, tipples, reservoirs, railways, roadways, tram roads, power lines, pipelines, telephone lines, drains and drainways, and all other structures and improvements necessary or convenient for the mining, removing, processing and marketing of the coal in, on and underlying the premises;

(f) The right to change, increase, diminish or destroy both surface and underground waters, whether percolating waters or subterranean streams; and to discharge upon the premises water found therein, and to construct, maintain and operate such drains and drainage ways as may be necessary or convenient to the operation, production and marketing of coal from the premises;

(g) The right to deposit anywhere upon the said premises such earth, rock, stones, slate and "gob" material as may be produced in connection with Lessee's operations hereunder, and also such products as may be derived from operations of the Lessee conducted upon adjacent, coterminous or neighboring lands; and also the right to take and use, off the premises, any such materials produced from the operations hereunder, for the purpose of utilizing the same in the building of roads, ramps or other facilities as may be necessary or convenient to the mining operations of the Lessee hereunder, or to its operations upon adjacent, coterminous or neighboring lands;

(h) The right to transport over, under, across and through the premises, any coal now or hereafter owned, leased or otherwise acquired by the Leasee and located upon adjacent, coterminous or neighboring lands; and the right to process and market such coal upon and from the premises hereby leased to the same extent as if such adjacent, coterminous or neighboring coal were included within the term of this lease;

(i) The right to use, free of charge, so much of the leased coal mined and removed hereunder, as may be necessary or convenient for fuel in connection with Lessee's mining operations hereunder;

(j) Each and all of the foregoing mining rights and privileges may be exercised without any liability to the Lessors, their heirs or assigns, for damages arising out of the exercise of such rights, to the premises or to any buildings, chattels, animals, persons or other things therein or thereon; the Lessor hereby expressly waiving any and all claims for damages of whatsoever character or description which it might or could have by reason of the exercise of such mining rights and privileges by Lessee.

2. TERM

This Agreement of Lease shall have a term commencing as of the date hereof and continuing through May 29, ~~1978~~¹⁹⁷⁹, and as long thereafter as mining operations are being continued upon the premises or any adjacent, coterminous or neighboring lands by Lessee, its successors or assigns.



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In the event, however, no material activity has been initiated within twelve (12) months from date relative to the mining or subleasing of mining rights to coal under more than three hundred (300) feet of overburden, Lessor shall have the right to cancel that portion of the rights conveyed to Lessee hereby respecting the mining of such coal reserves by sending Lessee written notice of such apparent inactivity and giving the Lessee 30 days to initiate such activity or demonstrate that the required activity has been performed, failing in which, Lessor shall be entitle to retake possession of all rights with respect to the mining of coal under more than three hundred (300) feet of overburden only.

3. ADVANCE ROYALTY

Concurrent with the execution and mutual acceptance of this lease, Lessee will pay to the Lessor as advance royalty, a sum equal to thirty eight thousand five hundred fifty dollars (\$38,550) and a sum of thirty two thousand one hundred fifty dollars (\$32,150) per year during the remaining term of this Agreement of Lease or any renewal or extension hereof payable at the beginning of each twelve (12) months period. Any amount so paid shall be considered as advance royalty and shall be credited on and deducted at the rate of 50% of earned mineral royalty as the same becomes due and payable.

4. EARNED ROYALTY

When and as actual mining operations for coal are commenced on the leased premises and so long as actual mining operations are conducted upon the leased premises by whatever means of mining, Lessee shall pay to the Lessor earned mineral royalty of five percent (5%) of Lessee's realization on a net f.o.b. pit price basis, but not less than one dollar (\$1) per ton of 2000 pounds for each and every ton of coal mined and removed by Lessee from the leased premises as determined by railroad or other carrier's weights.

The obtaining of surface rights other than as specifically conveyed hereby and determination of royalty rates and terms therefor, where applicable shall be the responsibility of Lessee.

Payments of earned royalty shall be made monthly on the twentieth (20th) day of each month during the continuance of such mining operations; such payment shall be made for the amount due for earned royalty on the tonnage produced and sold during the preceding month. As to any portion of the leased premises in which the Lessor owns an undivided interest the applicable advance royalty after the first year of the Agreement of Lease and earned royalty shall be reduced in proportion to Lessor's undivided interest in the leased premises.

5. RECORDS AND INSPECTION

Lessee shall keep true and correct records of all coal mined and sold from the premises furnishing Lessor a true and correct statement each month showing the tons of coal mined and sold during the preceding month and shall permit Lessor or Lessor's agent to examine such records at all reasonable times.

6. TITLE

Lessor warrants and covenants that he has good title to the premises and the coal as described herein; that he is fully seized of the right to mine, recover and remove all of the coal covered by this lease; that the premises and coal as described herein are free from all liens and encumbrances, charges and rights in favor of others; that they have good and perfect right to lease, let and demise the premises and coal covered by this lease and to grant the right to mine, recover and remove all of the coal covered by this lease; and that he will defend in favor of Lessee the quiet and peaceable enjoyment of the premises and the right to mine, recover and remove all of the coal covered by this lease against all parties whomsoever.

7. PAYMENT OF TAXES

Lessor shall be responsible for paying all taxes that may be levied or assessed against the premises, and Lessee shall pay all taxes on machinery or equipment brought upon the premises by Lessee and on all improvements and betterments erected by the Lessee and on all of the coal mined and produced hereunder by Lessee. Lessee shall also pay all taxes and assessments, other than taxes assessed against Lessor based on the royalties received by Lessor hereunder, that may be levied or assessed by the United States of America, the state where the premises are located, or any county, municipality, or taxing district or authority on the production or output of coal produced from the premises by Lessee, or based thereon. Lessor shall pay all taxes levied or assessed against him by the United States of America, the state where the premises are located, or any county, municipality or taxing district or authority on or based upon any royalties received hereunder by Lessor. In the event of Lessor's failure to promptly pay the taxes to be paid by Lessor hereunder when the same becomes due and payable, the Lessee, unless the Lessor shall be protesting such taxes or otherwise engaging in a dispute over such taxes with the proper taxing authority, may pay the same and any amount so paid with interest at the rate of eight percent (8%) per annum shall be deducted from any royalty payments thereafter due Lessor, except that should no further royalty payments be due and payable hereunder, Lessee shall be repaid for such taxes and interest upon demand.

8. COMPLIANCE WITH LAWS AND INDEMNITY

Lessee covenants that it will;

(a) at all times conduct its mining operations in compliance with all provisions and requirements of all applicable laws of the United States of America and of the state where the premises are located, now or hereafter in force and effect, and in compliance with all valid rules and regulations promulgated thereunder;

(b) make and file all maps required;

(c) indemnify and hold Lessor harmless from any liability arising from Lessee's failure to observe such laws, rules or regulations.

Lessee's obligations hereunder shall survive, if applicable, the termination of this lease.

Lessee further agrees to indemnify, protect and hold Lessor harmless from and against any and all claims, demands, suits, actions, causes of action, judgements or decrees for injury to person(s) or damage to property asserted by any third party or by the employees of the Lessee resulting from the mining operations of Lessee conducted upon the premises.

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9. LESSEE'S RIGHT TO SURRENDER OR TERMINATE THIS LEASE

Lessee shall have the right at any time, and from time to time, during the term of this lease to execute and transfer to Lessor or file for record in the official records of the county where the premises are located, release or releases covering all of the premises hereby leased, and thereby surrender this lease as to such portion of the premises designated therein and terminate from and after the date of such surrender all obligations and liabilities relative thereto.

Anything to the contrary notwithstanding contained herein, Lessee shall have the right at any time during the term of this lease upon written notice to Lessor, to terminate this lease, and from and after the date of termination, Lessee shall have no further obligations or liabilities to Lessor, including the obligation and liability for payment of the advance royalties as set forth above. It is expressly understood between the parties that the right to terminate this lease set forth in this paragraph is supported by the consideration recited herein and the payment of royalties by Lessee to Lessor, and the unilateral right on the part of the Lessee to terminate this lease does not vest a similar right in Lessor.

Upon the expiration or termination of this lease, Lessee shall have the right within one (1) year therefrom to remove all of its property of whatsoever kind and nature from the premises.

10. NO IMPLIED COVENANTS WITH RESPECT TO MINING ON THE PREMISES

It is understood between the Lessor and Lessee that this lease shall not be forfeited or cancelled for failure on the part of Lessee to commence mining operations on the premises or diligently prosecute mining operations once such operations have commenced on the premises or mine any coal which Lessee deems not to be merchantable or economically mineable, it being expressly understood that the payment of advance royalty by Lessee to Lessor as hereinabove set forth fully compensates Lessor for Lessee's failure to commence mining operations on the premises or diligently prosecute mining operations once such operations have been commenced or mine any coal which Lessee deems not to be merchantable or economically mineable.

11. RIGHT TO ASSIGN

The estate of either party to this lease may be assigned or transferred in whole or in part. No change or division of ownership in the premises or in the royalties payable under this lease shall (except at the Lessee's option in any particular case) be binding upon Lessee until thirty (30) days after Lessee shall have been furnished notice, together with the original recorded instruments, or duly certified copies thereof, properly evidencing same. No such change or division of ownership shall operate to enlarge the obligations or diminish the rights of Lessee.

12. FORCE MAJEURE

Lessee shall not be deemed in default for failure to perform or observe any of the terms, conditions, provisions, obligations or covenants to be performed or observed by it during periods in which performance or observance is prevented by any cause beyond Lessee's control (any such cause being herein called "force majeure"), such as, for example and not by way of limitation, fire, cave-in, floods, windstorm, other damage from the elements, strikes, riots, unavailability of transportation, actions of governmental authority, acts of God and acts of the public enemy.

The term of this lease shall be extended, unless sooner terminated by Lessee as hereinabove provided, for a period equal to the period for which performance is suspended due to force majeure. All periods of force majeure shall be deemed to begin at the time Lessee stops performance hereunder by reason of such force majeure, and Lessee shall notify Lessors of the beginning and ending date of each such period.

13. All notices required to be given hereunder shall be served in person or by United States Mail (registered or certified), return receipt requested, postage prepaid, addressed to the party concerned as follows, or to such other place as either party shall from time to time designate in writing:

If to Lessor;

If to Lessee:

ASSOCIATED INVESTMENT SERVICES
Post Office Box 2425
Birmingham, Alabama 35201

STANDARD MINERALS CORPORATION
Post Office Box 344
Sumiton, Alabama

14. WAIVER, MODIFICATION OR AMENDMENT

Failure of either the Lessor or Lessee to exercise any of their respective rights hereunder upon the performance by the other party of any condition, covenant or provision herein contained shall not be construed as a waiver thereof, nor shall the defective performance or waiver of nonperformance of any such condition, covenant or provision upon the part of the other party be construed as a waiver of the rights of the other party as to any subsequent defective performance or nonperformance hereof.

No waiver, release, modification nor amendment of any of the terms, conditions or provisions of this lease shall be valid or relied upon by either party hereto or offered in any judicial proceeding or otherwise, unless the same is in writing, duly executed by Lessor and Lessee.

15. DEFAULT

Should Lessee fail to make any payment under the terms of this Lease within thirty (30) days after the same is due, and if such default shall continue for a period of thirty (30) days after written notice by the Lessor to the Lessee thereof by United States registered or certified mail, return receipt requested, then without further act of either party, this Lease shall forthwith be cancelled and terminated without further liability of either party to the other, the Lessor shall retain all sums theretofore paid.

16. BINDING EFFECT OF LEASE

This lease and all provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions and restrictions hereinabove set forth in regard to mortgaging, assigning, conveying, subleasing, assigning and transferring of this lease and the premises embraced herein.

The rights, duties, obligations and liabilities of the parties hereto shall be several and not joint or collective, it being the express purpose and intention hereto to create only a Lessor and Lessee relationship, and nothing herein shall ever be construed as creating a partnership, joint venture or other business, duty, obligation or liability.

17. CAPTIONS

The captions appearing in this lease are for purpose of identification only and shall not be considered or construed as affecting, in any way, the meaning of the provisions hereof.



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18. MEMORANDUM OF LEASE

The parties agree that concurrently with the execution of this lease, they will, upon request of either party, execute, acknowledge and deliver a short form or memorandum of this lease for recordation in the county where the premises are located.

19. DRILLING RESULTS

Lessee agrees to furnish to Lessor a copy of all drilling information at the expiration of the drilling.

WITNESS THE SIGNATURES of the parties hereto as of the day and year first above written.

Witness

Thurman D. Hall

LESSOR:

ASSOCIATED INVESTMENT SERVICES, INC

By George E. Murphree
George E. Murphree
Its President

LESSEE:

STANDARD MINERALS CORPORATION, INC.

Witness

H. Wayne Webb

By C. F. Ballenger
C. F. Ballenger
Its President



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ACKNOWLEDGEMENTS

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, H. Wayne Wade, a Notary Public, hereby certify that GEORGE E. MURPHREE whose name is signed to the foregoing Agreement of Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement of Lease, he executed same voluntarily on the day the same bears date.

Given under my hand this 10th day of October, 1978.

H. Wayne Wade
Notary Public

My Commission Expires:
May 79

STATE OF ALABAMA
COUNTY OF SHELBY

I, H. Wayne Wade, a Notary Public, hereby certify that C. F. Ballenger whose name as an authorized signatory of Standard Minerals Corporation, Inc., a corporation, is signed to the foregoing Agreement of Lease, and who is known to me, acknowledged before me on this day that being informed of the contents of the Agreement of Lease, he executed the same on the day the same bears date.

Given under my hand this 10th day of October, 1978.

H. Wayne Wade
Notary Public

My Commission Expires:
May 79



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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

S 1/2 of NE 1/4, SE 1/4 of NW 1/4 and S 1/2 of Section 11

NE 1/4 of NW 1/4 and W 1/2 of NW 1/4 of Section 13

E 1/2 and NE 1/4 of NW 1/4, SW 1/4 of NW 1/4, E 1/2 of SW 1/4 and
SW 1/4 of SW 1/4 of Section 15

NE 1/4 of NE 1/4, S 1/2 of NE 1/4 and S 1/2 of Section 21

NE 1/4 of NE 1/4, W 1/2 of NE 1/4, SE 1/4 of NW 1/4, NE 1/4 of
SW 1/4, S 1/2 of SW 1/4 and W 1/2 of SE 1/4 of Section 29

NE 1/4 of NE 1/4, SE 1/4 of NE 1/4 of Section 31

contained in Township 20 South, Range 2 ~~West~~,
in the County of Shelby, State of Alabama

and consisting of 2,280 acres MOL

STATE OF ALA. SHELBY CO.

I CERTIFY THIS

FILED

OCT 25 PM 12:10

JUDGE OF PROBATE

Rec. 13.50

Ind 1.00

\$ 560.00



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