

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-3952

STATE OF ALABAMA SURFACE MINING COMMISSION

- (X) Permit Application for a Surface Coal Mine
() Permit Application for an Underground Coal Mine
() Permit Application for a Preparation Facility

PART I A. IDENTIFICATION

1. PERMIT APPLICANT

Name: Gunner - Reilly Corp.
Street Address: 414 Knightsbridge Road
City: Alabaster State: AL Zip: 35007
Mailing Address: P. O. Box 1253
City: Alabaster State: AL Zip: 35007
Telephone Number: (205) 616-5908
Social Security Number (Voluntary): _____
Employer Identification Number: 52-2439323
ASMC License#: L-0807

2. ENTITY OR PERSON RESPONSIBLE FOR PAYING ABANDONED MINE LAND RECLAMATION FEES

Name: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Telephone Number: (_____) _____
Social Security Number (Voluntary): _____
Employer Identification Number: _____
ASMC License#: _____

3. IDENTIFY THE OPERATOR FOR THIS MINE IF DIFFERENT FROM THE PERMITTEE

Name: _____
Street Address: _____
City: _____ State: _____ Zip: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Telephone Number: (_____) _____
Social Security Number (Voluntary): _____
Employer Identification Number: _____
ASMC License#: _____

4. CONTACT PERSON FOR PERMIT REVIEW ISSUES AND CORRESPONDENCE

Name: Jeffery Elkins
Mailing Address: P.O. Box 90
City: Alabaster State: AL Zip: 35007
Telephone Number: (205) 616-5908

ALSO PLEASE COPY: PERC Engineering Co., Inc.
Post Office Box 1712
Jasper, AL 35502-1712
Telephone: (205) 384-5553

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-3952

PART I B. OWNERSHIP AND CONTROL

1. PERMIT APPLICANT OWNERSHIP AND CONTROL.

At the time of filing of this application provide an update of all information contained in the applicant's license file or certify that the information contained in the license is accurate and complete. The updated information shall be submitted on Part IA through Part IF of the License application form. Check one of the following

- A license update is included
- Information contained in the license file is accurate and complete at the time of filing of this application. No update is included.

Following notification that the permit appears eligible for issuance, the applicant must certify that all information in this application and the license file pertaining to ownership and control, surface mining history and violation history is still valid or the applicant must submit the appropriate update information.

2. OPERATOR OWNERSHIP AND CONTROL.

If someone other than the permittee has been identified as the operator under this permit, an update of the ownership and control information contained in the operator's license file must be provided or certify that the information contained in the license file is accurate and complete. The updated information shall be submitted on Part I A through Part I F of the License application form. Check one of the following: **NOT APPLICABLE**

- A license update is included
- Information contained in the license file is accurate and complete at the time of filing of this application. No update is included.

Following notification that the permit appears eligible for issuance, the applicant must certify that all information in this application and the license file pertaining to ownership and control, surface mining history and violation history is still valid or the applicant must submit the appropriate update information.

3. CONTROL OF MINING OPERATION THROUGH CONTROL OF COAL TO BE MINED.

Provide the information below for any person or entity who owns or controls the coal to be mined under this permit and who, by lease, sublease, or other contract:

- A. has the right to receive the coal after mining, or,
B. has the authority to determine the manner in which the operator or permittee conducts surface coal mining operations.
(USE ADDITIONAL SHEETS IN THE FORMAT BELOW IF NECESSARY)

Name: Applicant
Street Address: _____
City: _____ State: _____ Zip: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Telephone: (____) _____ - _____
Social Security Number (Voluntary): _____ - _____ - _____
Employer Identification Number: _____
ASMC License Number: _____

Applicant: Gunner-Reilly, Corp.
 Mine Name: Cane Creek Mine
 Permit Number: P-3952

PART I C. PROPERTY OWNERSHIP, INTERESTS AND RIGHTS

1. OWNERSHIP OF PROPERTY TO BE MINED AND RIGHT OF ENTRY.

INSTRUCTIONS: Show the property ownership boundaries of each parcel of land in the permit area on the permit map or an overlay of the same scale as the permit map. If the surface estate is severed from the mineral estate, show and describe the ownership of each estate separately. In the spaces below, identify:

1. Every current legal or equitable owner(s) of record (as found in a standard search of title) of the property;
2. The holders of record of any leasehold interest in the property; and,
3. Any purchaser of record under a real estate contract of the property.

Describe the basis of the applicant's legal right to enter and mine on all properties contained in the permit application. If the mineral estate has been severed from the surface estate, describe the basis of the legal right to enter and mine both the surface and mineral separately. Give the nature of such right (i.e. lease, deed, contract, etc.), where recorded, describe from whom, to whom, and the date executed, and whether that right is the subject of pending litigation.

USE ADDITIONAL SHEETS IN THE FORMAT BELOW AS NECESSARY

Page 1 of 2

Legal description of property or permit map symbol: Gail Beaird (S)

Surface/Mineral/or Fee Simple (both): Surface & FEE

Legal owner(s) of record: Gail Beaird

Address: P. O. Box 100 City: Cordova State: AL Zip: 35550

Holders of leasehold interest: _____

Address: _____ City: _____ State: _____ Zip: _____

Purchasers under a real estate contract: _____

Address: _____ City: _____ State: _____ Zip: _____

Description of right to enter or mine:
 Describe the type of document or conveyance which grants the right of entry, disturbance or mining. Indicate from whom the right was acquired and to whom the right was granted. If the grantor of the right is not the owner(s) of property, identify all grantors and grantees of the right beginning with the owner(s) and ending with the permit applicant.

Describe Right of Entry (If deed indicate where recorded):	Granted From:	Granted To:	Date Granted:	Litigation Pending? (Yes or No) If yes, explain.
Lease	Gail Beaird	Gunner-Reilly Corp.	08-20-11	No

Applicant: Gunner-Reilly, Corp.
 Mine Name: Cane Creek Mine
 Permit Number: P-3952

PART I C 1. (CONTINUED)

Legal description of property or permit map symbol: Drummond Company, Inc.

Surface/Mineral/or Fee Simple (both): Surface/Mineral

Legal owner(s) of record: Drummond Company, Inc.

Address: P. O. Box 1549 City: Jasper State: AL Zip: 35501

Holders of leasehold interest: _____

Address: _____ City: _____ State: _____ Zip: _____

Purchasers under a real estate contract: _____

Address: _____ City: _____ State: _____ Zip: _____

Description of right to enter or mine:
 Describe the type of document or conveyance which grants the right of entry, disturbance or mining. Indicate from whom the right was acquired and to whom the right was granted. If the grantor of the right is not the owner(s) of property, identify all grantors and grantees of the right beginning with the owner(s) and ending with the permit applicant.

Describe Right of Entry (If deed indicate where recorded):	Granted From:	Granted To:	Date Granted:	Litigation Pending? (Yes or No) If yes, explain.
Lease	Drummond Company, Inc.	Gunner-Reilly Corp.	9-29-11	No

Legal description of property or permit map symbol: Southern Region Industrial Realty, Inc. (M)

Surface/Mineral/or Fee Simple (both): Mineral

Legal owner(s) of record: Southern Region Industrial Realty, Inc.

Address: 3 Commercial Place City: Norfolk State: VA Zip: 23510

Holders of leasehold interest: _____

Address: _____ City: _____ State: _____ Zip: _____

Purchasers under a real estate contract: _____

Address: _____ City: _____ State: _____ Zip: _____

Description of right to enter or mine:
 Describe the type of document or conveyance which grants the right of entry, disturbance or mining. Indicate from whom the right was acquired and to whom the right was granted. If the grantor of the right is not the owner(s) of property, identify all grantors and grantees of the right beginning with the owner(s) and ending with the permit applicant.

Describe Right of Entry (If deed indicate where recorded):	Granted From:	Granted To:	Date Granted:	Litigation Pending? (Yes or No) If yes, explain.
Lease	Southern Region Industrial Realty, Inc.	Gunner-Reilly Corp.	Pending	No

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-3952

PART I C. (CONTINUED)

2. OWNERSHIP OF SURFACE AND MINERAL LANDS CONTIGUOUS TO THE AREA TO BE MINED
INSTRUCTIONS:

Provide the information below for the owners of record of all surface and mineral properties contiguous to any part of the proposed permit area.

USE ADDITIONAL SHEETS AS NECESSARY IN THE FORMAT BELOW

=====

PAGE 1 of 1

=====

Name: Gail Beaird
Address: P. O. Box 100
City: Cordova State: AL Zip: 35550
Interest owned (Surface, Coal or Fee Simple): Surface & FEE
Type of Interest (Owner, Lease, or Other): Owner

Name: Southern Region Industrial Realty, Inc.
Address: 3 Commercial Place
City: Norfolk State: VA Zip: 23510
Interest owned (Surface, Coal or Fee Simple): Mineral
Type of Interest (Owner, Lease, or Other): Owner

Name: Drummond Company, Inc.
Address: P. O. Box 1459
City: Jasper State: AL Zip: 35502
Interest owned (Surface, Coal or Fee Simple): Surface/Mineral
Type of Interest (Owner, Lease, or Other): Owner

STATE OF ALABAMA)
)
COUNTY OF WALKER)

COAL MINING LEASE

THIS AGREEMENT by and between **Gail Beard and Marilyn Beard** (hereinafter collectively referred to as "Lessor"), and **Gunner-Reilly, Inc.**, an Alabama corporation (hereinafter referred to as "Lessee")(Lessor and Lessee shall collectively be referred to as "Parties").

WITNESSETH:

WHEREAS, Lessor owns certain real property that Lessee wishes to lease from Lessor; and

WHEREAS, Lessee is in the business of coal mining; and

WHEREAS, Lessee wishes to lease Lessor's property in order to mine the coal believed to be on the property; and

WHEREAS, the Parties agree that under the lease terms, Lessor, Lessor's affiliates, or any company owned in full or part by Lessor or Gail Beard, shall have the right to mine for clay in and around each location after Lessee mines coal from such location; and

WHEREAS, Lessee shall be responsible for reclaiming all mined locations on the leased property but not until Lessor is completely finished clay mining such area and gives Lessee written permission.

NOW THEREFORE, for and in consideration of the royalties to be paid and the covenants, agreements, and stipulations hereinafter set forth, Lessor has granted, demised, let, and leased and by these presents does let and lease unto Lessee, to the extent of Lessor's interest, and Lessee does hereby lease, for the term, rentals and purposes hereinafter set forth, those certain tracts or parcels of land situated in Walker County, Alabama described in Exhibit "A" attached to this lease and incorporated herein by reference (hereinafter collectively called "said land" or "premises" or "property"). The Parties hereto covenant and agree as follows:

1. **Purpose.** Lessee shall have the right to mine and remove all seams of coal in and under said land by the surface mining method only, and the right to exercise all of Lessor's mining rights for mining and removing coal by the surface method of mining, and shall have the right to the full extent that the Lessor has such right to use, during the term of this lease, the said land for all purposes necessary, convenient or desirable in carrying out such coal mining operations. It is understood that no right or privilege is given or granted to Lessee except such rights and privileges as the Lessor may lawfully give and grant by virtue of ownership. It is understood and agreed that

Lessor shall not be responsible or liable to Lessee in any respect if Lessee is not allowed to mine the property or part of the property by any enforcement authority or governmental agency or other reason beyond the control of Lessor. Any existing easements, rights of way, licenses, and other property interests or rights that are located within the boundaries of the premises and that are not owned by Lessor or the Lessee are excepted from this Lease and shall not be disturbed unless Lessee and Lessor have the written permission of the owner of such property interest or right.

2. Reservation and Exceptions. All right, title, and interest vested in Lessor and not herein specifically granted to Lessee are reserved to Lessor, its successors and assigns. Without limiting the generality of this reservation, there are hereby expressly excepted from this Lease and reserved to Lessor, its successors and assigns:

(a) All oil, gas, (including gas and/or methane in the coal leased), timber, clay, and minerals other than coal.

(b) The following rights and privileges in and respecting the premises:

- (i) the right at all reasonable times to enter upon the premises, and to drill, bore, excavate, cut, remove, develop, store, and market (or to lease or license to others said rights), all such oil, gas, timber, clay, and other minerals, hereinabove reserved to Lessor;
- (ii) the right to construct and operate roads, structures, and appliances which may be necessary for the removal or processing of such oil, gas, timber, coal, clay, and other minerals, or to serve other properties of the Lessor;
- (iii) the right and privilege of leasing to tenants the surface of the above described tracts of land for the purposes of occupying and farming said surface or of constructing thereon such plants and appliances as may be needed for the removal or processing of said oil, gas, timber, clay, and other minerals; and
- (iv) the right to grant and convey from time to time to any electric or other power company, pipeline, gas, oil, mining, or railroad company, so much of said premises and property as may be required for rights-of-way by such company or companies.

3. Term. The term of this Lease shall be for four (4) years commencing on the 20th day of July, 2011 and ending on the 19th day of July, 2015 unless sooner terminated. Lessor hereby grants to Lessee the option to extend this lease for two (2)

additional one (1) year terms by giving Lessor prior written notice of the exercise of such option. In the event Lessee does not begin mining within six (6) months from the date that this lease has been executed by both parties, Lessor may terminate this lease.

In the event the property, or any portion or part thereof, or any easement on or interest in all or part of the surface included within the premises shall be taken, damaged, or injured by the exercise of the right of condemnation or eminent domain, or any other legal proceedings or acts by government, public or quasi public authority, or by any corporation, person, or persons having lawful power and authority to exercise the right of condemnation, eminent domain, or legal proceeding, then Lessor shall have the right and option to terminate this lease.

4. Royalty. Lessee shall, as rental for the rights herein granted, pay to Lessor not later than the 20th day of each month for all coal mined and sold from the premises during the preceding month a royalty equal to the following:

A. Surface Only. Four Percent (4%) of the sales price F.O.B. pit for each ton of 2,000 pounds of coal removed from each location on said land that Lessor owns the surface rights only and sold during the preceding month.

B. Minerals Only. Eight Percent (8%) of the sales price F.O.B. pit for each ton of 2,000 pounds of coal removed from each location on said land that Lessor owns the mineral rights only and sold during the previous month.

C. Surface and Mineral Rights. Twelve Percent (12%) of the sales price F.O.B. pit for each ton of 2,000 pounds of coal removed from each location on said land that Lessor owns the surface and mineral rights and sold during the previous month.

In the absence of an arm's length transaction, the sales price for determining the royalty payments to Lessor shall be equal to the price of comparable coal in the open market. In the event that coal mined from the premises is not sold, unreasonably wastes, or used by Lessee, an affiliated company or affiliated individual of Lessee, or in the event coal mined from the premises is sold F.O.B. some other point other than the mine pit, royalty payments are to be paid to Lessor on said coal and the sales price for determining the royalty payments shall be deemed to be that price which the coal would have brought had it been sold F.O.B. mine pit the previous month.

5. Blending and Location of Sales. If coal mined from the premises is to be blended with coal mined from somewhere other than the premises and the sales price is to be negatively affected by such blending, then consent must be obtained from Lessor in writing. If coal mined from the premises is blended with coal of lesser quality mined somewhere other than the premises, the sales price shall be deemed to be that of which the coal mined from the premises would have brought had it not been blended. This section applies only when coal mined from other locations is brought to the premises for blending.

6. Weights and Prices. Weights and prices shall be determined in the manner from time to time agreed upon between the parties hereto, and in the event of any dispute as to weights or prices, said dispute shall be submitted to arbitration as provided for herein. Remittances of royalties provided for herein shall be accompanied by certificates signed by Lessee showing the total amount of coal mined and sold during the preceding month and the gross price or prices at which the same has been sold, adjusted as hereinabove provided so as to arrive at a price F.O.B. mine pit. All coal trucks loaded with coal mined from the premises must be weighed on the scales of Cordova Clay Company at the old brick plant once loaded.

7. Method of Operation. Lessee agrees that all mining operations undertaken by it under the provisions hereof shall be conducted in a proper and workmanlike manner and in accordance with the laws and regulations pertaining to surface mining and reclamation. It is specifically understood and agreed that Lessee shall not be obligated to mine where by reason of terrain or inherent nature of conditions of depth, strata or thinness of coal seam, the removal of the coal is not economically feasible or practical. Lessee shall mine and operate in a method as to minimize waste of the coal as much as reasonably possible. Lessee must mine all economically recoverable coal on and under the premises.

8. Lessor's Right to Mine. Lessee understands and agrees that Lessor, Gail Beard, any company owned in full or in part by Lessor or Gail Beard, or affiliate of Lessor, shall have access to the premises and shall have the right to mine the premises for clay and shall have any other right related to the premises as long as Lessor, Gail Beard, or any company owned in full or in part by Lessor or Gail Beard does not interfere with Lessee's coal mining operations to the point Lessee cannot mine coal off the premises. The mining of clay by Lessor or its affiliates or companies does not relieve Lessee's obligation to later reclaim the property. Lessee shall be responsible for the reclamation of said land, but Lessee shall only reclaim or otherwise disturb said land when Lessor gives Lessee written permission to do so, Lessor is completely finished mining the area, and/or Lessee is required by an enforcement authority to immediately reclaim such area. Lessee shall take all reasonable steps and precautions as to not disturb or damage the clay on the premises, whether such clay is already mined or not. Lessor shall have no obligation to include Lessee's operations within the scope of Lessor's bonds, permits, and/or other authorizations and shall not be obligated to perform reclamation or incur other expenses attributable to Lessee's operations or obligations as a condition for receiving Lessee's assistance in obtaining the necessary bonds, permits, and/or other authorizations for Lessor's operations. Lessor shall have no obligation to notify Lessee of Lessor's rights and reservations under this Lease or as owner of the property.

9. Lessor's Lien: Lessor shall have and is hereby granted a lien and charge on all such machinery, tram tracks, buildings, structures, trucks, improvements and other property of every kind whatsoever belonging to the Lessee, and the leasehold estate herein granted, and all of the coal mined or removed from or stored or stockpiled on said land hereunder, to secure the payment of any and all royalties, damages and other amounts due or to become due to the

Lessor under this agreement. In the event Lessee owes Lessor royalties or other amounts due under this lease and does not pay Lessor within thirty (30) days of the date those royalties or other amounts become due, Lessor may take possession of the mined coal from the premises and of Lessee's property on the premises free and clear of any claims of, by, or through Lessee, and pursue any and all remedies available to Lessor under the law, including, but not limited to, the sale of such property to satisfy the amount Lessee owes Lessor.

10. Removal of Property: In the event Lessee shall have complied with all of the terms of this agreement and shall have paid to the Lessor before the expiration or termination hereof all amounts then owing by it to the Lessor, then and in such event the Lessee shall have sixty (60) days following such expiration or termination to remove all machinery, fixtures and other property of every kind whatsoever, theretofore placed on or in said land by Lessee. If such property is not removed from the property by the end of the sixty day period, Lessor shall have the right to charge Lessee a reasonable amount of rent for each month and/or day the property remains on said land after the sixty (60) day period. Lessee shall be obligated to pay such rent. If Lessee does not remove the property within the sixty (60) days following such expiration or termination, Lessor shall also have the right to remove Lessee's property to another location for storage and require Lessee to pay all costs and expenses related to such removal and storage, but Lessor shall send Lessee a notice in writing of Lessor's intentions to remove the property at least ten days before Lessor intends to remove the property. If the property is not removed from said land by Lessee under this section within a year after the expiration or termination of this lease, such property becomes the property of Lessor.

11. Records: Lessee shall keep proper books of account of the weights and sale prices of all coal mined and sold from the premises and, for the purpose of information and checking the certificates of weights and prices furnished by Lessee, by its officers, agents, or employees.

12. Right of Inspection: The Lessor and their engineers, agents and attorneys shall have the right and privilege, at all reasonable times, of entering upon, examining and surveying said land and said mining operations thereon and inspecting, examining and verifying all books, accounts, statements, sales, maps, invoices, plans, diagrams or other records of whatsoever kind and nature of the Lessee for the purpose of ascertaining the amount of coal taken from said land or the amount received by Lessee for the sale of said coal, for the manner in which the mining operations of the Lessee are being conducted thereon, and for any other purpose.

13. Taxes: Lessee shall, in accordance with law, return for taxation all structures, machinery, equipment, and other property placed by it in, under, and upon the premises, and shall at such times as may be required by law pay all taxes or charges in the nature of taxes thereon. Lessee further agrees to pay all taxes in the nature of severance taxes upon all coal so mined and removed by it.

14. Non-Liability of Lessor and Indemnity by Lessee: Lessor shall not be held liable

for any claims on account of or arising from or in any way connected with any act or acts of Lessee on or in connection with the premises or the exercise by Lessee of any of the rights herein granted, or at any time or in any way growing out of the mining operations hereunder by Lessee. Lessee shall indemnify, defend, and hold Lessor harmless from any liability, fines, suits, damages, expenses, costs, actions, and any and all other types of liability or claims on account of or arising from or in any way connected with the act or acts of Lessee on or in connection with the premises or the exercise by Lessee of any of the rights herein granted, or at any time or in any way growing out of the mining operations of Lessee, including reasonable attorney fees and expenses. Claims that Lessor shall not be held liable include, but are not limited to, the following:

- (a) Any claim for damage which may accrue to any improvements on the surface of the premise (or, if surface rights are not granted hereby, to the surface of the premise) by reason of cracking or subsidence or otherwise;
- (b) Damages under the Alabama Worker's Compensation Act or similar law;
- (c) Liability imposed or sought to be imposed upon Lessor or Lessor's agents, servants, or employees, for injuries or death to persons or damages to property, either or both, on or in or about the premises or at any other location;
- (d) Claims for any default or failure by Lessee in compliance with the laws of the State of Alabama or otherwise in connection with the exercise of Lessee's rights hereunder;
- (e) Fines, suits, demands, and actions of any kind or nature by reason of any breach, violation, or nonperformance by Lessee of any condition hereof; and Lessee agrees to and does hereby indemnify, protect, and hold harmless Lessor against all claims, suits, demands, judgments, decrees, loss, cost, or expense, including attorneys' fees and court cost, which may arise in connection with or in account of any one or more of the claims described above.

15. Insurance: Lessee agrees to carry public liability insurance naming Lessor as an additional insured in such form and with such limits of liability as may be reasonably satisfactory to Lessor; and to deliver to Lessor certificates evidencing such insurance, or a copy of each such insurance policy; to carry an endorsement prohibiting cancellation during the term of this lease, or any extension thereof, without first giving notice in writing to Lessor. Lessee must deliver such certificates or a copy of each insurance policy to Lessor before Lessee begins mining. This lease may be terminated, at the option of Lessor, if Lessor is not provided with evidence of existing and current insurance coverage at any time during and throughout the term of this lease and/or if the insurance is cancelled or terminated for any reason.

16. Lessee's Operations: Lessor shall have no control or right to exercise any control whatsoever over Lessee, Lessee's employees or agents in the exercise of their rights of operation under this lease, unless specifically stated otherwise herein. The right to engineering inspection under this lease, the right to inspect the Lessee's records and other rights herein reserved by the Lessor shall not give, or be deemed to give Lessor the right to exercise control over the Lessee or Lessee's employees in its mining operations hereunder, unless specifically stated otherwise herein.

17. Lessor's Right to Terminate: If Lessee shall fail to pay when due any monthly royalty payment provided for herein or if Lessee shall fail to comply with any other covenant or term of this lease, Lessor shall have the right to terminate this lease if any such default or breach is not remedied within 30 days of Lessor's having given Lessee written notice of such default. In the event that default under this lease is of such a nature that it may not reasonably be corrected within 30 days after written notice, then under such conditions Lessee shall immediately commence work to cure such default upon written notice by Lessor of such default and shall continue to work with diligence to complete such correction as soon as is reasonably possible, but if such default is not cured within one hundred and twenty (120) days, Lessor may terminate this lease regardless of whether Lessee has worked diligently to cure such default.

If such default is not cured within thirty (30) days of the written notice of default or within hundred and twenty (120) days of the written notice of default, whichever time period shall apply, then Lessor shall have the option of declaring this contract terminated and shall have the right to bring claims for damages including the recovery of costs, expenses and reasonable attorney's fees. In the event damages are not appropriate because of the subject matter of the obligations and conditions contained herein, Lessor may alternatively and/or at the same time bring claims for injunctive relief and/or specific performance against the Lessee. The rights and options herein given Lessor to terminate this lease and the remedies given to Lessor on Lessee's default shall not constitute the only rights, options, and remedies available to Lessor, but shall be in addition to any other rights or remedies available to Lessor under the circumstance and law.

For the purposes of this section, written notice shall be conclusively deemed to have been given upon deposit thereof in the United States Mail, regular, registered or certified mail, postage prepaid and addressed to Lessee at the following address P.O. Box 90, Alabaster, AL 35007 and to the attention of Jeff Elkins or at such other address as may hereafter be designated in writing by Lessee. Lessor does not waive its right to terminate this lease by delaying termination. Failure by Lessor to terminate this agreement upon the happening of any such event shall not constitute a waiver on the part of Lessor to terminate this agreement upon the subsequent happening of any such event. Upon termination of this lease, Lessor may re-enter the premises and eject Lessee from the same. However, Lessee shall remain liable for all royalties due prior to said termination.

18. Lessee's Right to Terminate: Lessee reserves the right to cancel this lease at any time upon thirty (30) days written notice to Lessor at the address set forth hereunder, in the event that the quality of the coal, or the quantity of the coal, as to the size of the seam or continuity of coal, or the thickness or type of overburden of the coal, or any combination of these factors together or other pertinent factors in the conduct of the mining operations on the land make it unprofitable to extract or mine coal from the said land, or in the event Lessee shall desire to retire from the business of mining coal, but no such termination shall relieve Lessee of any obligations or liabilities for the royalties herein provided with respect to any coal theretofore mined or any operations theretofore conducted hereunder, or of any other conditions, requirements, obligations, or liabilities theretofore accrued hereunder.

19. Warranty: The rights that are herein granted to Lessee are limited to those owned by Lessor, and Lessor makes no representation or warranty as to the existence, quantity, quality, or location of coal in, on, or under the premises. Lessor does not warrant that Lessee will be allowed by any enforcement agencies or government agencies or authorities to grant a permit to mine said land. It is specifically understood and agreed that Lessor shall be under no liability or duty if any claim be made or established or litigation instituted by any third party as to the title or ownership of Lessor in and to any portion of the premises. In the event of any such claim or litigation, Lessor shall have the right at its option to defend the same, but Lessor shall be under no duty to do so.

20. Notice: Any notice provided for or permitted herein to be given by either party to the other party shall be conclusively deemed to have been given upon deposit thereof in the United States Mail, regular, registered or certified mail, postage prepaid and addressed to the parties as follows:

(a) To Lessor: Gail Beaird
P.O. Box 100
Cordova, AL 35550

(b) To Lessee: Jeff E. King
P.O. Box 90
Alabaster, AL 35007

or to such other addresses as either Lessor or Lessee shall designate to the other in writing.

21. Arbitration: In the event of any difference in opinion or any controversy between the parties hereto as to whether mining operations are being conducted in accordance with approved mining methods, or as to any other matters involved in the performance hereof, each party agrees, upon notice in writing from the other party requesting such action, to appoint a reputable mining engineer as an arbitrator, and said arbitrators shall appoint a third arbitrator,

and the decision of the majority shall be final and binding on the parties hereto as to such matters as are determined by them. In the event either party fails to appoint such arbitrator after ten (10) days written request by the other party so to do, or in the event the said arbitrators fail to appoint a third arbitrator within ten (10) days, or if the arbitrators have failed to reach an agreement on any matter submitted, then in any and each of said events, the presiding or senior Judge of the District Court of the United States for the Northern District of Alabama, or such other person as may be mutually agreed on by the parties to this lease, shall be requested to select an arbitrator, or arbitrators, to make the determination of such matters at issue between the parties; all arbitrators hereunder shall be competent mining engineers. The cost of the arbitration and the reasonable compensation of any arbitrators not in the employ of or designated by the respective parties shall be paid jointly in equal amounts.

22. Compliance With Laws of Governing Bodies: In its operations hereunder, Lessee shall adhere to and comply with all rules, regulations and laws of the county, state, and federal governments and any agencies of such governments having jurisdiction (including but not limited to regulations requiring the filing of surface mining pits and restoration of the surface), whether now in effect or subsequently passed or adopted during the term of this lease, and Lessee hereby expressly agrees to indemnify and hold harmless the Lessor from any liability whatsoever brought about by Lessee's failure to comply with said rules, regulations, and laws.

23. Reclamation: Lessee covenants and agrees that it shall be and is obligated to plant loblolly pine seedlings at the rate of 700 per acre on the mined area and on all other areas the Assumption of Reclamation Liability Bond encompasses as part of its reclamation obligation hereunder to Lessor. Provided, however, Lessee is not required to submit a mining plan to the Alabama Surface Mining Commission which contains the planting of pine seedlings as a required element of said plan. Lessor is in agreement for the post mining land use to be termed as "undeveloped" as defined by the Alabama Surface Mining Commission. Lessee shall be responsible for successful establishment of the pine seedlings consistent with a success rate of 450 trees per acre surviving. Lessee assumes the liability of reclaiming said land once it begins mining operations on any part thereof.

24. Force Majeure: Neither Lessor nor Lessee shall not be deemed in default for failure to perform or comply with any of the covenants or conditions hereof when such failure is caused by explosion, accidents, the elements, fire, restrictions, prohibitions or regulations of federal, state or local government or agency thereof, strikes, work stoppage or labor difficulty, acts of God, war, civil commotion, or any circumstance or condition (whether or not similar to those herein enumerated) beyond the reasonable control of Lessor or Lessee.

25. Waiver of Rights: No failure or failures to exercise any right of the Lessor under this contract shall be deemed as a waiver or bar to the subsequent exercise or enforcement by Lessor of such right, any provision of this contract, or any other right of the Lessor hereunder.

26. Payment of Royalty: The Lessee shall make payment of royalties due hereunder to: P.O. Box 100, Cordova, AL 35550.

27. Assignment and Sale of Business: Lessee shall not sell, assign, convey, sublease, mortgage, pledge, or otherwise transfer or encumber (collectively referred to as "transfer") this lease or Lessee's rights under this lease unless and until Lessor gives written permission to Lessee to do so. Such permission shall be granted or denied by Lessor in Lessor's sole discretion. A transfer of control of Lessee's capital stock or ownership interest, either voluntarily or by operation of law, shall constitute a transfer if forty percent (40%) or more of Lessee's capital stock or ownership interest is transferred (transferred in this context shall mean the same as it does collectively in this section) after the date this lease is executed by Lessee. Lessor's "sole discretion" is not limited by any standard of reasonableness.

28. Binding Effect: All covenants, agreements, and conditions herein set forth to be performed by or on behalf of Lessor or Lessee shall bind their respective successors and assigns, whether so expressed or not, and shall inure to the benefit not only of Lessor and Lessee, but also to the benefit of their respective successors and assigns. This section shall not be construed to modify, in any way, the provisions of section 27 herein.

29. Bond: Lessee shall acquire, purchase, and/or obtain an Assumption of Liability Reclamation Bond as a condition of this lease. Lessee must provide evidence that it has obtained an Assumption of Liability Reclamation Bond to Lessor before Lessee may begin mining under this lease. If Lessee does not provide Lessor with evidence of such bond or does not obtain such bond, Lessor may terminate this lease.

30. Unable to Mine: If this lease is executed and the Lessee is unable to receive a permit to mine the premises or does not begin mining the premises, for any reason, within six (6) months of the date of this lease, Lessor shall have the right to terminate this lease with no further obligation to Lessee.

31. Effective Law and Venue: The law of the State of Alabama shall apply to this lease in all respects.

32. Certified Blaster: Lessor and Lessee agree that Joey Beard shall be the certified blaster for Lessee's mining operations on the premises. Joey Beard shall receive compensation for his position as the certified blaster of the mining operations that is comparable to that of other certified blasters for similar mining operations. Joey Beard, as certified blaster, shall have no obligation other than those required to be the certified blaster of all Lessee's mining operations on the premises. He shall have no obligation to provide material, workforce, equipment, etc.

33. Captions: The captions or section headings in this Agreement are made

for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of the provisions of this Agreement.

34. Continuous Mining: Once Lessee begins mining, it must mine at a continuous pace and manner consistent with the compliment of equipment placed on the property at the beginning of this lease and to obtain a production that is consistent with the production achievable with that type of equipment. In the event Lessee ceases mining for any reason for a period over two (2) months or fails to continuously mine for a period of over two months, Lessor may terminate this lease.

35. Effects: In the event a party terminates this lease, such termination shall be in addition to and not by way of limitation of, that party's rights and remedies at law and equity, including the right to sue for damages and performance.

36. Merger Clause: This Agreement represents and constitutes the entire agreement between the parties hereto and supercedes all prior negotiations, representations, agreements, promises, or inducements, either written or oral. No modification of this agreement shall be binding upon any party unless in writing and signed by each of the parties. No negotiations, representations, agreements, promises or inducements shall be binding upon any party except as herein specifically set forth.

37. Execution of Documents: Each party will execute any and all documents necessary to effectuate the intent of this Agreement which may be reasonably requested

38. Recitals: The recitals to this agreement are incorporated into this lease.

IN WITNESS WHEREOF, the parties hereunto caused this lease to be executed in their respective names by their respective representatives thereunto duly authorized, on this the 19 day of July, 2011.

LESSOR.

By:


Gail Beard

By:


Marilyn Beard

LESSEE:

By: [Signature]
Jeff Elkins, as duly authorized
representative of Gunner-Reilly, Inc.

STATE OF ALABAMA)
)
COUNTY OF WALKER)

The foregoing instrument was acknowledged, subscribed and sworn to before me this
19 day of July, 2011, by Gail Beard, who is known to me.

My commission expires: 7-7-14

[Signature]
NOTARY PUBLIC

STATE OF ALABAMA)
)
COUNTY OF WALKER)

The foregoing instrument was acknowledged, subscribed and sworn to before me this
19 day of July, 2011, by Marilyn Beard, who is known to me.

My commission expires: 7-7-14

[Signature]
NOTARY PUBLIC

STATE OF ALABAMA)
)
COUNTY OF Walker)

The foregoing instrument was acknowledged, subscribed and sworn to before me this
19 day of July, 2011, by Jeff Elkins, who is known
to me, as President and Owner of Gunner-Reilly.

My commission expires: 9-22-12

[Signature]
NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION

LEASE AREA

Strip Mining Rights on Gail Beard's and Marilyn Beard's property located in and around Cordova, Alabama, more particularly described as the land that had been previously permitted to mine and mined by Beard Mining, Inc. under permit number # 3742. The property that is being leased is within, but does not fully encompass, the following described area:

SW/SW, SE/SW, of Section 31, Township 14 South, Range 6 West, SW/SW of Section 5; NW/NW, NE/NW, SE/NW, NE/SW, SE/SW, SW/SE, SE/SE of Section 6; NE/NE, NW/NE, NE/NW, NW/NW of Section 7, Township 15 South, Range 6 West; SE/SW, SW/SE, SE/SE, of Section 36, Township 14 South, Range 7 West; NE/NW, NW/NE, NE/NE, SE/NE, SW/NE of Section 1, Township 15 South, Range 7 West, Walker County, Alabama.

EASEMENT and AGREEMENT

STATE OF ALABAMA)
)
COUNTY OF WALKER)

THIS AGREEMENT, made and entered into this 29th day of September, 2011, by and between and **DRUMMOND COMPANY, INC.**, an Alabama Corporation, whose address is P.O. Box 1549 Jasper, Alabama 35502 (hereinafter called "Grantor") and **CORDOVA CLAY COMPANY, INC.**, and **GUNNER/REILLY, CORPORATION**, whose address is 414 Knightsbridge, Alabaster, Alabama 35007 (hereinafter called "Grantee").

That the Grantor does hereby, to the extent of its ownership and insofar as its title enables it to do so, and subject to the terms and conditions hereinafter set forth, do hereby grant unto the said Grantee, a non-exclusive easement or right-of-way to be used for ingress and egress over and across an existing roadway in Walker County, Alabama, which non-exclusive easement or right-of-way is more particularly described as follows:

Section 6: N ½ of NW ¼ West of Corridor "X" R.O.W.; SW ¼ of NW ¼;
 NW ¼ of SE ¼ of SW ¼ West of Corridor "X" R.O.W.

 All Located in Township 15 South, Range 6 West
 Walker County, Alabama

TO HAVE AND TO HOLD the same to the Grantee, subject, however, to the following terms and conditions:

1. **TERM OF AGREEMENT.** The parties agree that the term of this Agreement shall be for one (1) year from the date of this agreement.
2. **INDEMNITY AND LIABILITY COVERAGE BY GRANTEE.** Grantee shall indemnify and hold Grantor harmless from all costs, expenses, claims and damages that arise from Grantee's use or occupancy of the Premises. Grantee covenants and agrees at all times during the term of this Agreement to carry insurance coverage covering comprehensive general liability to include contractual liability, with property damage and bodily injury, and automobile coverage in an amount not less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00) and to name Grantor, as additional insured under said liability insurance policy. Said policy is to provide liability protection to Grantor as a consequence of any claims or demands made by anyone for injuries to persons or damages to property. In addition said liability insurance shall be endorsed to be primary over any insurance of Grantor and so that the same shall not be cancelled nor modified without Sixty (60) days prior written notice to Grantor.
 - a. Grantee shall also carry workers' compensation insurance in compliance with Worker' Compensation Laws of the State of Alabama.
3. **COMPLIANCE WITH LAWS OF GOVERNING BODIES.** Grantee agrees, that its operations on the premises will adhere to and comply with all rules, regulations and laws of the County, State, and Federal Government or any agencies of such governments having jurisdiction, now in effect or subsequently passed or adopted during the term of this agreement, and hereby expressly agrees to indemnify and hold harmless Grantor from any liability whatsoever brought about by failure to comply with said rules, regulations and laws. Without intending to qualify the generality of the foregoing, Grantee shall comply with and abide by all applicable laws relating to mining of coal and land reclamation.
4. **ATTORNEY'S FEES AND COURT COSTS.** Grantee shall pay all attorney fees, court costs and other miscellaneous costs incurred or sustained by Grantor in its enforcement of this Agreement and Grantee's compliance hereunder or to

MB

protect Grantor's rights and interests hereunder in the event Grantee is adjudged bankrupt or files a petition under any section or chapter of the National Bankruptcy Act or in any litigation or negotiations in which Grantor shall, through no fault of Grantor, become involved through or on account of this Agreement

5. DAMAGE TO GRANTEE'S PERSONAL PROPERTY. In no event shall Grantor be liable for damage to or theft of any property belonging to Grantee, its employees, servants, agents, customers, clients or invitees, located in or about the Premises. Grantee shall have the right to insure and keep insured at its own expense its interest in the Premises and its personal property located therein.

6. ASSIGNMENT AND SUBLETING. Grantee shall not assign or sublet its interests and rights hereunder, by operation of law or otherwise, nor shall Grantee sublet the Premises as this Agreement is considered as personal.

7. CAPTIONS. Captions contained in this are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this instrument or any part hereof.

8. ENTIRE AGREEMENT. This Agreement replaces any previous agreement(s) with any prior owner or owners and Grantee agrees that any such agreement(s) shall be considered terminated.

a. This Agreement contains the entire and only agreement between the parties, and no verbal statements or representations or prior written manner not herein contained shall have any force and effect.

b. This Agreement shall not be modified in any way except in writing duly executed by both parties. This Agreement shall bind and inure to the benefit of the heirs, legal representative, successors or assigns of the parties hereto.

9. NOTICES HEREUNDER REQUIRED. Unless otherwise notified in writing by Grantor, all notices hereunder required or permitted to be given by Grantee to Grantor shall be sent to Drummond Company, Inc., Land Department, P. O. Box 1549, Jasper, Alabama 35502.

a. Unless otherwise notified in writing by Grantee, all notices hereunder required or permitted to be given by Grantor to Grantee shall be sent to 414 Knightsbridge, Alabaster, Alabama 35007.

10. NON-WAIVER BY GRANTOR. Grantor's failure to insist, in any one or more instances, upon Grantee's strict performance of any of the terms, conditions, covenants or agreements herein contained shall not be deemed a waiver by Grantor of any rights or remedies available to Grantor hereunder or otherwise and shall not be deemed a waiver of Grantor's rights and remedies to any subsequent breach or default hereunder by Grantee. This Agreement shall not be deemed modified or changed, nor shall any rights of Grantor or Grantee be deemed a waiver except by agreement in writing duly executed by the parties hereto.

11. INVALIDATION. In the event any provision or part thereof, of this Agreement shall be declared invalid by a court of competent jurisdiction, then such invalidation shall be limited only to such provision so declared, and all other terms and conditions herein contained shall continue in full force and effect.

IN WITNESS WHEREOF, this Agreement has been executed by the parties in duplicate on the day and year first above written.

ATTEST:

GRANTOR:

DRUMMOND COMPANY, INC.

By: _____

By: Michael A. Butts

Its: _____

Its: Vice President

ATTEST:

GRANTEE:

CORDOVA CLAY COMPANY, INC.

By: _____

By: Paul Bunt

Its: _____

Its: PRESIDENT

ATTEST:

GRANTEE:

GUNNER/REILLY CORPORATION

By: _____

By: Sej D. El

Its: _____

Its: PRESIDENT

STATE OF ALABAMA)
)
COUNTY OF WALKER)

I, the undersigned authority, a Notary Public, in and for said State and County, do hereby certify that MICHAEL A. BUTTS, whose name as **Vice President** of **DRUMMOND COMPANY, INC.**, an Alabama 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 the instrument, he, as such **Vice President** and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 29 day of September, 2011.

Michael Wayne Em
NOTARY PUBLIC

STATE OF ALABAMA)
)
COUNTY OF WALKER)

I, the undersigned authority a Notary Public in and for said State and County, do hereby certify that GAIL BEARID whose name as PRESIDENT of **CORDOVA CLAY COMPANY, INC**, 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, with full authority, executed the same voluntarily on the day the same bears date.



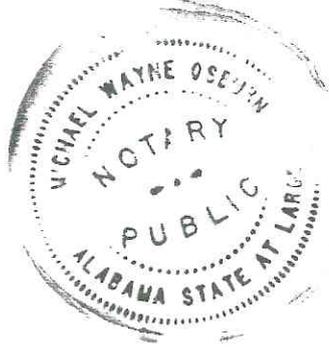
Given under my hand and official seal, this 27th day of September, 2011.

Michael Wayne Osburn
NOTARY PUBLIC

MY COMMISSION EXPIRES AUGUST 19, 2012

STATE OF ALABAMA)
)
COUNTY OF WALKER)

I, the undersigned authority a Notary Public in and for said State and County, do hereby certify that JEFFERY ELKINS whose name as PRESIDENT of **GUNNER/REILLY, 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, with full authority, executed the same voluntarily on the day the same bears date.



Given under my hand and official seal, this 27th day of September, 2011.

Michael Wayne Osburn
NOTARY PUBLIC

MY COMMISSION EXPIRES AUGUST 19, 2012

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-3952

PART I C. (CONTINUED)

**3. INTERESTS OR PENDING INTERESTS IN LANDS CONTIGUOUS TO THE PERMIT AREA
INSTRUCTIONS:**

Give the legal description of all lands contiguous to the permit area for which the for which the permit applicant:

1. Holds an interest,
2. Holds an option, or
3. Has made a bid for ownership, lease or other interest.

USE ADDITIONAL SHEETS AS NECESSARY IN THE FORMAT BELOW

=====

PAGE OF **Not Applicable**

=====

Legal description: _____

Describe the nature of the interest: _____

=====

Legal description: _____

Describe the nature of the interest: _____

=====

Legal description: _____

Describe the nature of the interest: _____

=====

Legal description: _____

Describe the nature of the interest: _____

=====

Legal description: _____

Describe the nature of the interest: _____

=====

Legal description: _____

Describe the nature of the interest: _____

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-3952

PART I D. PERMIT AREA INFORMATION

1. Give the requested term of this permit: 5 years.
2. Give the legal description of the land upon which the applicant proposes to conduct surface coal mining operations. List each quarter-quarter section, section, township, range, and county. SW/SW, SE/SW, of Section 31, Township 14 South, Range 6 West; SW/SW of Section 5; NW/NW, NE/NW, SE/NW, NE/SW, SE/SW, SW/SE, SE/SE of Section 6; NE/NE, NW/NE, NE/NW, NW/NW of Section 7, Township 15 South, Range 6 West; SE/SW, SW/SE, SE/SE, of Section 36, Township 14 South, Range 7 West; NE/NW, NW/NE, NE/NE, SE/NE, SW/NE of Section 1, Township 15 South, Range 7 West, Walker County, Alabama.

3. Give the acreage of the permit, each increment and the type of bonding.

a. Total permit acreage: 175 acres

b. Give the acreage and type of bond for each mining increment:

<u>Increment</u>	<u>Acres</u>	<u>Type Bond Proposed</u>
1.	<u>77</u>	<u>Surety Bond</u>
2.	<u>37</u>	<u>Surety Bond</u>
3.	<u>40</u>	<u>Surety Bond</u>
4.	<u>21</u>	<u>Surety Bond</u>

c. Identify the increment(s) on which mining will initially begin upon issuance of this permit: Increments 1 & 4.

4. Has any acreage in the proposed permit area been previously disturbed by mining?
(XXX)YES ()NO

If yes, supply the following for any and all previously disturbed areas:

- a. Show the boundaries of the previously disturbed area(s) on the permit map and identify with an appropriate symbol.

See permit map.

- b. List, for each area, the permit number under which it was disturbed and the number of acres. Indicate the status of each permit as Unreleased, Grading released, or 100% released. (If no permit, indicated as such.

<u>Permit</u>	<u>Acres</u>	<u>Status</u>
<u>Pre-law</u>	<u>32.0</u>	<u>Unreclaimed</u>
<u>P-3742</u>	<u>31.0</u>	<u>Unreclaimed</u>

5. Is disturbance to be conducted within 300 feet, measured horizontally from an occupied dwelling? ()YES (XX)NO.

If YES, attach a signed waiver from the owner of the dwelling indicating the minimum distance disturbance will be allowed by the owner.

Applicant: Gunner-Reilly, Corp.
Mine Name: Cane Creek Mine
Permit Number: P-

Attachment I.E.13.

PUBLIC NOTICE OF FILING OF PERMIT APPLICATION

In accordance with the provisions of Act No.81-435 of the State of Alabama and the regulations promulgated under this act, Gunner-Reilly, Corp., P. O. Box 90, Alabaster, Alabama 35007, hereby gives notice that it has filed an application with the Alabama Surface Mining Commission to permit a surface mining facility whose access to the site is as follows: From the intersection of Burlington Avenue and Commerce Street in Cordova, Alabama. Travel west on Commerce Street for 0.4 miles. Continue on on Stevens Street for 0.5 miles. Turn right at the intersection of Parrish Road and Stevens Street. Travel 1.3 miles to the intersection of Parrish Road and Cordova-Parrish Road. Turn right onto Cordova-Parrish road and travel 200 feet to the mine entrance. The Permit area will marked and signs will be posted. The area to be permitted is located in the SW/SW, SE/SW, of Section 31, Township 14 South, Range 6 West; SW/SW of Section 5; NE/NW, SE/NW, NE/SW, SE/SW, SW/SE, SE/SE of Section 6; NE/NE, NE/NE, NE/NW, NW/NW of Section 7, Township 15 South, Range 6 West; SE/SW, SW/SE, SE/SE, of Section 36, Township 14 South, Range 7 West; NE/NW, NW/NE, NE/NE, SE/NE, SW/NE of Section 1 ,Township 15 South, Range 7 West, Walker County, Alabama as shown on the Cordova, Alabama United States Geological Survey quadrangle map. A copy of the permit application is available for public inspection at the Alabama Surface Mining Commission website <http://surface-mining.alabama.gov/PermitApplications.html>. Written comments, objections, or requests for informal conferences should be submitted to the Alabama Surface Mining Commission, P.O. Box 2390, Jasper, Alabama 35502-2390, within 30 days from the last publication of this notice.