

Lease on Gold King Mine - the original discovery mine of the Cripple Creek District.

Lease and Agreement

THIS LEASE made as of the 23 day of January, 1948, by and between The Gold King Mining Syndicate, Inc. a corporation of the State of New York doing business in the State of Colorado, (hereinafter termed "Company"), Party of the First Part, and Raymond McLeod and Julian Davis (hereinafter termed "Lessees"), parties of the Second Part:

WITNESSETH:

That Company, for and in consideration of the royalties, covenants and agreements hereinafter reserved and by said Lessees to be paid, kept and performed, has granted, demised and let, and by these presents does grant, demise and let unto said Lessees, all that portion of the mining property of Company situate in the Cripple Creek Mining District, county of Teller State of Colorado, and particularly described as follows:

That block of ground consisting of 200 feet Southwest and 100 feet Northeast of the Basalt Dike, from 400 level to 200 level, known as the Discovery Vein. (Original Vein)

TO HAVE AND TO HOLD the said demised premises unto said lessees for the purpose of mining and no other purpose, for the term of six months from the date hereof, expiring at noon on the twenty-third day of January, 1948, but the term of this lease shall be extended for successive six months' periods unless either Company or Lessees, not less than ten days prior to the expiration of the term hereof, or prior to the end of any subsequent six months' period, shall serve notice in writing upon the other party, of intention to terminate at the end of the current term, and unless at any time sooner terminated for default on the part of said Lessees, as hereinafter provided,

AND IN CONSIDERATION OF said demise said Lessees do jointly and severally covenant and agree with Company as follows, to-wit:

1. That Lessees herein are independent contractors and there shall be no privity of contract between Company and employees or sublessees of Lessees, but all such employees, or sublessees, whether on a wage or profit sharing basis, shall be selected by Lessees, hired by Lessees, directed by Lessees and paid by Lessees; and that subject only to the specific limitations herein set out, Lessees shall have exclusive dominion and control over the leased property and the operations therein during the term hereof.

2. That they will enter upon said leased premises and during every month of the term hereof, cause the same to be worked with reasonable diligence; and by the term "reasonable diligence" as used herein the parties agree that 50 shifts of work per month shall constitute prima facie evidence of such reasonable diligence; that they will perform all work in said demised premises in a safe and minerlike manner in accordance with the mining laws of the State of Colorado and such rules and regulations as may have been or may be issued by the Industrial Commission of Colorado or the State Metal Mine Inspector. All openings shall be maintained in accordance with standards established by such rules and regulations, and shall be kept thoroughly drained, clear of loose rock and rubbish and obstructions unless prevented by extraordinary mining casualty, except where safe and economical mining practice requires back filling.

3. That they will permit Company to deduct from the proceeds of settlements on ores mined and shipped by them the amount of all production and other taxes accruing on account of or chargeable upon the operations conducted by Lessees on the property leased. Because of the practical impossibility of determining in advance the amount to be deducted to cover such production taxes, it is hereby agreed that Company may deduct from the proceeds of settlement on ores, and retain without obligation to account further to Lessees therefor, as in full settlement of any obligation of Lessees with respect to such production tax, a sum equal to one per cent of the gross value of ore produced by said Lessee, and without regard to any other operations in said mine.

4. That they will, at their expense, carry Workmen's Compensation Insurance covering all their employees and sublessees, provided, however, that Company may advance moneys to secure such insurance, and the Lessees shall reimburse Company for any such advances; and Lessees will pay any taxes and/or make any deductions under the Federal Social Security Act and/or the Colorado Employment Security Act for which Lessees may become obligated, and will comply with all other laws, rules and regulations of any governmental authority affecting Lessees' operations in said demised premises, and will furnish Company with supporting evidence of such compliance; provided further, that Lessees and their employees and sublessees may, if it be permitted, be covered for Workmen's Compensation Insurance under Company's blanket policies or under Company's self-insuring privileges, but Lessees shall reimburse Company for their proportionate share of the premiums paid for such coverage under such blanket policies, or shall pay Company for such coverage under Company's self-insuring privilege at the rates charged by the State of Colorado; and to enable Company to arrange for and carry such insurance, Lessees will, in a timely manner, furnish Company with all necessary data; or, if such arrangement may not be had, Company will endeavor to secure special policies of insurance covering Lessees, their employees and sublessees, and Lessees will pay all premiums required for such special insurance, or will reimburse Company in the event it advances the money, and will furnish Company with such information as may be required to arrange for and keep the same in force and effect.

5. That there is reserved to Company the right of way through any main workings in said property for ingress and egress for transportation purposes and the installation and maintenance of power lines, air lines and other facilities; and there shall also be reserved to Company the right of entry into said property for the purpose of inspection of the workings, for surveying, sampling, and for checking upon compliance with safety rules and regulations.

6. That they will pay any loss or expense resulting from any shipment of ores, the proceeds from which are not sufficient to meet all freight, smelter or mill, and other costs and charges in connection therewith.

Period of Lease

Independent Contractors

Shifts

Deductions

Compensation, Social Security, Etc.

Right of Way

Losses

Notices

7. That they will forthwith post and thereafter keep posted in conspicuous places on the demised premises as many written notices as may be necessary to adequately notify all persons who may come within or upon the demised premises, that the same are held by Lessees under lease from Company, and that Lessees and not Company are liable for all labor performed and supplies and/or materials used by Lessees in and upon the demised premises, and that Lessees and not Company shall be responsible for all debts and expenses incurred in mining operations in or upon the demised premises.

Debts Contracted by Lessees

8. That they will hold Company harmless and fully indemnify it against all claims and demands of every kind and nature which may be made upon Company or against the above described premises for or on account of any debts or expenses contracted or incurred by Lessees, as well as from and against all acts, transactions or omissions by Lessees, their agents and servants, including claims, demands, causes of action costs and expenses arising during the continuance of this agreement from or on account of injury to any persons, whether occasioned by any unsafe or dangerous condition of any part of the above described premises or any workings thereon or therein used by Lessees, or otherwise, and to defend Company at their own cost and expense from any such liability or asserted liability.

Assignments

9. That they will not assign or sublet this lease, or any interest therein, or the premises affected thereby, or any portion thereof, without the written consent of Company, nor allow any person not in privity with the parties hereto to take or hold said premises, or any part thereof, under any pretense whatsoever.

Termination of Lease

10. That they will deliver to Company the said premises with the appurtenances and improvements, in good order and condition, with all shafts, tunnels, levels and other permanent workings thoroughly clear of waste, rubbish and water and ready for immediate working, accidents not arising for negligence alone excepted, without demand or further notice on the last day of the term, or any extension of term hereof, or at any time previous thereto, upon demand for forfeiture; provided, that Lessees shall have thirty days from and after the date of any such termination in which to remove all broken ore from the property for shipment under the terms of this agreement; and Lessees shall have the right during such interim, to remove from said premises all tools, equipment, and supplies owned by them.

Marketing of Ores

11. That Company shall have the prior right to purchase all ores produced by Lessees from the said premises at the highest competitive price bid in the open market, and that if Company does not exercise its right to take any such ore, Lessees may sell the same elsewhere provided any contract for the sale of the ores elsewhere shall cover all ores produced from the leased premises during the term of the lease; or at the option of Lessees they may ship ores under Company's smelter or mill contract. That all ore produced by Lessees shall be shipped in the name of Company, and Company is hereby given a lien upon all ores extracted from the premises during the term of the lease to secure to it any and all sums due or owing by Lessees, and from the net smelter or mill returns Company shall make all deductions for any advances of any money, materials and supplies furnished, for taxes, rentals, royalties and all other proper charges, paying over to Lessees any remaining balance of net mill or smelter returns within five days from the receipt thereof.

Mill Returns

Lessees shall have access to all original records of mine, mill and smelter returns to enable them to check such receipts, deductions and payment. Lessees shall have the right to be present or be represented at the sampling of any ores should they so desire. Lessees shall pay the cost of assaying mine samples and of any controls, and also the cost of any surveys desired by them. Company shall not be liable for ore lost by theft, accident or financial difficulties of the ore buyer not arising from its negligence, nor shall it collect any royalties on ores so lost.

Royalty

12. That they will pay to Company, as rental for property leased to them, a royalty on all ores marketed in the amount of 50 per cent of the net mill or smelter return value. "Net mill or smelter return value" is defined as the mill or smelter schedule value per dry ton, less treatment, freight, and sampling charges.

Supplies

13. That Company shall furnish to Lessee the necessary powder, drill steel and timber and air without expense to Lessee in all cases and shall furnish to Lessee free of charge hoisting of ore where Company is operating hoist for its own operation. And that Lessee shall at his own expense furnish all necessary machinery, repair parts of such machinery, small tools and hand tools and all necessary labor.

Violations

14. Upon violation by Lessees of any of the covenants or agreements of this Lease, the term of this Lease shall, at the option of the Company, terminate and expire, and the Lease and leasehold rights of Lessees in the premises shall be forfeited, if such default or violation shall continue at the expiration of ten (10) days next after Company shall have given to Lessees written notice of such violation or default, and demand for possession of the leased premises because thereof, Lessees being given said ten (10) days' time to overcome the cause of such forfeiture by full compliance with the violated covenant or agreement, and if such cause be not so overcome at the expiration of said ten (10) days' time, without further demand or notice Company, by its agents or attorneys, may enter upon the leased premises and dispossess all persons occupying the same. In the event Lessees deny that the violations had occurred or that the default existed, of which notice was so given, they may, within five (5) days from receipt of such notice, serve written demand upon Company for submission of such question to arbitration. Thereupon, Company and Lessees shall each, within five (5) days from the making of said demand, appoint an arbiter, and if the two so appointed do not agree within five (5) days, such arbiters shall promptly select a third, and the decision of any two such arbiters shall be rendered within ten (10) days and shall be conclusive and binding upon Company and Lessees as to the fact of the occurrence or non-occurrence of such claimed violation or default, except as provided in paragraph 15 below. Any expense incurred in said arbitration shall be borne by the party found to be at fault by arbiters.

Safety

15. That all operations shall be conducted in a safe and prudent manner; and it is agreed that should any dispute arise between Company and Lessees regarding the conduct of operations in a safe and prudent manner; such dispute shall be referred to the State Mine Inspector for decision, such decision to be final and binding upon both parties.

16. That this Lease applies only to ore bodies, veins, or ledges within the property owned or controlled by Company; and in no event or circumstances shall Company be held liable if Lessees' operations continue beyond the outside boundaries of the leased property herein described.

17. That no officer or employee of Company shall be interested in or participate in the profits derived from this Lease.

18. That nothing in this agreement contained shall be construed to require Company to continue its operations or to continue to make available to the Lessees service, equipment or supplies if to do so would result in financial loss to the Company; and operations may be suspended by either party to this Lease due to causes beyond the control of such party; such as acts of God, fire, destruction of mine, strikes, riots, unavailability of labor, materials or supplies, or low price of metals.

This lease and agreement shall be binding upon and inure to the benefit of the successors and assigns of Company, and the heirs, executors, administrators, personal representatives and consent assigns of Lessees.

IN WITNESS WHEREOF, the said Party of the First Part has caused these presents to be signed by its Agent, V. L. Porter and said Parties of the Second Part have hereunto set their hands the day and year first above written.

The Gold King Mining Syndicate, Inc.
By V. L. Porter, Agent
[Signature] (SEAL)
Julian E. Davis (SEAL)
____ (SEAL)
____ (SEAL)