

1967

The Oil Shale Corporation, A Nevada Corporation
v. Fred v. Larson, Also Known As Frederick v.
Larson, Ethel B. Larson, Husband And Wife;
Frederick H. Larson And Dorothy H. Larson,
Husband And Wife : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE OIL SHALE CORPORATION,
a Nevada Corporation,
Plaintiff-Appellant,

— vs. —

FRED V. LARSON, also known as
FREDERICK V. LARSON,
ETHEL B. LARSON, Husband and
Wife; FREDERICK H. LARSON
and DOROTHY H. LARSON,
Husband and Wife.

Defendants-Respondents.

Case
No. 10887

APPELLANT'S BRIEF

Appeal From the Judgment of the Fourth District
Court, in and for Uintah County
HONORABLE JOSEPH E. NELSON, *Judge*

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JUN 2 - 1967

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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and DOROTHY H. LARSON,
Husband and Wife.

Defendants-Respondents.

Case
No. 10887

APPELLANT'S BRIEF

NATURE OF THE CASE

Plaintiff seeks, in effect, specific performance of a written agreement to grant to plaintiff a six-month option for the lease and purchase of mining claims.

DISPOSITION IN THE LOWER COURT

Plaintiff initiated this action on October 14, 1964, by filing the complaint herein pursuant to the Utah Declaratory Judgment Statute (Section 78-31-1, Utah Code Annotated, 1953 as amended). Defendants were personally served and answered.

The matter came on for trial on June 22 and 23, 1966, before the Honorable Joseph E. Nelson, District Judge, sitting without jury, at Provo, Utah. At the conclusion of plaintiff's case, defendants moved to dismiss, and the court reserved judgment on said motion. Defendants then presented their case. The court instructed the parties to file briefs supporting their respective positions in lieu of oral closing arguments, and to file proposed Findings of Fact and Conclusions of Law.

The parties complied with said instructions and on November 1, 1966 the court entered Findings of Fact, Conclusions of Law and Judgment in favor of defendants. The Conclusions of Law signed by the court at that date found that there was no enforceable agreement.

On November 9, 1966 plaintiff moved for a new trial, and on November 18, 1966 that matter came on for hearing before the Honorable Joseph E. Nelson, sitting at Provo, Utah. A transcript of said hearing was made. At the hearing, the court ascertained that the Findings and Conclusions dated November 1, 1966 were contrary to the testimony at trial, and the court directed defendants to submit Revised Findings and Conclusions which reflected that position. The hearing was continued to January 6, 1967.

Defendants filed proposed Revised Findings and Conclusions with the court, and on January 6, 1967 the hearing was resumed and a transcript was made of the proceedings. The parties argued the merits of the proposed Revised Findings and Conclusions, and plaintiff again moved for a new trial in the event the Revised Findings and Conclusions were adopted by the court.

On February 21, 1967 the court, after review of the original Findings of Fact and Conclusions of Law entered on November 1, 1966, denied plaintiff's motion for new trial. On March 10, 1967 the court, without notice to plaintiff or hearing, entered an Amended Judgment and Decree, adopting the Revised Findings and Conclusions previously submitted by defendants. The Findings and Conclusions of said Amended Judgment found that there was an enforceable contract which had been fully performed. The trial court also concluded that the request for relief was, in fact, a request for specific performance of said written agreement.

On March 18, 1967 plaintiff received notice from defendants' counsel that the court had entered said Findings, Conclusions and Amended Judgment.

Because plaintiff had filed its first Notice of Appeal before it received notice of the Amended Judgment, it became necessary to file a Notice of Appeal from said Amended Judgment.

RELIEF SOUGHT ON APPEAL

The lower court found an enforceable written contract, supplemented by certain oral understandings. Plaintiff seeks reversal of that part of the Amended Judgment finding valid oral agreements contradicting the express terms of the written contract of July 25, 1963 and finding that an option period expired on January 15, 1964.

Plaintiff seeks further declarations that defendants have failed to perform their obligation under said written contract, and that defendants are obligated to perform specifically said written contract and grant plaintiff a six-month option to lease and purchase the Larson lands under the terms thereof.

In the alternative, plaintiff seeks a new trial or an order granting restitution to plaintiff of \$20,000 it paid to defendants on January 31, 1964.

STATEMENT OF FACTS

A. NEGOTIATIONS LEADING TO THE AGREEMENT OF JULY 25, 1963.

1. *The Meetings of July 10 and 11, 1963.*

In May and early June of 1963, defendant Frederick H. Larson, President of Larson Oil Company, a Nevada corporation, met with Hein I. Koolsbergen and A. F. Lenhart, President and Vice President, respectively, of plaintiff The Oil Shale Corporation, a Nevada corporation, hereinafter referred to as "TOSCO", in Beverly Hills, California, to consider the possibility of TOSCO's purchasing certain oil shale properties in Uintah County, Utah. The property consisted of approximately 30,000 acres of unpatented lands owned by Larson Oil Company and 1,000 acres of patented lands owned by Fred V. Larson and Ethel B. Larson (Tr-1 p. 22-23).^{*} After

^{*}The record contains three separate transcripts. For the Court's convenience, they have been numbered and referred to as Tr-1, Tr-2 and Tr-3.

further preliminary discussions were held on July 9 and 10, 1963 at TOSCO's New York City Offices (Tr-1 p. 15), TOSCO and Larson reached several understandings regarding the terms upon which the lands would be made available to TOSCO. These understandings were recorded in a memorandum dated July 11, 1963 prepared by Lenhart (Tr-1 p. 15; Exhibit 2). At this time Larson and TOSCO orally agreed that the option period referred to in the memorandum of July 11 should begin on July 15, 1963 (Tr-1 p. 186). They also agreed that Larson would be employed as a consultant for a period of one year, commencing July 15, 1963 at a salary of \$1,200.00 per month plus expenses. During the period hereinafter described, Larson was so employed and compensated, and transacted business from TOSCO's Los Angeles office, which he shared with Lenhart.

2. Events Between July 11, 1963 and July 25, 1963.

On his return trip to California from these meetings Larson stopped over in Denver, Colorado, to discuss with John B. Tweedy, an attorney for TOSCO, the understandings that had been reached in New York (Tr-1 pp. 85, 104). During Larson's conversations with Tweedy, it became apparent that the parties had failed to agree on the consideration to be paid at the time of the exercise of the option. Immediately thereafter, Tweedy had several telephone conversations with Koolsbergen in which he reported the discrepancies revealed in his discussions with Larson (Tr-1 p. 85). He then began to draft two formal option and lease agreements, one between Larson Oil Company and TOSCO covering the

unpatented lands, and the other between Fred V. Larson and Ethel B. Larson, Larson's parents, covering the patented lands. Tweedy also telephoned Larson's attorney, D. J. Dufford, in Grand Junction, Colorado, to discuss the drafts with him. They were completed and mailed to Dufford on July 20 (Tr-1 p. 108). The Tweedy drafts recited that TOSCO's option would begin "July 15, 1963" (Exhibits 14, 16).

While Tweedy was preparing the drafts in Denver, Larson had returned to California, where he first received a copy of the Lenhart memorandum of July 11. He was apparently dissatisfied with the delay rental provisions for the unpatented lands. On July 13 or 14 Larson informed Koolsbergen by telephone that the memorandum of July 11 did not correctly state his understanding of the transaction (Tr-1 p. 16). As a result, another meeting was arranged to resolve the differences remaining between the parties (Tr-1 p. 17).

On July 23 and 24, Koolsbergen and Morton M. Winston, counsel for TOSCO, met with Larson in Beverly Hills, California (Tr-1 p. 17). Lenhart was not present during these meetings, and took no further part in negotiations until January 1964. TOSCO and Larson reached agreement for the first time on the matters not covered by the Lenhart memorandum of July 11 — i.e., the question of delay rentals and the amounts to be paid on exercise of the options. They also agreed that the option would not commence until the payment of the \$20,000.00 and the signing of formal documents. Thereupon a new letter agreement dated July 25, 1963, which

the trial court found binding on the parties, was drafted in Larson's presence. It both recited the final understandings of the parties and incorporated the earlier memorandum of July 11 (Exhibit 2). Although the earlier conversations and the memorandum of July 11 contemplated a transaction between Larson Oil Company and TOSCO, by July 25 Larson had determined that the shareholders of Larson Oil Company, who were Larson and his wife, Dorothy H. Larson, and Larson's parents, Fred V. Larson and Ethel B. Larson, could gain certain tax advantages if the transaction were re-cast. Consequently, the parties to the transaction were altered (Tr-3 p. 29), the July 25 agreement was prepared for execution by the four shareholders of Larson Oil Company in their individual capacities (Exhibit 2), and the time of the commencement of the option was deferred until after the dissolution of Larson Oil Company and/or the distribution of its properties to its shareholders (Exhibit 2). The July 25 agreement was signed by Koolsbergen for TOSCO, and then taken by Larson to his and his parents' homes, where it was signed by his wife and his parents on July 26, 1963 (Tr-1 pp. 18, 19).

3. The July 25 Agreement.

The July 25 agreement (Exhibit 2)** provides:

1. It was the intention of the shareholders of Larson Oil Company to dissolve the company, to receive its oil shale claims, to make them available to TOSCO, and to enter into formal lease option contracts with

**This agreement is set forth as Appendix A to this brief for the Court's convenience.

TOSCO. These formal documents would spell out the understandings which had resulted from the meetings of July 9, 10, 23 and 24.

2. At the time of signing the formal documents, TOSCO would pay \$20,000.00 and would, at that time, receive an option to lease and purchase the properties, good for a term of six months, during which it could examine title, reserves and other aspects of the claims.

3. If TOSCO exercised the option, it would transfer 5,000 shares of its common stock to defendants, subject to appropriate investment representations in compliance with Federal Securities laws.

4. If TOSCO exercised the option, it would pay defendants \$10,000 yearly as delay rentals for unpatented lands, subject to TOSCO's right to recover the delay rentals paid out of subsequent production royalties.

5. TOSCO agreed to attempt to carry all of the unpatented placer mining claims to patent at its own expense, and the shareholders agreed to cooperate in such effort.

6. If TOSCO exercised the option, it would pay certain specified amounts as delay rentals for the patented lands.

7. If TOSCO exercised the option, it would pay defendants a royalty of $2\frac{1}{2}\%$ of the sales price of each barrel of crude shale oil produced and sold.

8. The lease would contain a provision granting TOSCO the right to purchase the lands at a formula

price to be computed as the "present worth of the recoverable amount of oil at 5 cents per barrel, discounted over 20 years at a rate of 12%."

TOSCO President Koolsbergen, signing for TOSCO, made the following statement in the July 25 letter: "I have asked our attorneys to commence the drafting of the necessary documents to carry out these understandings and reduce them to formal agreements . . ." By this time, however, Tweedy had not only commenced the drafting but had actually completed the first drafts and had forwarded them to Dufford for his revision. Larson testified that at the meeting at which the July 25 agreement was drafted in his presence, he also made certain oral agreements with TOSCO which, however, were not reflected in the written agreement (Tr-1, p. 181).

B. EVENTS LEADING TO TOSCO'S PAYMENT, AT LARSON'S REQUEST, OF THE \$20,000 OPTION PAYMENT.

Although Tweedy sent drafts to Dufford on July 20, 1963, it took almost five months for Dufford to forward revised drafts to TOSCO (Tr-1 p. 110). Throughout this period Dufford and Larson exchanged ideas on revisions of the Tweedy drafts (Tr-1 p. 33). They made some minor changes to conform the drafts to the July 25 agreement, such as substituting the individual shareholders as parties in place of Larson Oil Company. Not until December 13, 1963, did Dufford finally forward the Dufford-Larson revisions (Exhibits 4 and 5) of the Tweedy drafts. On December 19 Tweedy told Dufford

by telephone that he would not be able to review the drafts until sometime after Christmas (Tr-1 p. 116).

At about the same time he finally forwarded the Dufford-Larson drafts, Larson began making requests for the \$20,000.00 option payment (Tr-1 p. 56; Exhibits, 3, 20, 21), claiming pressing financial need. He asked Lenhart, who worked with him in TOSCO's Los Angeles office, to approach Koolsbergen on the matter (Tr-1 p. 197). At this time Larson was personally committed to buy a tract of oil shale claims called the "Ivers-Larson" tract, which he had in turn optioned to TOSCO at a higher price. He said he needed the money for this purpose (Tr-1 p. 56). According to Larson, he believed that the six-month option period provided in the July 25 agreement had already begun to run (Tr-1 p. 197). Larson testified that he informed Lenhart of this belief (Tr-1 p. 197). Lenhart, who had participated only in the discussions of July 9 and 10, 1963, promised to see Koolsbergen on his next trip to New York concerning this request (Tr-1 p. 197).

On January 14, 1964 Lenhart made his trip to New York City and conveyed Larson's request for the money to Koolsbergen (Tr-1 p. 92). Larson testified that Lenhart called him and asked for an extension of the option agreement but that he refused to grant such an extension (Tr-1 p. 198). Lenhart called Tweedy on January 14 or 15 and was then informed by Tweedy that no money was due the Larsons until they executed the formal documents (Tr-1 pp. 116, 117). Koolsbergen testified that he did not intend to pay the \$20,000 until the formal op-

tion and leases were signed (Tr-1 p. 93). However, since Larson at that time was an employee of TOSCO, holding the confidence of Koolsbergen, Koolsbergen attempted to help him out (Tr-1 p. 92). Accordingly, on January 22, 1964, Koolsbergen called Tweedy in Denver and informed him of Larson's request (Tr-1 p. 117). Tweedy explained to Koolsbergen that under the July 25, 1963 agreement TOSCO had no obligation to pay the Larsons \$20,000 until the agreements were signed (Tr-1 p. 117). The relevant terms of that agreement are as follows:

The shareholders of Larson Oil Co. are contemplating dissolution of the company and/or the distribution of its unpatented oil shale claims. Its shareholders, upon receipt of the claims from Larson Oil Co., will make them available to The Oil Shale Corporation on the following terms:

1. TOSCO will pay \$20,000 *at the time of signing of the agreements . . . and will receive in turn a six-month option . . .* (Emphasis supplied)

Tweedy informed Koolsbergen that he had examined Dufford's revision of his drafts and believed that there were only minor differences between the parties which he and Dufford could resolve in a relatively short time (Tr-1, p. 119). Koolsbergen then asked Tweedy to call Larson and see if he could help Larson out with regard to the payment of the \$20,000 (Tr-1 p. 118). On the same day, or the day after (Tr-1 p. 118), Tweedy called Larson. Larson testified he told Tweedy that he:

would be glad to discuss further the acquisition of the property, but before I did that, I wanted to be paid the \$20,000 due me on the option that had expired and I would not discuss any new deal on

these properties until they paid for the option that they already had. He [Tweedy] said, 'Fine, I will cout' (Tr-1 p. 28).

Tweedy, however, testified that:

He [Mr. Larson] said to me that he thought the option had expired on the 15th. I said to him that I did not understand that to be the case in view of the language of the July 25 letter-offer and in view of the fact that Mr. Dufford had not finished his draft or his version of the draft for some five months of the alleged option period. That we had by his action been deprived of the benefits that presumably that were to be made available to us, during the option period, which would have been the right to examine title. . . .

. . . I said after I had given him my view of the transaction that if he would assure me that there would be no difficulty so far as he was concerned in executing the documents . . . I would advise Mr. Koolsbergen of this fact and suggest to him that he make the money available to Mr. Larson.

. . . He said 'That's fine.' I further said, 'If that is the case, we've got to get together promptly and make sure that we get the property descriptions.' (Tr-1 pp. 120, 121.)

Following this telephone conversation of January 22, 1964, Tweedy called Koolsbergen and reported that Larson had assured him that he would sign the documents (Tr-1 p. 93). Tweedy and Koolsbergen discussed the matter and concluded they could trust Larson to sign the documents (Tr-1 p. 148). Although Koolsbergen understood and had been advised that he had no legal obligation to pay the \$20,000 until the documents had been signed, he determined to accommodate Larson with an advance payment (Tr-1 p. 93).

Pursuant to Larson's request, TOSCO prepared four checks, each in the amount of \$5,000, for the four stockholders of Larson Oil Company (Exhibit 7). The checks were dated January 31, 1964 and signed by Koolsbergen. On February 3, 1964 TOSCO'S comptroller wrote Larson requesting acknowledgement of receipt of the checks which were tendered "in connection with the options on certain patented and unpatented lands" (Exhibit 10). It is undisputed that the four defendants cashed the checks and as of today still retain the \$20,000 payment.

C. EVENTS SUBSEQUENT TO TOSCO'S PAYMENT OF THE \$20,000.

In the course of their telephone conversation on January 22, 1964, Tweedy and Larson agreed that they should get together promptly to get the detailed property descriptions and make a preliminary review of the abstracts which Larson had stored in his home (Tr-1 p. 121). In the first week in February, Tweedy confirmed with Larson their plans to meet at Larson's home in Pacific Palisades (Tr-1 p. 123). He then called Dufford to obtain consent for this direct visitation with Larson (Tr-1 p. 149) and then set about revising the Dufford-Larson drafts. He and one of his law associates underlined the provisions in the Dufford-Larson drafts that varied from Tweedy's original drafts, and from these comparisons Tweedy worked out revisions of the areas where he thought Dufford had departed from the agreement of July 25, 1963 (Tr-1 p. 126).

Tweedy then compiled a redraft in which he incorporated the language of the July 25 agreement in certain provisions in order to settle prior variances in the drafts (Tr-1 p. 133). For Larson's benefit he underlined all of the departures from the Dufford-Larson drafts (Exhibits 17 and 18).

On February 12, 1964, Tweedy flew to Pacific Palisades (Tr-1 p. 136). Larson met him at the airport and they went to Larson's house where they began putting together an overlay of the properties (Tr-1 p. 136). Tweedy gave Larson copies of the drafts he had prepared and suggested that they address themselves to the differences that still existed between them (Tr-1, pp. 134-138). Tweedy and Larson worked for two more full days with the descriptions and abstracts. On each day Tweedy asked Larson to go over the drafts with him, but Larson indicated that he didn't want to get into those matters at the time (Tr-1 p. 139). On Friday the 14th of February, Larson became evasive and told Tweedy he was not interested in discussing the drafts (Tr-1 p. 140).

The next day, February 15, 1964, Tweedy and Larson met with Koolsbergen in Beverly Hills (Tr-1 p. 141). At this time Larson informed Koolsbergen and Tweedy that he considered that the options had already expired (Tr-1 p. 141) and that there was no deal (Tr-1 p. 74). Larson indicated that at some time in the future he might be willing to discuss the matter further (Tr-1 p. 74).

On March 23, 1964 Larson met with Morton M. Winston, plaintiff's Vice President, for the purpose of discussing the possibility of compromising their differences (Exhibit 19). At this time Larson indicated that he would demand \$75,000 per year advance royalty instead of the \$10,000 provided in the agreement of July 25, 1963. TOSCO could not accede to Larson's demands for this uptrading of their agreement, and when no compromise could be reached, TOSCO commenced this lawsuit asking the court to declare that TOSCO was entitled to a six-month option on the Larson property, on the terms and conditions specified in the July 25, 1963, agreement.

ARGUMENT

A. THE TRIAL COURT ERRED IN REFUSING TO GRANT PLAINTIFF SPECIFIC PERFORMANCE OF THE WRITTEN JULY 25 AGREEMENT, BECAUSE BOTH PARTIES AGREE THERE WAS A CONTRACT AND THE TERMS OF THE CONTRACT ARE SUFFICIENTLY CLEAR AND CERTAIN TO BE CAPABLE OF SPECIFIC ENFORCEMENT.

The trial court has found, as plaintiff contends, that a contract was entered into on July 25, 1963, between plaintiff and defendants. Defendants do not challenge such finding by cross appeal, and may not here deny that a binding contract was entered into on that date. The July 25 agreement, signed by all the defendants and by the plaintiff, sets forth those terms and conditions upon

which the parties had agreed. This lawsuit was initiated when defendants, having accepted the benefits of plaintiff's performance under this contract, refused to perform their part of the bargain.

It is well established that courts of equity may order the specific enforcement of a contract when one party has in good faith performed its obligations thereunder, to its detriment, and the other party has received the benefit of such performance without having performed its obligations. See, e.g., 5 WILLISTON, CONTRACTS, Sec. 1439 (1937). Of course, the essential terms of the contract must be sufficiently clear to enable a court order enforcement thereof.

In *Johnson v. Jones*, 109 Utah 92, 164 P.2d 893 (1946) this court specifically enforced a preliminary real estate contract under circumstances very similar to the instant case. The *Johnson* case indicates the policy of this court to grant specific performance when the intention of the parties is made sufficiently clear in the contract. See, also, *Cummings v. Nielson*, 42 Utah 157, 129 P.2d 619 (1913), *Nielsen v. Rucker*, 8 Utah 2d 302, 333 P.2d 1067 (1959).

Other courts have expressed the same concept in granting the remedy of specific performance. See, e.g., *D. A. C. Uranium Co. v. Benton*, (D. Colo. 1956), 149 F. Supp. 667. This approach is illustrative of the general policy of courts of equity to enforce contracts rather than encourage evasion of contractual obligations. See e.g. *Frayser's Estate*, 401 Ill. 364, 82 N.E. 2d 633 (1948); *State v. Bland*, 353 Md. 639, 183 S.W. 2d 878 (1944).

The terms of the July 25, 1963 agreement are precise and definite. They define: (1) the parties; (2) the lands covered; (3) the option price; (4) the consideration to be paid on exercise of the option; (5) the delay rentals; (6) the royalties to be paid in event of production; (7) the purchase price in the event the purchase option is exercised; and (8) the procedures to be followed in obtaining patents on the claims. In short, all that was necessary to guide the lawyers in preparing formal agreements. They were the basis for the Dufford-Larson drafts of December 13, 1963. Indeed, Larson admitted that the Dufford-Larson drafts were complete in every detail, as the following statements indicate:

A. We had the July 25th letter that they were going on. Mr. Dufford presented the completed lease with the descriptions completed in every detail, early in December. There would have been plenty of time. (Tr-1 p. 39)

Q. But actually what was happening, you were having exchange of agreements, uncompleted exchange of agreements between two lawyers who were attempting to formalize the finalize what you agreed on?

A. That is not correct. *These were completed agreements.* (Emphasis supplied) (Tr-1 pp. 41, 42)

At the hearing of January 6, 1967, D. J. Dufford, attorney for Larson, pointed out that the two areas in which the Dufford-Larson drafts departed from the agreement of July 25, 1963 — the patenting arrangements and the formula for the purchase price in the event TOSCO elected to purchase the claims — had been

specifically covered by the July 25th agreement and that Larson would have been bound by the provisions of the July 25th agreement. His comments are as follows:

Why could they not have said to Larson, as they testified in the trial, 'Your drafts are just about substantially it, you've got two things, one you said to do the patenting at our expense, and that is not what the letter says. This is clear, we know, we decided that the patenting is going to be done by us with your assistance at our expense.

We've got to change that around, because that we agreed on, that is in the letter.

The second point. The Larson draft left an omission as to what the amount of the purchase price of the claims was to be, and the method of its payment, in the event that TOSCO elected sometime in the future to buy the property under the lease option. But, that was also covered in the letter. TOSCO could have said, 'Look, there is a formula in the letter which we say is complete, this lease has to be controlled by what the letter says in that particular phase, and it says, there is a formula by which your purchase price on the purchase option is to be decided.

We agreed that is already there. We have not got any argument about that because that is one of the few things in the letter.

They could have said at that point, '*Your draft is fine, we have changed those two things, and we are ready to execute.*' That would have created a real binding question here, there is no question about that at that point, Larson would have had to say, '*All right I am ready.*' He said in his memo when he transferred the drafts, '*We are ready to sign.*' (Emphasis supplied) (Tr-3 pp. 46, 47)

Plaintiff agrees that the Dufford-Larson drafts reflect the agreement between the parties except for those two terms which the July 25 agreement supplies (See Tr-1, pp. 112, 133) and except for the date of commencement of the option, a point on which the July 25 agreement is crystal clear. Plaintiff by this action seeks to have defendants do what they should have done at the time the \$20,000.00 was paid to them — grant TOSCO a six-month option to lease and purchase the Larson lands on the terms agreed upon on July 25, 1963. Plaintiff has attached as Appendix B to this brief the Dufford-Larson drafts, with such changes as are necessary to make them comply with the July 25 agreement. The lands covered by said Appendix B are the lands covered by the July 25 agreement (See Tr-1, pp. 19-23, 42-45. See also amended Exhibit B to the complaint.)

These are the agreements which plaintiff seeks to have enforced.

B. THE TRIAL COURT ERRED IN FINDING THAT THERE WERE ORAL AGREEMENTS AT VARIANCE WITH THE BASIC TERMS OF THE WRITTEN CONTRACT OF JULY 25, 1963, BECAUSE:

1. *The evidence does not establish that there were oral understandings which supplemented the July 25 agreement.*

The terms of the July 25 agreement are complete, clear and free from doubt, and under those terms, TOSCO was and is entitled to judgment.

The July 25 agreement provides that Larson Oil Company, the then owner of the unpatented oil shale claims in suit, would be dissolved and/or would distribute the claims to its shareholders. The shareholders, as owners of the claims, would "hereafter" enter into contracts and agreements formally expressing the trade. Finally, TOSCO would pay the shareholders \$20,000. More important, the July 25 agreement recites that "at the time of signing of the agreements . . . [TOSCO] will receive in turn a six (6) month option . . ." (Exhibit 2)

It is undisputed that defendants, after months of delay, refused to sign the agreements prepared by plaintiff and submitted to them. It is undisputed that, within days after payments to them of \$20,000, defendants claimed that they were not obliged to sign or grant an option, and instead stated that it had already run, contrary to the agreement of July 25, 1963. Against this background, defendants could prevail only if they assumed and satisfied the burden of proving that there existed other, enforceable oral agreements contradicting the written contract, which oral agreements provided that the option commenced to run ten days prior to that contract, notwithstanding the terms of the writing.

The trial court found that there were such contradicting, enforceable oral agreements (Finding of Fact No. 3). This finding is the central issue on appeal, and on its correctness or incorrectness rests the outcome. Plaintiff contends that it must be reversed, as unsupported by the evidence.

In this section we will briefly discuss the thin fabric of defendants' testimony on which this finding rests. In later sections we will show that most, or all, of this testimony is inadmissible and does not constitute lawful evidence; but this section will establish that even if the improper testimony is considered, the defendants did not satisfy their burden of proving the oral agreements found by the trial court.

The evidence which is not in the record is as significant as the testimony which is. There is not a single, solitary contemporaneous document proving, or even tending to support, the existence of the oral agreement claimed by defendants. No letter, no memorandum, no note, no diary entry; nothing in evidence prior to defendants' February 1964 repudiation of their contractual obligation states that the option commenced to run in July, or at any other time prior to the time clearly and expressly provided in the July 25 written agreement.

The July 25 agreement is the only evidence in the record which speaks for itself, unweakened by faulty and partial recollections or by later suspicions; and it squarely negates defendants' contention and the finding of the trial court.

Thus, the finding rests squarely on the flimsy base of defendant Larson's testimony. That testimony (even if it were legally admissible, as we show it is not, *infra*) is contradicted by plaintiff's testimony, is inconsistent with the conduct of the parties, and in general shows every sign of hasty fabrication.

Indeed, as late as the first minutes of the trial itself, defendants did not claim that they had performed under an oral agreement; they claimed that there was not and never had been any agreement at all (Tr-1 pp. 8, 9). The incredible story of the oral agreements finally saw the light of day only when defendant Larson took the stand.

Under these circumstances, it could hardly be expected that Larson's testimony would be free of internal contradiction, and it was not.

Larson's own testimony is in conflict about the occurrence of the alleged oral agreements purportedly supplementing the written July 25 agreement. He testified that at the close of the meeting on July 10 it was mutually agreed that both his employment and the option were to commence on July 15, 1963 (Tr-1 p. 186), and also that he believed the option period was in effect prior to the July 25 agreement (Tr-1 p. 25). Yet at another point, Larson testified that the oral agreement to commence the option period on July 15 was made concurrently with the preparation of the writing of July 25, 1963 (Tr-1, p. 181).

It is clear that by July 14, 1963 Larson had concluded there had been no meeting of the minds (Tr-1 p. 16). The very purpose of the July 23 and 24 meetings was to resolve existing differences between the parties. Larson's own confused and self-contradicting testimony is incredible.

Nor does the history of the negotiations between July 10 and July 25, 1963 support the thesis that an oral

contract differing from the terms of the July 25 agreement supplemented such written agreement. Any agreements made on July 9 and 10, 1963 were necessarily between Larson Oil Company and TOSCO (Tr-1 pp. 30-33). Yet, different parties executed the July 25 agreement.

Defendants' counsel stated:

It is true, for tax reasons there was a difference in the mode they wanted to follow between the July 11 memo and the July 25 memo (Tr-3 p. 29).

The mode was changed and the July 25 agreement was executed by the shareholders in place of Larson Oil Company. That agreement recited:

The shareholders of Larson Oil Co. are contemplating dissolution of the company and/or the distribution of its unpatented oil shale claims. *The shareholders, upon receipt of the claims will make them available to The Oil Shale Corporation on the following terms (Emphasis supplied).*

It was recognized by the parties that a formal dissolution of the company or distribution of its assets would be required to obtain the desired tax benefits. This procedure would take time, and a premature granting of an option before the shareholders had actual title to the mining claims would jeopardize these benefits. Therefore, the beginning of the six-month option period was conditioned on three subsequent events: (1) Receipt of title to the unpatented claims by the shareholders of the company; (2) Signature of formal documents by said shareholders; and (3) Payment by TOSCO of \$20,000.00.

In order to believe Larson's testimony that he and TOSCO orally agreed on July 25, 1963 that the option would commence on July 15, 1963, it must be concluded that Larson, as president of Larson Oil Company, acted in direct conflict with the agreement signed by the company's shareholders, including himself, and risked losing the tax position so carefully provided for in the writing.

In the normal course of business, the option price is paid at the commencement of the option period. The only reasonable inference to be drawn from the fact that the money was not paid to the defendants on July 25, 1963, is that the option had not and would not begin until the formal instruments were signed. Indeed, this is what the July 25 agreement expressly provides:

The shareholders of Larson Oil Co. are contemplating dissolution of the company and/or the distribution of its unpatented oil shale claims. The shareholders, upon receipt of the claims from Larson Oil Co., will make them available to The Oil Shale Corporation on the following terms:

1. TOSCO will pay \$20,000 at the time of signing of the agreements (\$10,000 to Fred V. Larson and Ethel B. Larson, his wife; and \$10,000 to Frederick H. Larson and Dorothy H. Larson, his wife) and will receive in turn a six-month option during which it will examine the title, history and status of the mining claims, the feasibility of patent proceedings and the extent and mineability of the reserves.

In addition, there is not one phrase of testimony in the record indicating TOSCO considered such pur-

ported oral understandings to constitute a binding agreement. All testimony on the point relates to defendant Larson's alleged belief that there was such a contract; he at no point suggested that TOSCO considered itself bound by any agreements other than the writings. Koolsbergen and Tweedy repeatedly testified that after July 25, 1963 TOSCO at all times considered that the option period was to commence only upon the signing of the agreements here sought to be enforced. There is simply no evidence to support the trial court's finding that TOSCO considered any extraneous oral understandings as creating an agreement with defendants, whatever defendant Larson's belief may have been.

2. The evidence does not establish that the parties' conduct subsequent to the execution of the July 25 agreement was in accord with and confirmed oral understandings differing from the terms of said written agreement.

a. Koolsbergen and Tweedy testified that TOSCO did not make costly geological evaluations and title examinations because they felt, relying on the agreement of July 25, 1963, that the options had not commenced (Tr-1 pp. 70, 80, 114, 115).

b. After the July 25 agreement was signed, defendants took five months to revise the drafts of the formal agreements, which plaintiff had initially prepared, thus leaving TOSCO only one month in which to exercise under the "modified" term. Obviously, defendants cau-

not rely upon their own dilatory conduct in revising these agreements as evidence of a shortened option period. On the contrary, under their theory, they were taking advantage of TOSCO by their delay.

c. On November 21, 1963 Larson sent an interoffice memorandum to Koolsbergen which contains the following statement:

At the time of signing, \$10,000.00 will be due from TOSCO (Frederick H. Larson, \$5,000.00 and Dorothy H. Larson, \$5,000.00). (Exhibit 21)

It is obvious that as of that date Larson did not believe that an option had commenced to run or that he was entitled to a payment of \$20,000.00. Again, on December 13, 1963, Larson finally forwarded the revised drafts of formal agreements to TOSCO under cover of an interoffice memo (Exhibit 3) which stated in part:

Under the terms of our agreement, my father and mother will be entitled to \$10,000.00 at the time of signing the leases

There will be due to Frederick H. Larson and Dorothy H. Larson \$10,000.00 upon the signing of the leases. My purchase of the Kohlberg-Barron-Cummings 2240-acre parcel is due to close on December 21st. I must deposit \$58,520.00, and I would like to use the \$10,000.00 due me from Tosco on the Larson deals as part of this purchase money

Nowhere does this document suggest that Larson is laboring under the belief that an option will expire only one month later.

d. Tweedy, on behalf of TOSCO, prepared the initial drafts in July, 1963, after his conference with Larson on July 12 and well before the July 25 agreement was entered into. These initial drafts recite July 15, 1963 as the commencement date of the option period. On July 12, of course, the parties were still contemplating that the option was to begin on July 15. The Dufford-Larson drafts were prepared subsequent to the July 25 agreement and are in direct conflict with that writing regarding the commencement date of the option.

Furthermore, the dates on the drafts can be given no weight. In the case of *Moody v. Smith*, 9 Utah 2d 139, 340 P.2d 83 (1959), this court held that option performance dates set out in unsigned draft agreements would evidently have "no purpose other than to indicate relative time for each element of performance," and could not be considered as expressing the actual dates of performance as contemplated by the parties.

e. In January of 1964, Larson told Lenhart, with whom he shared TOSCO's Los Angeles office, that the option would expire on January 15, 1964 (Tr-1 p. 197). Larson then testified that on January 14, 1964, Lenhart called him from New York and asked for an extension of the option (Tr-1 p. 198). But Lenhart was not aware of the change in the commencement date made by the final written agreement of July 25, 1963 until he called Tweedy (Tr-1 pp. 116, 117). He had not participated in any negotiations after July 11, 1963.

f. On January 22, 1964 Tweedy, at Koolsbergen's request, called Larson to ascertain whether TOSCO could help him out (Tr-1 p. 92). Larson's and Tweedy's testimony conflict over the substance of this conversation (See pp. 11, 12, *supra*).

It is possible that there was a mutual misunderstanding by both Tweedy and Larson as to what was said. Nonetheless, Tweedy reported to Koolsbergen that Larson had agreed to sign the documents (Tr-1 p. 93).

g. TOSCO paid the \$20,000.00 required by the option agreement on January 31, 1964. Koolsbergen testified:

Mr. Larson required money and needed money. Mr. Larson at that time was an employee of ours. We had complete confidence in him. We began to think how we could help him on the way, how we could accomodate him so that he could have his money and we could have our documents. That was the last part of January (Tr-1 p. 92).

He [Tweedy] said, 'Legally, he was not entitled to the money. It became a business decision. There was no legal obligation to pay the money until the documents were signed, I promised Mr. Larson that we would sign them. I made the business judgment to pay it.' (Tr-1 p. 93).

Koolsbergen's testimony is uncontradicted and must be accepted as the reason for TOSCO's payment in advance of the \$20,000.00.

h. After Larson told Tweedy on January 22 that he would sign the documents, Tweedy and an associate

set about revising the Dufford-Larson drafts. It is clear he would not have done this had he believed the option had expired.

i. In February, 1964 Tweedy, with Larson's and Dufford's consent, traveled to Pacific Palisades and worked with Larson for three days, organizing the abstracts and making a preliminary overlay (Tr-1 pp. 136, 138-139) in preparation for completion of the drafts. Tweedy gave Larson the revised drafts and asked Larson to go over them, so that the minor points of disagreement might be resolved. Larson avoided this discussion for two days and, on Friday the 14th of February, became evasive and told Tweedy he was not even interested in discussing the drafts (Tr-1 p. 140). It is clear that Tweedy would not have spent three days assembling the property descriptions had he known that Larson was resuming his position that the option was over.

j. It is apparent that Larson was dissatisfied with the agreement he had made and wanted considerably more money (see Exhibit 19). This explains his evasiveness in discussing the agreement with Tweedy at this three-day February meeting.

Defendants have alleged an oral option that was fully performed and unexercised by plaintiff. Defendants had the burden of proof in showing the existence of this oral contract and the burden of proving performance thereof. *Superior Trailer Mfg. Corp. v. Scatterday, Inc.*, 241 Ind. 459, 169 N.E.2d 721 (1960). Defendants have

not sustained their burden in showing a *modified* contract that was fully performed.

3. *The oral testimony tending to establish that the six-month option was to commence July 15, 1963 was inadmissible under the parol evidence rule and cannot be considered to vary the terms of the written contract of July 25, 1963.*

At trial Larson was permitted to testify as to an alleged oral agreement which he claimed occurred contemporaneously with the signing of the written instrument. TOSCO objected to the introduction of this evidence on the ground that it was in conflict with and contradicted the express terms of the written instrument (Tr-1 p 181). The parol evidence rule was designed to prevent the very evil which the admission of this evidence has led to in this case. As stated by this Court in *Garrett v. Ellison*, 93 Utah 184, 72 P.2d 449 (1937), at p. 452:

The [parol evidence] rule is founded upon the principle that when the parties have discussed and agreed upon their obligation to each other, and reduced those terms to writing, that such terms, if clear and unambiguous, furnish better and more definite evidence of what was undertaken by each party than the too often fickle memory of man, for why else reduce it to writing.

Larson's testimony of a contemporaneous oral agreement for an option period which is in direct conflict with the express wording and implicit purpose of the writing, was admitted over objection, considered by the

trial court and found as a fact by the trial court. This was reversible error. *Last Chance Ranch v. Erickson*, 82 Utah 475, 25 P.2d 952 (1933).

In Utah, the parol evidence rule is a rule of substantive law and not merely a rule of evidence. *American Crystal Sugar Co. v. Nicholas*, 124 F.2d 477, (10th Cir. 1941); See: *Globe Motors, Inc. v. Studebaker Packard Corp.*, 328 F.2d 645 (3rd Cir. 1964); *Carey v. Shellburne, Inc.*, 215 A.2d 450 (1965); *Rental Development Corp. v. Rubenstein Const. Co.*, 96 Ariz. 133, 393 P.2d 144 (1964); 31A C.J.S. Evidence § 151 (1955).

Since the parol evidence rule is one of substantive law, the legal effect cannot be avoided, even though parol evidence be admitted without objection. *MacIntyre v. Angel*, 109 Cal. App. 245, 240 P.2d 1047 (1952); *Jackson v. Domschot*, 40 Wash. 2d 30, 239 P.2d 1058 (1952); *Holyoke Water Power Co. v. American Writing Paper Co.*, 68 F.2d 261 (1st Cir. 1933); *Hale v. Bohannon*, 38 Cal.2d 283, 241 P.2d 4 (1952).

Parol evidence is not admissible to contradict, add to, or vary the terms of a written instrument. *Farr v. Wasatch Chemical Co.*, 105 Utah 272, 143 P.2d 281 (1943). Nor can oral testimony be admitted regarding terms to which the writing is silent. *Fox Film Corp. v. Ogden Theatre Co.*, 82 Utah 279, 17 P.2d 294 (1932).

4. *Such finding is not permissible under the doctrine of merger.*

The doctrine of merger is a well-known rule of common law. It was ignored by the trial court when it found

that an oral agreement to commence the option at an earlier time than the time expressly provided in a writing subsequently signed by the parties was not merged in the writing. This court cited Williston as follows:

All courts agree that if the parties have integrated their agreement into a single written memorial, all prior negotiations and agreements in regard to the same subject matter are excluded from consideration, whether they are oral or written. *Shaw v. Abraham*, 12 Utah 2d 150, 364 P.2d 7, F.N. 3 (1961).

In *Bullock v. Deseret Dodge Truck Center, Inc.*, 11 Utah 2d 1, 354 P.2d 559 (1960), this court stated:

. . . He [plaintiff] must also show that such oral agreement was not merged in the written agreement as is usually the case, where as here, the written agreement covers the question involved. In such case in the absence of ambiguity, parol evidence is not admissible to vary the terms of the contract or to show the intention of the parties.

The case of *Combined Metals, Inc. v. Bastian*, 71 Utah 535, 267 Pac. 1020 (1928) is directly in point. In that case, this court stated, at p. 1027:

The record shows that on June 1, 1921, the plaintiffs and Bastian entered into a contract, Exhibit B. There is no dispute as to that. While the parties, of course, had prior bargainings and negotiations back and forth with respect thereto, yet all such and *all contemporaneous oral agreements were merged into that contract*, which on June 1 was written out in longhand and then signed.

Since the July 25 agreement expressly provided for the time of the commencement of the option, any prior or contemporaneous oral agreement on the same subject matter must be deemed to have been merged into the final written expression, which was signed by the parties on July 26, 1963. The court erred in not holding that the alleged "oral understandings" were merged.

5. Such finding is prohibited by the Utah Statute of Frauds and would operate as a fraud upon plaintiff.

The court found as Conclusion of Law Number 3 that there was a six-month option commencing July 15, 1963. Plaintiff has pointed out that such conclusion cannot be reached in light of the parol evidence rule and the doctrine of merger. Furthermore, such conclusion violates the Utah Statute of Frauds.

The pertinent provision of the Utah Statute of Frauds (Section 25-5-3, U.C.A., 1953) reads as follows:

Every contract for the leasing for a longer period than one year, or for the sale, of any lands, or any interest in lands, shall be void unless the contract, or some note or memorandum thereof, is in writing subscribed by the party by whom the lease or sale is to be made, or by his lawful agent thereunto authorized in writing.

In *Knight v. Chamberlain*, 6 Utah 2d 394, 315 P.2d 273 (1957), this court held that an "option" is similar to a conditional sales contract of real estate, and is therefore an "interest in land" coming within the purview of the statute of frauds.

The rule forbidding the oral modification of contracts required to be in writing by the statute of frauds was stated in *Combined Metals, Inc. v. Bastian*, 71 Utah 535, 267 Pac. 1020 (1928) at page 1032:

Again, the original contract to be binding and enforceable, and to satisfy the Statute of Frauds, was required to be, as it was, in writing and subscribed by the parties sought to be charged. To alter or modify any of its material parts or terms by a subsequent agreement required one also to be in writing and subscribed . . .

The rationale for the above rule was ably stated by the Supreme Court of Texas in *Robertson v. Melton*, 131 Tex. 325, 115 S.W.2d 624 (1938):

The rule is that parties to a written contract coming within the provisions of the statute of frauds may not by mere oral agreement alter one or more of the terms thereof and thus make a new contract resting partly in writing and partly in parol, the reason for the rule being that, when such alteration is made, part of the contract has to be proven by parol evidence, and the contract is thus exposed to all the evils which the statute was intended to remedy.

There is one well-known exception to the rule concerning oral modification of such contracts — part performance. *Bamberger Co. v. Certified Productions, Inc.*, 88 Utah 194, 48 P.2d 489 (1936). However, it is well established that to defeat the statute, the party alleging part performance must rely on *his own detrimental performance*. He cannot point to the performance of the other party. *Utah Mercur Gold Min. Co. v. Herschel Gold Min. Co.*, 103 Utah 249, 134 P.2d 1094 (1943).

In *Ravarino v. Price*, 123 Utah 559, 260 P.2d 570 (1953), this court laid down the criteria that must be met by a party attempting to avoid the statute of frauds on the grounds of detrimental performance (at 577):

... [T]his court must be convinced that *no reasonable doubt* exists as to whether or not the acts of improvement are explainable on some basis other than the hypothesis of an oral contract. The reason for the rule is well established in the common experience of mankind to which the enactment of the statute of frauds bears witness: the possibility of fraud and uncertainty in oral promises to convey reality makes it incumbent on the courts to hesitate in applying a general exception to diverse factual situations. . . . The plaintiff here did not acquire possession, nor is the purchase of the "Terry Strip" an act of such a nature that explanation on some other ground other than the existence of an oral contract is *unreasonable*. (Emphasis supplied).

There is no evidence in the record upon which a conclusion could be reached that defendants acted under any agreement except the July 25 written agreement. Indeed, there is no evidence whatsoever of any detrimental performance by defendants. It took Tweedy eight days from the time he received his information from Larson and Koolsbergen to prepare the initial drafts and forward them to Dufford. It would have been a reasonable assumption that the revision by Larson and Dufford would take about the same time and that Larson Oil Co. could be dissolved, the claims distributed and the documents ready for signature in early August, 1963. However, Larson and Dufford took almost *five months* to revise

these drafts and return them to Tweedy. Under the terms of the written agreement, the burden was placed on defendants to dissolve Larson Oil Co., obtain the claims, and to execute formal documents granting TOSCO a six-month option. Larson dallied under this burden for five months and seeks to avoid it by an alleged oral agreement.

On the other hand, TOSCO relied during this period on the express provisions of the written agreement, and the finding of a completed oral modification works a fraud upon TOSCO. The statute of frauds was enacted to prevent the very thing that has happened here. TOSCO's reliance on that written agreement was proven beyond reasonable doubt. It waited for five months while Larson and Dufford revised its initial drafts. It did not undertake the costly title examination contemplated under the option (Tr-1 p. 115). It did not undertake the costly geological examination contemplated during the option period (Tr-1 p. 80). It was not even aware until January of 1964 that Larson believed the option was running. It did revise the Dufford-Larson drafts after January 15, 1963 (Tr-1 p. 113). It did pay the \$20,000 (Tr-1 p. 93) and it did request Larson to complete the steps necessary to execute the formal instruments (Tr-1 p. 139). It paid the \$20,000 in advance of the time called for in the agreement only for the defendants' benefit and because Larson was in need of money. All of TOSCO's acts reflect its reliance upon the express terms of the July 25 agreement, which TOSCO seeks to have enforced.

The trial court made no finding of part performance by defendants under the alleged oral option, and there is no evidence to support such a finding. On the other hand, TOSCO relied to its detriment on the written agreement. The trial court erred in not granting TOSCO the protection of the statute of frauds.

C. THE TRIAL COURT ERRED IN REACHING CONCLUSIONS OF LAW NUMBERED 4 AND 5 AND FINDINGS OF FACT NUMBERED 4, 5 AND 7 BECAUSE THE EVIDENCE IN THE RECORD DOES NOT SUPPORT SUCH CONCLUSIONS AND FINDINGS.

In its order dated March 10, 1967, the trial court reached the following conclusions of law (R-94):

4. Having permitted the said option period to expire, the Plaintiff is not now entitled to an order of this court adjudging that Plaintiff is entitled to an additional six months option covering the Larson lands.

5. Judgment should be entered herein dismissing the Complaint with prejudice and providing that Defendant's (sic.) are entitled to recover their costs of suit incurred herein.

These conclusions were based on Findings of Fact numbered 4, 5 and 7. These Findings of Fact are not supported by the evidence, and therefore the conclusions of law based upon them cannot be sustained.

1. *Findings of Fact Numbers 4 and 5 are contrary to the plain language of the written agreement and are not supported by the evidence.*

Plaintiff has shown that defendants entirely failed to perform their obligation under the written agreement of July 25, 1963 to grant a six-month option to plaintiff, contrary to the erroneous finding of the trial court. It is also necessary to discuss briefly another erroneous finding: namely, that plaintiff agreed, but did not, prepare the formal instruments of lease and option contemplated by the July 25 letter (Findings of Fact Numbers 4 and 5).

The trial court found, correctly, that at the time of the July 25 agreement, both parties intended that there would be prepared and executed "formal instruments expressing the complete and entire transactions which they contemplated." The trial court then went on to find that "Plaintiff agreed to prepare such formal instruments and submit them to the defendants for their consideration" (Finding of Fact No. 4). The only evidence on which this finding could be based is this paragraph of the July 25 agreement in which Koolsbergen stated:

I have asked our attorneys to commence the drafting of the necessary documents to carry out these understandings and reduce them to formal agreements and would appreciate your prompt reply.

This is manifestly not an "agreement", but a simple statement of fact: Koolsbergen had indeed already

asked TOSCO attorney Tweedy to prepare drafts of the "necessary documents" (Tr-1 p. 85).

But even if this were an "agreement" by TOSCO to prepare drafts of the documents, there can be no doubt that TOSCO fully performed its obligation. Tweedy, acting for TOSCO, prepared complete drafts based largely upon the terms reported to him by defendant Larson himself (Tr-1, p. 104), and on July 20, 1963 mailed them to Larson's attorney, D. J. Dufford, for his "consideration" (Tr-1 p. 108). The drafts themselves are in evidence (Exhibits 14, 16); their existence cannot be denied. Thus, the trial court's finding that "Contrary to the terms of Plaintiff's Exhibit 2, Plaintiff did not prepare formal instruments expressing the transaction contemplated by the parties," is at best inexplicable. The "formal instruments" are in the record and their undeniable existence refutes the finding (Finding of Fact No. 5).

It is conceivable that the trial court was under the erroneous impression that Exhibits 14 & 16 were in some mysterious way disqualified because they were completed prior to July 25. The trial court added that, "In fact, at no time *subsequent to July 25, 1963*, did Plaintiff prepare, offer to prepare or offer to execute any instrument which complied with Plaintiff's Exhibit 2" (Finding of Fact No. 5). This portion of the finding is defective in two ways: first, it is irrelevant; second, it is wrong.

It is irrelevant because the "obligation", if any, imposed on TOSCO by the July 25 agreement was not

limited to a "time subsequent to July 25, 1963." The July 25 letter states that "I *have* asked our attorneys to commence the drafting . . ." This is not an agreement to do anything. The sentence is in the present-perfect tense and merely states a fact. Its only possible meaning is that Koolsbergen had already requested such acts. This is true; the drafts had been prepared, and there had been full compliance.

It is wrong because plaintiff did further drafting at a "time subsequent to July 25, 1963," namely, in January and February, 1964. Plaintiff's first drafts were mailed by Tweedy to defendants' attorney, D. J. Dufford, on July 20, 1963 (Tr-1 p. 108). Neither Dufford nor defendants claimed that these were not the "formal instruments" in question. On the contrary, Dufford studied them, revised them, and after a delay of nearly five months, sent revised drafts back to Tweedy (Tr-1 p. 110; Exhibits 4 and 5). Tweedy, acting for TOSCO, then prepared final redrafts, which are also in evidence (Exhibits 17 and 18) and which he delivered to Larson in person (Tr-1 pp. 134-138).

Thus, Conclusions of Law Numbers 4 and 5 should be reversed because the indisputable evidence shows that there was no agreement that TOSCO would draft the formal instruments; and, in any event, TOSCO did produce and deliver not one but two complete sets of drafts.

2. Finding of Fact Number 7 is not supported by the evidence.

Finding of Fact Number 7 states that "In compliance with the understandings referred to in paragraph

3 of these findings and in satisfaction of the obligation of plaintiff thereunder, as recognized by the parties, the sum of \$20,000.00 was paid by plaintiff and received by defendant'' (R-94). As argued *supra*, the referred to Finding of Fact Number 3 is unsupported by any evidence in the record. Furthermore, there is no testimony by any party or witness that TOSCO recognized the payment was made because of any oral understandings arrived at earlier. Whatever defendant Larson might have believed or assumed, it is the clear testimony of Koolsbergen and Tweedy that TOSCO believed it had no obligation whatsoever to pay defendant Larson anything other than his salary as its employee. Their testimony did show a desire to aid Larson in his attempted purchase of certain property by paying him \$20,000.00 in advance of the signing of the documents called for by the July 25 agreement.

As Findings of Fact numbered 4, 5 and 7 are not supported by the record, the conclusions of law that TOSCO is not entitled to a six-month option to lease and purchase the Larson lands, and that judgment should be entered for defendants, are erroneous and cannot be sustained.

D. THE TRIAL COURT ERRED IN NOT GRANTING PLAINTIFF A NEW TRIAL OR RESTITUTION OF \$20,000.00 BECAUSE THE JUDGMENT OF THE TRIAL COURT CONSTITUTED SURPRISE, ENTITLING PLAINTIFF TO INTRODUCE NEW EVIDENCE; THE PROCEDURE BY WHICH THE FINAL JUDGMENT WAS ENTERED WAS IRREGULAR AND PRE-

JUDICIAL TO PLAINTIFF; AND PLAINTIFF IS ALTERNATIVELY ENTITLED TO RESTITUTION.

If this Court does not agree with plaintiff's Arguments A, B and C, supra, plaintiff is at least entitled to a new trial on the ground of surprise, as provided for by Rule 59(a)(3) of the Utah Rules of Civil Procedure.

At the beginning of the trial, defendants' counsel abandoned the prior theory expressed in defendants' amended answer that there had been a valid and enforceable option contract. At the beginning of the trial the following discourse took place:

MR. DUFFORD: Yes sir, we take the position that it was merely, at best, a memorandum of certain points in a pending transaction which certain other essential and additional elements to be negotiated.

MR. ASHTON: Do you take the position that there was in fact *no agreement*?

MR. DUFFORD: Yes sir.

THE COURT: But you do admit a receiving \$20,000.00. What was that for?

MR. DUFFORD: We think the Oil Shale Corporation paid that as a result of an obligation which they figured they owed at that time and *that will be our position*. (Emphasis Supplied) (Tr-1 p. 8-9).

Later in the trial, the defendants stipulated that they would return the \$20,000.00 to plaintiff if the court held there was no option agreement. (See, Tr-1 p. 155.)

Because of defendants' abandonment of their original theory of the case, the parties addressed themselves primarily to the question of whether a complete agreement existed rather than when the option period was to run. It was not until after the trial, after judgment had been ordered and only after the trial court realized that the judgment then entered contradicted the testimony of defendants' own witnesses, that the defendants changed their position and submitted *new* proposed Findings of Fact and Conclusions of Law concluding that a contract did exist.

It has been held that if a wrong theory of the case has been injected into the case by instructions to a jury, a new trial is in order. *Nichols v. Whitacre*, 112 Mo. App. 692, 87 S.W. 594 (1905). Here the trial was over and Findings of Fact and Conclusions of Law had been entered holding that the contract was insufficient and unenforceable, when the court abruptly reversed itself and entered a new judgment to the effect that there was a valid and enforceable contract which had been performed.

By initially injecting the "wrong" theory into the case, defendants caused plaintiff to litigate that "wrong" theory. When the new theory was adopted, the trial was over and TOSCO did not have the opportunity to properly meet the issues now espoused by defendants and found by the court.

Moreover, the preparation and submission by the defendants to the court of an amended judgment and

decree and the adoption of the amended judgment and decree without a motion or notice to TOSCO or granting TOSCO the opportunity to be heard constitutes irregularity entitling TOSCO to a new trial. (Rules 5 and 59, Utah Rules of Civil Procedure)

Should this Court determine that plaintiff is not entitled to specific performance or to a new trial, plaintiff would be entitled to the return of the \$20,000.00 it paid defendants.

It is clear from the testimony of TOSCO President Koolsbergen and TOSCO attorney Tweedy that TOSCO paid \$20,000.00 to defendants on January 31, 1964, with the belief that the July 25, 1963 written contract clearly provided that TOSCO would receive a six-month option upon such payment. If the July 25, 1963 contract is not enforceable, plaintiff erroneously paid the money to defendants under a mistaken belief, and would be entitled to the return of the \$20,000.00, plus interest from the date of payment.

The following statement from RESTATEMENT, Contracts, § 47 (1937) illustrates this principle.

A person who, in order to obtain the performance of a promise given or believed to have been given by another and in exchange therefor, has conferred upon the other a benefit other than the performance of services or the making of improvements to the land or chattels of the other, is entitled to restitution from the other, if the transferor, because of mistake of law, (a) erroneously believed the promise to be binding on him, and (b) did not obtain the benefit expected by him in return.

See, also, RESTATEMENT, *Contracts*, § 15 (1937).

Here plaintiff has transferred money to defendants in the belief that it had a valid written contract with them. Should this Court find that the writings will not support a decree of specific performance, defendants must return the \$20,000.00 they have received.

CONCLUSION

It is respectfully submitted that the trial court erred in finding an oral option term which contradicted the express terms of the written agreement and in basing its judgment thereon. Plaintiff further submits that if said oral modification as found by the trial court is properly disregarded, that there remains a clear, unambiguous and enforceable written agreement. Plaintiff has fully performed under the written agreement and is therefore entitled to judgment and an order requiring the defendants to specifically perform their obligations under the agreement. In the event the court fails to grant the requested relief, plaintiff is entitled to a new trial or restitution.

Respectfully submitted,

VAN COTT, BAGLEY, CORNWALL
& McCARTHY

Suite 300, 141 East First South
Salt Lake City, Utah

CLIFFORD L. ASHTON

HOWARD L. EDWARDS

DON W. CROCKETT

Attorneys for Appellant

APPENDIX A

THE OIL SHALE CORPORATION
45 Rockefeller Plaza
New York 20, New York
PLaza 7-8959

Los Angeles, California
July 25, 1963

TO THE SHAREHOLDERS OF LARSON OIL CO.:

Fred V. Larson
Ethel B. Larson
Frederick H. Larson
Dorothy H. Larson

In conversations held between Mr. Frederick H. Larson, who was in telephone contact with Mr. Fred V. Larson and who was representing the shareholders of Larson Oil Co., and Mr. Koolsbergen and various members of the TOSCO staff in New York on July 9 and 10, as recorded in Mr. Albert F. Lenhart's memorandum of July 11, and a subsequent meeting on July 24 in Los Angeles, the understandings described below applicable to the holdings of Larson Oil Co. were reached. The purpose of this letter is to state the intention of TOSCO and the shareholders of Larson Oil Co., as modified on July 24, to hereafter enter into contracts and agreements giving expression to those understandings as they pertain to the holdings of Larson Oil Co. This letter does not, in any way, limit or restrict the other understandings recorded in the memorandum of July 11.

The shareholders of Larson Oil Co. are contemplating dissolution of the company and/or the distribu-

tion of its unpatented oil shale claims. The shareholders, upon receipt of the claims from Larson Oil Co., will make them available to The Oil Shale Corporation on the following terms:

1. TOSCO will pay \$20,000 at the time of signing of the agreements (\$10,000 to Fred V. and Ethel B. Larson, his wife; and \$10,000 to Frederick H. Larson and Dorothy H. Larson, his wife) and will receive in turn a six-month option during which it will examine the title, history and status of the mining claims, the feasibility of patent proceedings and the extent and mineability of the reserves.

2. By the end of the six-month period, TOSCO must elect whether to lease the lands for oil shale mining. TOSCO is aware of the existence of liquid oil and gas leases granted to others on this land for the production of liquid oil and gas lying below the Green River formation. If it elects to lease, it will, at the time of the election, deliver to Fred V. Larson and Ethel B. Larson, his wife, 2500 shares of its authorized but unissued common stock and simultaneously deliver to Frederick H. Larson and Dorothy H. Larson, his wife, 2500 shares of its authorized but unissued common stock, subject to delivery to it of appropriate investment representations from the recipients and subject to such other terms and conditions as may, in the opinion of its counsel, be required for compliance with the Federal Securities Laws.

3. Under the terms of the lease, TOSCO will pay as a delay rental \$10,000 per year (\$5,000 to Fred V. Larson and Ethel B. Larson, his wife; and \$5,000 to Frederick H. Larson and Dorothy H. Larson, his wife), payable semi-annually for all the unpatented acreage, the total amount paid

to be recoverable out of the subsequent production royalties as described in paragraph 6.

4. TOSCO will agree, at its own expense and with due diligence in the light of its experience in patenting procedures, to attempt to carry all the unpatented placer mining claims to patent and the shareholders will agree to execute all documents and permissions and to provide all reasonable assistance to TOSCO required by that effort. TOSCO will have the right to drop any of the unpatented claims which it deems to be unpatentable or uneconomical, but the shareholders shall have the right to attempt to carry to patent any claims so dropped by TOSCO.

5. After patening of any portion of the presently unpatented acreage, TOSCO will pay as a delay rental for the patented acreage, yearly payments in the amount of \$2.50 per acre for the first year after the patenting thereof; \$3.50 per acre for the second year; \$4.50 per acre for the third year; and \$5.00 per acre each year thereafter. Payment will be made one-half to Fred V. Larson and Ethel B. Larson, his wife; and one-half to Frederick H. Larson and Dorothy H. Larson, his wife, semi-annually and will be recoverable out of subsequent production royalties. Upon the commencement payment of the delay rental for patented acreage on any acreage which is unpatented at the time of the signing of the agreements, the \$10,000 annual payment for unpatented acreage provided for in paragraph 3 above will be reduced by the amount of the annual payment for the patented acreage and may, therefore, be ultimately reduced to zero.

6. Upon the commencement of production of all or any portion of the property, TOSCO will pay a royalty of $2\frac{1}{2}\%$ of the sales price (initialed by H.I.K., F.V.L., E.B.L., F.A.L., D.H.L.) for

each barrel of crude shale oil produced and sold, the payment to be divided one-half to Fred V. Larson and Ethel B. Larson, his wife; and one-half to Frederick H. Larson and Dorothy H. Larson, his wife.

7. The lease agreement will also grant TOSCO an option for the outright purchase of the lands both before and after patenting. The purchase price will be computed on the formula basis: The present worth of the recoverable amount of oil, at 5c per barrel, discounted over 20 years at a rate of 12%.

I have asked our attorneys to commence the drafting of the necessary documents to carry out these understandings and reduce them to formal agreements and would appreciate your prompt reply.

If the above is in accordance with your understanding, will you please so indicate by signing in the space below provided.

Very truly yours,
s/H. I. Koolsbergen

HIK/as

Signed this 26th day of July, 1963.

s/Fred V. Larson

s/Ethel B. Larson

s/Frederick H. Larson

s/Dorothy H. Larson

FILE
ALBERT F. LENHART

July 11, 1963
107
Land Acquisition —
Larson Oil Company

Meetings were held with Mr. Frederick H. Larson representing the Larson Oil Company, and the TOSCO staff on July 9th and 10th to discuss the acquisition of oil shale properties owned by Larson Oil Company and the acquisition of a number of small parcels of Utah shale lands located in the vicinity of the Larson properties.

Larson Oil Company was formed specifically as a holding company for Utah shale lands and is owned equally by Mr. Larson and his father, Frederick V. Larson. Their holdings consist of approximately 30,000 acres of unpatented shale lands and 1,000 acres of patented lands lying to the north and partially to the east of the Skyline property in Utah.

In addition there are about 15 small parcels of patented shale lands contiguous to the Larson and Skyline properties and totalling about 14,000 acres. Mr. Larson has put together this package of small parcels twice before. The first time was in 1958 when the sale of all these Utah lands, including what is now Skyline, was arranged with Socony who subsequently backed out. Since then, the land package has been assembled by Mr. Larson to grant oil and gas leases to Phillips Petroleum. As a result of these past dealings, Mr. Larson has excellent relations with the various owners of the lands, who trust in Mr. Larson's judgment. Mr. Larson feels

he could put the parcels together into a single package again for TOSCO. Time is of the essence, however, since three or four approaches have been made to some of these people in the past few weeks.

With the exception of three tracts, Mr. Larson believes that he can get the land committed to TOSCO on a lease basis with a royalty payment from production. The three tracts which may require outright purchase are:

- a. about 1,300 acres lying mostly in Sections 6 and 7, T9S, R25W. Mr. Larson believes this piece can be purchased for about \$60.00 per acre and is in St. Louis today negotiating for the purchase of the land. Time is particularly important here since Skyline Oil has been pressing the owners to sell.
- b. about 2,200 acres lying in Sections 8, 16, 17, 20 and 21, T9S, R25W. About half this land will have to be purchased.
- c. about 1,000 acres lying in Sections 28, 29 and 30, T11S, R25W. This is the most southerly of the tracts and surrounds about half of the southern portion of the Skyline property.

The parcels are not all contiguous but have value in a number of ways:

- a. They all contain shale.
- b. One of the parcels contains the valley land which cuts the Skyline property in two pieces.
- c. If patents can be obtained on the Larson properties, these parcels become an extension of those lands.

d. If patents cannot be obtained on the Larson properties, it might be possible to trade the scattered patented tracts with the government for unpatented Larson land so as to have a single tract large enough for commercial development. We will explore this possibility with the Department of the Interior as soon as we are sure we can obtain control of these parcels.

Two distinct agreements were reached with Mr. Larson. One for the acquisition of the Larson Oil Company land and the other relating to Mr. Larson's activities in obtaining control of the other lands for TOSCO.

The following terms were agreed upon for the acquisition of the Larson Oil Company lands:

1. TOSCO will take a 6 months option on the land for \$20,000. During this period we will examine title, history and status of mining claims and patent proceedings, the extent of reserves and accessibility of mining.
2. TOSCO will carry the lands to patent at its own expense.
3. TOSCO has the right to drop any portions which it deems unpatentable or uneconomic.
4. TOSCO will pay a delayed rental to Larson Oil on patented lands owned. Yearly payments will be \$2.50 per acre for the first year, \$3.50 per acre the second year, \$4.50 per acre the third year and \$5.00 per acre every year thereafter. Payments will be semi-annual and will be applied to subsequent royalty payments.
5. Upon putting the property into production, TOSCO will pay Larson Oil a royalty of 5c per barrel of oil produced and sold.

6. The lease agreement will contain an option for outright purchase of the land. Purchase price will be computed on the following formula: Present worth of the recoverable oil at 5c per barrel discounted over 20 years at a 12% rate.

It was agreed that Mr. Larson will act as TOSCO's representative to bring together the group of owners of the other shale lands in the area in committing the land to TOSCO as follows:

1. Mr. Larson will make the first pass in contacting all the owners to determine the cost and terms on which the land might be available. At this point TOSCO will be able to determine the desirability of proceeding further.
2. Mr. Larson will not reveal TOSCO's name at this stage of the negotiations.
3. Mr. Larson will be employed as a consultant by TOSCO for up to one year at \$1,200 per month plus expenses. During this time he will work toward assembling the small parcels into a single package and assist in the work involved in patenting the Larson Oil Company lands. If Mr. Larson succeeds in obtaining control of the small parcels for TOSCO, he will receive 1c per barrel on the oil produced from such lands. Production from the Larson lands is covered elsewhere and is not included in this override.

Mr. Larson also knows of a 4,000 acre tract of patented shale lands just across the border in Colorado, approximately TIN. Because of the location, these are probably not first quality lands. They could be useful in trading with the government for unpatented lands. There might be a problem, even then, in trading lands

across a state border if we wanted to trade for Larson land in Utah. We will investigate this tract also, after the more important work is done.

Mr. Larson also owns a $\frac{3}{8}$ th interest in a 10,000 acre shale tract in Utah, farther south of the land just discussed. Continental Oil owns the rest of the land. We did not discuss this tract at length because Mr. Larson informed us that it has serious title problems which must be resolved before it is of any value. He is working with Continental to resolve these problems and would then be willing to discuss the sale of this tract also.

AFL:ek

cc: John B. Tweedy; Esq.
Mr. C. DeWitt Smith
Mr. L. P. Warriner

APPENDIX B

Appendix B contains the documents referred to in Argument A of this Brief. These documents are as follows:

1. Option Agreement between Frederick H. Larson and Dorothy H. Larson and The Oil Shale Corporation.

2. Exhibit A to the above option agreement identified as Mining Lease and Option to Purchase between Frederick H. Larson and Dorothy H. Larson and The Oil Shale Corporation.

3. Exhibit A to the above Mining Lease and Option to Purchase.

4. Option Agreement between Fred V. Larson and Ethel B. Larson and The Oil Shale Corporation.

5. Exhibit A to the above Option Agreement identified as Mining Lease and Option to Purchase between Fred V. Larson and Ethel B. Larson and The Oil Shale Corporation.

6. Exhibit A to the above Mining Lease and Option to Purchase.

Spaces for insertion of the dates of performance under the above documents have been provided. All other additions made by Plaintiff in order to conform the above documents to the Agreement of July 25, 1963 (Appendix A this brief) are italicized. All italicized additions have been extracted from the July 25 Agreement and replace provisions that are contrary to the terms of said agreement. The portions that have been replaced may be found in Exhibits 4 and 5.

OPTION

THIS AGREEMENT, made as of the day of, 196..., between Frederick H. Larson and Dorothy H. Larson, hereinafter referred to as Optionor, and The Oil Shale Corporation, hereinafter referred to as Optionee,

WITNESSETH:

For and in consideration of the sum of \$5,000.00 paid to Frederick H. Larson and the sum of \$5,000.00 paid to Dorothy H. Larson and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Optionor hereby grants to Optionee the exclusive option to lease the unpatented placer mining claims (herein called "the Claims") described in the Mining Lease and Option to Purchase (hereinafter called "the Lease") attached hereto as Exhibit A. The Lease shall be in the form of Exhibit A and shall contain the option to purchase set forth therein and shall be subject to the reservations, rights, titles, claims and leases specified on page 2 of the Lease.

1. TERM: This Option shall commence as of 12 o'clock noon on the date hereof and shall expire at 12 o'clock noon *six months thereafter*.

2. PURCHASE. At any time during the term of this Option or at any time during the term of the Lease, or any renewal or extension thereof, if the Option herein granted as exercised, Optionee shall have the right to purchase the Claims at the price and upon the same terms and conditions as are set forth in the option to purchase contained in the Lease.

3. **TITLE DOCUMENTS.** Immediately upon execution of this Agreement, Optionor will deliver to Optionee such abstracts of title, copies of title opinions, maps, plats, geological and engineering reports, patent applications, briefs, opinions, correspondence, and any other writings relating to the Claims then in the possession or control of Optionor and which are requested by Optionee. In the event Optionee does not elect to exercise the option granted in this instrument, any and all documents delivered to Optionee pursuant to this paragraph shall be returned to Optionor within thirty (30) days after the expiration date of the option granted herein.

4. **EVALUATION.** Optionor grants to Optionee the right during the term of this Option to enter upon the Claims for the purpose of conducting thereon exploratory and/or development work, including the right to construct drifts, adits, shafts and tunnels, access roads, drill sites, electric power and telephone facilities, radio towers and other radio facilities, camp sites, air strips and housing facilities. Optionor grants to Optionee the further right during the term of this Option to remove from the Claims so much oil shale and to perform such other work as, in the opinion of Optionee, is necessary to evaluate the oil shale deposits contained in the lands covered by the Claims and to determine the feasibility of extracting oil shale therefrom. If the option is not exercised, Optionee agrees to furnish Optionor with copies of all drilling and other data obtained or acquired by Optionee with respect to the Claims.

5. INDEMNIFICATION. Optionee agrees to indemnify and save Optionor harmless from and against any and all lawful claims for expense, loss, liability or damages arising from any injuries (including death) or damage to persons or property resulting from Optionee's operations on the Claims and also from and against any and all expenses or liability incurred by reason of the liens of workmen, mechanics and materialmen and all other persons or corporations who may acquire liens against the Claims by reason of labor performed, services rendered, or materials, supplies or equipment incorporated in, on or under the Claims at the direction of Optionee, its employees or agents, or in connection with Optionee's operations or activities on or about the Claims.

6. INSURANCE. Optionee shall, at all times during the term of this Option, (a) insure at its sole cost and expense, to each and every workman employed in, about or upon the Claims, the compensation and benefits provided for in and by each and every applicable statute, rule or regulation relating to Workmen's Compensation, Occupational Disease or Disability, and Employer's Liability; (b) pay and discharge or otherwise dispose of any and all claims, liabilities, suits and demands, of every kind and nature whatsoever, for injury to or death of persons and loss of or damage to property caused by or in connection with the Optionee's operations or activities on the Claims; and (c) procure and maintain, at the sole cost and expense of Optionee, direct and contractual bodily injury liability insurance and property damage liability insurance issued by reputable and financially

responsible insurance company or companies, properly safeguarding Optionor against direct and assumed liability for injuries to or death of persons and loss of or damage to property in amounts acceptable to Optionor, but in no event less than \$150,000.00 for injury to or death of any one person, \$350,000.00 for injuries to or death of two or more persons, and \$50,000.00 for loss of or damage to property in any one incident. Optionee shall also furnish Optionor written certificates from insurance carriers or from appropriate Governmental agencies verifying and establishing that the insurance provided for in this paragraph has been obtained, is being properly maintained, the premiums therefor paid, and specifying the names of the insurers and the respective policy numbers and the expiration dates thereof. All such policies of insurance shall provide (unless by statute applicable thereto it is otherwise provided) that in the event of cancellation thereof, written notice of such cancellation shall be given to Optionor at least fifteen (15) days prior to the effective date of cancellation.

7. NOTICES. All notices provided for herein shall be sufficient if given in writing and mailed by registered mail with return receipt requested to the parties at the following addresses:

Frederick H. Larson
Dorothy H. Larson
350 Alma Real Drive
Pacific Palisades, California

OPTIONOR

The Oil Shale Corporation
45 Rockefeller Plaza
New York 20, New York

OPTIONEE

or if delivered personally and a receipt is signed therefor either by the person to whom addressed or by an officer of a corporate addressee.

8. ASSIGNMENT. The interest of each of the parties hereto may be assigned at any time in whole or in part. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the parties.

9. REPRESENTATIONS AND WARRANTIES. Optionors shall have the right to assign and convey an undivided $\frac{1}{2}$ interest in the Claims to Frederick H. Larson as Trustee for certain issue of Fred V. Larson and Ethel B. Larson. If such assignment and conveyance is made prior to the expiration date of this Option, then Lessee will enter into one lease with respect to an undivided $\frac{1}{2}$ interest of the Claims and the said Frederick H. Larson shall enter into a lease with respect to an undivided $\frac{1}{2}$ interest in the Claims as Trustee under said trust; provided, that the shares of Optionee provided for in paragraph 1 of Exhibit A shall be distributed among the Lessors of both leases in the names designated by Frederick H. Larson. In no event shall the number of shares to be given by the Optionee under said lease or leases exceed 5,000 in number. *Delivery of the common stock is subject to delivery to Optionee of appro-*

priate investment representations from the Optionor and subject to such other terms and conditions as may, in the opinion of Optionee's counsel, be required for compliance with Federal Securities laws.

IN WITNESS WHEREOF, we have executed this document on the day and year first above written.

Frederick H. Larson

Dorothy H. Larson

OPTIONOR

THE OIL SHALE CORPORATION

By -----
President

OPTIONEE

ATTEST:

Secretary

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

On the day of, 196.....
personally appeared before me Frederick H. Larson and
Dorothy H. Larson, the signers of the above instrument,
who duly acknowledged to me that they executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

STATE OF NEW YORK }
COUNTY OF } ss.

On the day of, 196.....
personally appeared before me H. I. Koolsbergen, who
being by me duly sworn did say that he is the President
of The Oil Shale Corporation, and that said instrument
was signed in behalf of said corporation by Resolution
of its Board of Directors, and said H. I. Koolsbergen
acknowledged to me that said corporation executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

EXHIBIT A

MINING LEASE
AND
OPTION TO PURCHASE

THIS LEASE executed on this day of, 196....., between FREDERICK H. LARSON and DOROTHY H. LARSON (hereinafter referred to as "Lessor") and THE OIL SHALE CORPORATION (hereinafter referred to as "Lessee".)

1. LEASE. (a). For and in consideration of the royalties to be paid by Lessee, and the delivery to Frederick H. Larson of 1250 shares of the common stock of The Oil Shale Corporation by Lessee, and the delivery to Dorothy H. Larson of 1250 shares of the common stock of The Oil Shale Corporation by Lessee, and other good and valuable consideration, Lessor hereby leases to Lessee the unpatented placer mining claims situated in Uintah County, Utah, described in the list attached hereto as Exhibit A, which are hereinafter referred to as "the Lease Claims," for the purpose of exploring, developing, mining and operating the Leased Claims and of extracting, processing and removing therefrom for sale or further processing and sale all oil shale, products derived therefrom, and other minerals, metals, and metalliferous and non-metalliferous substances in, on or under the Leased Claims, except oil, gas and other minerals lying below the Green River formation. To the extent the Lessor has the right to grant the same, Lessor hereby grants to Lessee:

(i) The right to use so much of the surface of said land as may be reasonably necessary, desirable or convenient for the conduct of Lessee's operations on the Leased Claims;

(ii) The right, license and easement to construct and maintain buildings, shops, plants and structures of all kinds, to construct and maintain roads and roadways, ore bins, shafts, inclines, tunnels, drifts, adits, open pits, waste dumps, ore stockpiles and any and all other facilities necessary, desirable or convenient for the conduct of mining, processing, and related operations on the Leased Claims;

(iii) The right, license and easement to construct and maintain on the Leased Claim pipelines, telephone lines, electric transmission lines, transportation facilities for other utilities, and the right to construct thereon facilities for the operation and use of aircraft and the maintenance thereof, and facilities for the operation and use of radio and other communication facilities and the maintenance thereof;

(iv) All rights of way, easements and other rights of access of every kind and nature owned by Lessor giving Lessor access to the Leased Claims through, on or across the lands of others; and

(v) All of Lessor's interest in and to all water and water rights, ditches and ditch rights, reservoirs and reservoir rights use in, on or upon the Leased Claims or in connection therewith;

Provided, that this Lease and Lessee's rights hereunder are subject to an existing oil and gas lease granted to Mid America Minerals of Oklahoma City, Oklahoma, and the rights, titles, claims and interests set forth in Ap-

pendix B hereto. The Lessor RESERVES AND EXCEPTS from this Lease and Option to Purchase (herein called "this Lease") all oil, gas and other minerals, of any kind whatsoever, underlying the Leased Claims below the Green River formation, together with the right of ingress and egress and the right to use so much of the surface as may reasonably be necessary to explore for, develop, mine, remove and produce the reserved excepted oil, gas and other minerals.

(b) If any of the claims described in Exhibit A are surrendered pursuant to the provisions of paragraph 8 hereof, such surrendered claims shall thereafter no longer be considered a part of the Leased Claims.

2. PRIMARY TERM. The term of this lease shall be for a period of fifteen (15) years commencing at 12:00 o'clock noon on *the day of exercise*, and as long thereafter as oil shale or other minerals are produced from the Leased Claims, or any part thereof, in commercial quantities.

3. For the purpose of this Lease the following definitions shall apply:

A. The term "Lease Year" shall mean the period commencing February 1 of each year and ending January 31 of the next succeeding year.

B. The term "Minimum Annual Royalties" shall mean amounts payable to Lessor pursuant to and as provided in subparagraph 3.1 hereof.

C. The term "Earned Royalties" shall mean the amounts payable pursuant to and as provided in subparagraph 3.2 hereof.

D. The term "Patented Land" shall mean and be that part or portion of the Leased Claims for which the United States of America has issued or hereafter issues to Frederick H. Larson a mineral patent.

E. The term "Unpatented Land" shall mean that part or portion of the Leased Claims for which a patent has not been issued to Frederick H. Larson by the United States of America.

3.1 Lessee agrees to pay Lessor the following amounts as Minimum Annual Royalties:

A. For the first Lease Year an amount equal to \$2.50 multiplied by the number of surface acres of Patented Land contained in the Leased Claims as of the first day of the first Lease Year.

B. For the second Lease Year an amount equal to \$3.50 multiplied by the number of surface acres of Patented Land contained in the Leased Claims as of the first day of the second Lease Year.

C. For the third Lease Year an amount equal to \$4.50 multiplied by the number of surface acres of Patented Land contained in the Leased Claims as of the first day of the third Lease Year.

D. For the fourth and each subsequent Lease Year an amount equal to \$5.00 multiplied by the number of surface acres of Patented Land contained in the Leased Claims as of the first day of the applicable Lease Year.

Provided, that so long as this Lease remains in effect as to any of the Leased Claims, the Minimum Annual Royalties payable pursuant to the provisions of paragraph 3.1 for any Lease Year shall not be less than the sum of

\$10,000.00 irrespective of the number of surface acres of Patented Land contained in the Leased Claims.

3.2. If at any time the Lessee uses or utilizes any part of the Unpatented Land contained in the Leased Claims for waste dumps, mills, plants, ore dumps or storage sites, or if Lessee conducts mining operations or other operations of any kind whatsoever on Unpatented Lands, the surface acres of Unpatented Land so used or utilized shall, for the purposes of calculating the Minimum Annual Royalty payable Lessor hereunder, be considered as and deemed to be Patented Land.

3.3. Lessee agrees to pay Lessor, as Earned Royalty, an amount equal to two and one-half per cent ($2\frac{1}{2}\%$) of the gross value of all crude shale oil or other oil extracted or removed by Lessee from oil shale or oil shale formations contained in the Leased Claims; provided, that if there is no market for shale oil or other oil in the crude form and by reason thereof, or for any other reason, Lessee shall not sell shale oil or other oil in the crude form, then Lessee shall pay Lessor, as Earned Royalty, an amount equal to two and one-half per cent ($2\frac{1}{2}\%$) of the gross value of the first marketable product or products derived by Lessee, directly or indirectly, from processing or refining of crude shale oil or other oil. Earned Royalties due hereunder shall be paid on or before the 20th day of each month for all shale oil or other oil (or products thereof if not sold in crude form) produced and sold from the Leased Claims during the preceding calendar month.

3.4. All Advance Minimum Annual Royalties paid by Lessee to Lessor shall be credited against all Earned Royalties payable hereunder.

3.5. Minimum Annual Royalties shall be payable semi-annually on the 15th days of February and August of each Lease Year; provided, that such Minimum Annual Royalties shall become a firm obligation and accrued as of the first day of the applicable Lease Year and no surrender of any part of the Leased Claims or termination of this Lease made by Lessee subsequent to the first day of the applicable Lease Year shall relieve Lessee of the obligation to pay the portion of the Minimum Annual Royalties which become payable as of the 15th day of August of said applicable Lease Year.

4. TAXES. Lessee agrees to pay all taxes levied and assessed against the Leased Claims and/or the production therefrom before the date such taxes become delinquent.

5. ASSIGNMENT. If the interest of Lessor or Lessee in the Leased Claims, or the royalties provided for herein, or any part thereof, is assigned or otherwise transferred (and the privilege of assigning is hereby reserved to each party), the covenants and conditions hereof shall be extended to and be binding upon the heirs, executors, administrators, successors and assigns of the transferee; but no transfer of ownership in the Leased Claims, this instrument or advance of actual royalties payable hereunder shall be binding upon Lessor or Lessee until copies of the instrument creating such transfer are delivered to the other party.

6. ENCUMBRANCES. Lessor consents and agrees that Lessee may, but shall have no obligation to, pay and discharge any valid mortgage, lien or encumbrance now or hereafter existing against any part of the Leased Claims and/or the production therefrom, resulting from the act of Lessor, his agents, or employees. If Lessee pays and discharges any such mortgage, lien or encumbrance, Lessee shall be subrogated to the rights of any holder or holders of the mortgage, lien or encumbrance so paid and shall be entitled, at its option, to credit for any sum so applied against rentals or other monies, including the purchase price if the option to purchase is exercised, due and payable to Lessor, which right of subrogation shall be in addition to all other rights which Lessee may have under this Lease or under law.

7. SURRENDER. Lease may, at any time, surrender this Lease as to any one or more of the Leased Claims by delivering to Lessor a quitclaim deed conveying to Lessor any such claim or claims to be so surrendered. From and after date of surrender of any of the Leased Claims, Lessee shall be relieved of all obligations contained herein with respect to the claims so surrendered, except any accrued Minimum Annual Royalties or Earned Royalties due and payable on account of oil shale removed from the claims so surrendered prior to the effective date of any such surrender.

8. REMOVAL OF IMPROVEMENTS. Lessee shall have the right at any time during the term hereof or within ninety (90) days after termination or expiration of this Lease (if at such time all royalties and other

sums required to be paid by Lessee to Lessor under the terms of this Lease shall have been paid) to remove any and all property, including but not limited to any and all buildings, structures, plants, shops, machinery and equipment, placed or used by Lessee on the Leased Claims during the term, or any extensions or renewals of the term hereof, whether or not any such property was originally personalty but has under law become attached to the land as a fixture or otherwise.

9. DEPOSITORY. The First National Bank of Grand Junction, Colorado, or its successor is hereby named as Lessor's agent to receive royalty payments and all such royalty payments may be made by paying or tendering the same to Lessor or for Lessor's credit at said Bank. Such Bank shall continue as depository of all royalty payments hereunder during the term of this Lease regardless of changes of ownership of said property, or the right to payment of royalties hereunder. If at any time it appears that one or more persons who are not parties to this Lease Agreement may be entitled to any part of royalties payable hereunder, Lessee may withhold all of said payments until such person or persons together with Lessor shall deliver to Lessee a recordable instrument wherein such person or persons and Lessor consent to the terms of this Lease Agreement and designate a mutually acceptable person or bank as agent to receive all royalties and other payments due hereunder and execute division and transfer orders on behalf of Lessor and all of said persons and their respective successors in title.

10. LESSER INTEREST. In the event Lessor owns less than the entire and undivided mineral estate in and to the minerals leased hereunder, royalties and other payments provided for herein shall be paid the Lessor only in the proportion which Lessor's interest bears to the entire mineral estate of the minerals subject to this Lease.

11. INDEMNIFICATION. Lessee agrees to save Lessor harmless from and to indemnify him against any and all lawful claims for damages arising from any injuries or damage to persons or property resulting from Lessee's operation of the Leased Claims and from and against the claims of all workmen, mechanics and materialmen, and all other persons who may acquire rights in the Leased Claims by reason of labor performed, services rendered, or materials, supplies or equipment incorporated in, on or under the Leased Claims at the direction of Lessee, its employees or agents, or used in connection with Lessee's operations thereon.

12. INSURANCE. Lessee shall at all times, during the term of this Lease, insure at its sole cost and expense, to each and every workman employed in, about or upon the work, the compensation and benefits provided for in and by each and every statute, rule or regulation applicable thereto with respect to Workmen's Compensation, Occupational Disease or Disability, and Employer's Liability; to pay and discharge or otherwise dispose of any and all claims, liabilities, suits and demands of every kind and nature whatsoever, for injury to or death of persons and loss of or damage to property caused by or

in connection with the Lessee's operations or activities on the Leased Claims; to procure and maintain, at the sole cost and expense of Lessee, direct and contractual bodily injury liability insurance and property damage liability insurance in a reputable and financially responsible insurance company, properly safeguarding Lessor against direct and assumed liability for injuries to or death of persons and loss of or damage to property in amounts acceptable to Lessor, but in no event less than \$150,000.00 for injury to or death of any one person, \$350,000.00 for injuries to or death of two or more persons, and \$50,000.00 for loss of or damage to property in any one accident. Lessee shall also furnish Lessor written certificates from insurance carriers or from appropriate governmental agencies verifying and establishing that the insurance provided for in this paragraph has been obtained, is being properly maintained, the premiums therefor paid, and specifying the names of the insurers and the respective policy numbers and the expiration dates thereof. All such policies of insurance shall provide (unless by statute applicable thereto it is otherwise provided) that in the event of cancellation thereof, written notice of such cancellation shall be given to Lessor at least fifteen (15) days prior to the effective date of cancellation.

13. **DEFAULT.** If Lessee fails to make any payment herein required or fails to comply with any of its other obligations and covenants contained herein, Lessor may notify Lessee, in writing, setting forth in detail the covenants and conditions of this Lease which Lessee has

failed to perform. Lessee shall then have a period of thirty (30) days after receipt of such notice within which to perform or commence to perform the covenants or conditions specified in said notice and unless, within such 30-day period, Lessee shall perform or commence to perform the covenants and conditions specified in said notice, this Lease shall be terminated. If Lessee performs the covenants and conditions specified in said notice within said 30-day period, or if Lessee commences to perform said covenants and conditions within said 30-day period and thereafter completes the performance of said covenants and conditions with reasonable diligence, this Lease shall continue in full force and effect. Service of the notice referred to in this paragraph shall be a condition precedent to the commencement of any legal proceedings by Lessor under this Lease for any cause and no such proceedings shall be commenced until the lapse of the aforementioned 30-day period.

14. NOTICES. Any notices provided for herein shall be sufficient if given in writing by certified or registered mail with return receipt requested, or delivered personally and a signed receipt therefor is obtained. All notices shall be addressed to:

LESSOR: Frederick H. Larson
Dorothy H. Larson
350 Alma Real Drive
Pacific Palisades, California

LESSEE: The Oil Shale Corporation
45 Rockefeller Plaza
New York 20, New York

The parties may change the person to whom notices are to be addressed or the address of a recipient by giving the other party written notice of such change. Notices shall be deemed given when personally delivered to the parties or, if mailed, when such notice is placed in the United States mail, registered or certified with return receipt requested, properly addressed and bearing proper and sufficient postage.

15. OBLIGATION TO PRODUCE. No statement contained in this Lease shall be construed by implication or otherwise to obligate Lessee to mine or produce any oil shale or other metal or metalliferous substances from the Leased Claims during the term hereof or any extensions or renewals.

16. LESSEE'S OPERATIONS. Lessee agrees to conduct all of its operations on the Leased Claims in a good and workmanlike manner and in compliance with all applicable laws, rules, regulations and orders of any state or federal authority having jurisdiction over such operations.

17. PATENT PROCEEDINGS: *Lessee will, at its own expense and with due diligence in the light of its experience in patenting procedures, to attempt to carry all the unpatented placer mining claims to patent and the shareholders will agree to execute all documents and permissions and to provide all reasonable assistance to TOSCO required by that effort. TOSCO will have the right to drop any of the unpatented claims which it deems to be unpatentable or uneconomical, but the share-*

holders shall have the right to attempt to carry to patent any claims so dropped by TOSCO.

18. **OPTION TO PURCHASE.** At any time during the term of this Lease, or any extension or renewal hereof, Lessee shall have the right and option to purchase all of the Leased Claims. *The purchase price will be computed on the formula basis: The present worth of the recoverable amount of oil, at 5c per barrel, discounted over 20 years at a rate of 12%.*

18.1. The Leased Claims purchased by Lessee under these paragraphs 18 and 18.1 shall be conveyed to Lessee, or its nominee, by deed which shall contain warranties of Lessor wherein said Lessor shall warrant title to such Leased Claims only against persons or corporations claiming by, through or under Lessor and such deed shall be subject to all rights, titles, claims and interests specified in *Par. 1(a)* hereof, and shall reserve and except to Lessor the same and like minerals and rights as are reserved and excepted from this Lease in *Par. 1(a)* hereof.

19. **CONSTRUCTION.** When necessary for proper construction, the masculine of any word used in this Agreement shall include the feminine and neuter genders, and the singular, the plural and vice versa. The entire Agreement shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF the parties hereto have
executed these presents the day and year first above
written.

Frederick H. Larson

Dorothy H. Larson

LESSOR

THE OIL SHALE CORPORATION

By-----

President

LESSEE

ATTEST:

Secretary

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

On the day of, 196.....,
ersonally appeared before me FREDERICK H. LAR-
SON and DOROTHY H. LARSON, the signers of the
above instrument, who duly acknowledged to me that
they executed the same.

My Commission expires:

.....
Notary Public

STATE OF NEW YORK }
COUNTY OF } ss.

On the day of, 196.....,
personally appeared before me H. I. KOOLSBERGEN,
who being by me duly sworn did say that he is the Presi-
dent of THE OIL SHALE CORPORATION, and that
said instrument was signed in behalf of said corpora-
tion by Resolution of its Board of Directors, and said
H. I. Koolsbergen acknowledged to me that said cor-
poration executed the same.

My Commission expires:

.....
Notary Public

EXHIBIT A
TO
MINING LEASE AND OPTION TO PURCHASE
UNPATENTED CLAIMS

TOWNSHIP 9 SOUTH, RANGE 24 EAST, S.L.M.

Section 36: SE $\frac{1}{4}$ Davis 18

TOWNSHIP 10 SOUTH, RANGE 24 EAST, S.L.M.

| | |
|------------------------------------|----------|
| Section 1: NE $\frac{1}{4}$ | Alois 1 |
| Section 1: SE $\frac{1}{4}$ | Alois 2 |
| Section 12: NE $\frac{1}{4}$ | Alois 45 |
| Section 12: SE $\frac{1}{4}$ | Alois 46 |
| Section 12: SW $\frac{1}{4}$ | Alois 47 |
| Section 13: NE $\frac{1}{4}$ | Alois 49 |
| Section 13: SE $\frac{1}{4}$ | Alois 50 |
| Section 13: SW $\frac{1}{4}$ | Alois 51 |
| Section 13: NW $\frac{1}{4}$ | Alois 52 |
| Section 14: NE $\frac{1}{4}$ | Alois 53 |
| Section 14: SE $\frac{1}{4}$ | Alois 54 |
| Section 23: NE $\frac{1}{4}$ | Alois 89 |
| Section 23: SE $\frac{1}{4}$ | Alois 90 |
| Section 23: SW $\frac{1}{4}$ | Alois 91 |
| Section 24: NE $\frac{1}{4}$ | Alois 93 |
| Section 24: SE $\frac{1}{4}$ | Alois 94 |
| Section 24: SW $\frac{1}{4}$ | Alois 95 |
| Section 24: NW $\frac{1}{4}$ | Alois 96 |

TOWNSHIP 9 SOUTH, RANGE 25 EAST, S.L.M.

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|------------------------------------|--------------|
| Section 32: Lots 8, 9, 10..... | Shale 2 |
| Section 33: Lots 2, 3, 8, 9..... | Shale 3 |
| Section 33: NE $\frac{1}{4}$ | Shale 4 |
| Section 28: SW $\frac{1}{4}$ | Shale 5 |
| Section 28: SE $\frac{1}{4}$ | Shale 6 |
| Section 33: Lots 4, 5, 6, 7..... | Shale 25 |
| Section 35: SW $\frac{1}{4}$ | Lucky Bill 1 |

TOWNSHIP 9 SOUTH, RANGE 25 EAST, S.L.M.

(Continued)

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| Section 35: SE $\frac{1}{4}$ | Lucky Bill | 2 |
| Section 36: Lots 3, 4 and W $\frac{1}{2}$ SW $\frac{1}{4}$ | Lucky Bill | 3 |
| Section 33: SW $\frac{1}{4}$ (Lots 2, 3, 8, 9) | Almo | 1 |
| Section 32: SE $\frac{1}{4}$ (Lots 8, 9, 10) | Almo | 2 |
| Section 33: SE $\frac{1}{4}$ (Lots 4, 5, 6, 7) | Almo | 3 |
| Section 28: SE $\frac{1}{4}$ | Alamo | 8 |
| Section 28: SW $\frac{1}{4}$ | Alamo | 9 |
| Section 31: NW $\frac{1}{4}$ | Davis | 20 |
| Section 30: SW $\frac{1}{4}$ (Lots 9, 10, 11, 12) | Davis | 21 |
| Section 30: SE $\frac{1}{4}$ (Lots 6, 7, 8, 13, 14) | Davis | 22 |
| Section 30: NE $\frac{1}{4}$ | Davis | 23 |
| Section 19: SE $\frac{1}{4}$ | Davis | 24 |
| Section 20: SW $\frac{1}{4}$ | Davis | 25 |
| Section 20: S $\frac{1}{2}$ NE $\frac{1}{4}$ | Davis | 26 |
| Section 24: W $\frac{1}{2}$ SW $\frac{1}{4}$ | Last Chance | 1 |
| Section 25: W $\frac{1}{2}$ NW $\frac{1}{4}$ | Last Chance | 1 |
| Section 24: E $\frac{1}{2}$ SW $\frac{1}{4}$ (Lot 6) | Last Chance | 2 |
| Section 25: E $\frac{1}{2}$ NW $\frac{1}{4}$ (Lots 1, 2) | Last Chance | 2 |
| Section 25: E $\frac{1}{2}$ SW $\frac{1}{4}$ (Lots 3, 4) | Last Chance | 3 |
| Section 36: E $\frac{1}{2}$ NW $\frac{1}{4}$ (Lots 1, 2) | Last Chance | 3 |
| Section 20: SE $\frac{1}{4}$ | McRae | 78 |
| Section 21: NE $\frac{1}{4}$ | McRae | 81 |
| Section 21: SE $\frac{1}{4}$ | McRae | 82 |
| Section 21: SW $\frac{1}{4}$ | McRae | 83 |
| Section 21: NW $\frac{1}{4}$ | McRae | 84 |
| Section 29: NE $\frac{1}{4}$ | McRae | 113 |
| Section 29: SE $\frac{1}{4}$ | McRae | 114 |
| Section 29: SW $\frac{1}{4}$ (Lots 1, 2, 3, 4) | McRae | 115 |
| Section 9: NW $\frac{1}{4}$ | McRae | 116 |
| Section 30: SE $\frac{1}{4}$ (Lots 6, 7, 8, 13, 14) | McRae | 118 |
| Section 31: NE $\frac{1}{4}$ (Lots 1, 2, 3) | McRae | 121 |
| Section 31: SE $\frac{1}{4}$ | McRae | 122 |
| Section 31: SW $\frac{1}{4}$ | McRae | 123 |
| Section 32: NE $\frac{1}{4}$ (Lots 1, 2, 6, 7) | McRae | 125 |
| Section 32: SW $\frac{1}{4}$ | McRae | 127 |
| Section 32: NW $\frac{1}{4}$ (Lots 3, 4, 5) | McRae | 128 |
| Section 33: NW $\frac{1}{4}$ | McRae | 132 |

TOWNSHIP 10 SOUTH, RANGE 25 EAST, S.L.M.

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| Section 5: NE $\frac{1}{4}$ | Alamo | 4 |
| Section 5: SE $\frac{1}{4}$ | Alamo | 5 |
| Section 5; SW $\frac{1}{4}$ | Alamo | 6 |
| Section 33; NE $\frac{1}{4}$ | Alamo | 7 |
| Section 4: NW $\frac{1}{4}$ | Alamo | 12 |
| Section 4: SW $\frac{1}{4}$ | Alamo | 13 |
| Section 8: NE $\frac{1}{4}$ | Alamo | 14 |
| Section 5: Lots 1 and 2, S $\frac{1}{2}$ NE $\frac{1}{4}$ | Shale | 1 |
| Section 8: NE $\frac{1}{4}$ | Shale | 18 |
| Section 5: SW $\frac{1}{4}$ | Shale | 19 |
| Section 5: SE $\frac{1}{4}$ | Shale | 20 |
| Section 4: NW $\frac{1}{4}$ | Shale | 23 |
| Section 4: SW $\frac{1}{4}$ | Shale | 24 |
| Section 9: NW $\frac{1}{4}$ | Shale | 27 |
| Section 11: W $\frac{1}{2}$ E $\frac{1}{2}$ | Lucky Bill | 4 |
| Section 11: E $\frac{1}{2}$ W $\frac{1}{2}$ | Lucky Bill | 5 |
| Section 11: W $\frac{1}{2}$ W $\frac{1}{2}$ | Lucky Bill | 6 |
| Section 9: W $\frac{1}{2}$ | Davis 1 and Davis 2 | |
| Section 35: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 1 |
| Section 35: E $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 2 |
| Section 35: W $\frac{1}{2}$ E $\frac{1}{2}$ | Hell Hole | 3 |
| Section 35: E $\frac{1}{2}$ E $\frac{1}{2}$ | Hell Hole | 4 |
| Section 36: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 5 |
| Section 36: Lots 1, 2, 3 and 4 | Hell Hole | 6 |
| Section 27: E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole 7, 8, 9 | |
| Section 26: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 10 |
| Section 26: E $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 11 |
| Section 26: W $\frac{1}{2}$ E $\frac{1}{2}$ | Hell Hole | 12 |
| Section 26: E $\frac{1}{2}$ E $\frac{1}{2}$ | Hell Hole | 13 |
| Section 25: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 14 |
| Section 25: Lots 1, 2, 3, 4 | Hell Hole | 15 |
| Section 22: All | Hell Hole 16, 17, 18, 19 | |
| Section 23: All | Hell Hole 20, 21, 22, 23 | |
| Section 24: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 24 |
| Section 24: Lots 1, 2, 3, 4 | Hell Hole | 25 |
| Section 15: All | Hell Hole 26, 27, 28, 29 | |
| Section 14: All | Hell Hole 30, 31, 32, 33 | |
| Section 13: W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole | 34 |

TOWNSHIP 10 SOUTH, RANGE 25 EAST, S.L.M.
(Continued)

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| Section 10: | S $\frac{1}{2}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ | Hell Hole 40, 41 |
| Section 11: | E $\frac{1}{2}$ E $\frac{1}{2}$ | Hell Hole 42 |
| Section 13: | Lots 1, 2, 3, 4 | Hell Hole 35 |
| Section 12: | W $\frac{1}{2}$ W $\frac{1}{2}$ | Hell Hole 43 |
| Section 12: | Lots 1, 2, 3, 4 | Hell Hole 44 |
| Section 2: | All | Hell Hole 45, 46, 47, 48 |
| Section 1: | W $\frac{1}{2}$ W $\frac{1}{2}$ (Lot 2, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and W $\frac{1}{2}$ of SW $\frac{1}{4}$) | Hell Hole 49 |
| Section 1: | Lots 1, 3, 4, 5 | Hell Hole 50 |
| Section 31: | W $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 1 |
| Section 31: | E $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 2 |
| Section 32: | W $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 3 |
| Section 32: | E $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 4 |
| Section 32: | W $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 5 |
| Section 32: | E $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 6 |
| Section 33: | W $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 7 |
| Section 33: | E $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 8 |
| Section 33: | W $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 9 |
| Section 33: | E $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 10 |
| Section 34: | W $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 11 |
| Section 34: | E $\frac{1}{2}$ W $\frac{1}{2}$ | Raven Dome 12 |
| Section 34: | W $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 13 |
| Section 34: | E $\frac{1}{2}$ E $\frac{1}{2}$ | Raven Dome 14 |
| Section 18: | NE $\frac{1}{4}$ | Best 69 |
| Section 18: | SE $\frac{1}{4}$ | Best 70 |
| Section 18: | SW $\frac{1}{4}$ | Best 71 |
| Section 18: | NW $\frac{1}{4}$ | Best 72 |
| Section 19: | NE $\frac{1}{4}$ | Best 73 |
| Section 19: | SE $\frac{1}{4}$ | Best 74 |
| Section 19: | SW $\frac{1}{4}$ | Best 75 |
| Section 19: | NW $\frac{1}{4}$ | Best 76 |
| Section 16: | N $\frac{1}{2}$ of NW $\frac{1}{4}$ of NE $\frac{1}{4}$ | Irene 1 |
| Section 16: | S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NE $\frac{1}{4}$ | Irene 2 |
| Section 16: | N $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ | Irene 3 |

TOWNSHIP 10 SOUTH, RANGE 25 EAST, S.L.M.
(Continued)

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|---|-------|----|
| Section 16: S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ | Irene | 4 |
| Section 27: W $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 1 |
| Section 28: E $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 2 |
| Section 28: W $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 3 |
| Section 28: E $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 4 |
| Section 28: W $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 5 |
| Section 29: E $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 6 |
| Section 29: W $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 7 |
| Section 29: E $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 8 |
| Section 29: W $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 9 |
| Section 21: SE $\frac{1}{4}$ | Alta | 10 |
| Section 21: SW $\frac{1}{4}$ | Alta | 11 |
| Section 20: SE $\frac{1}{4}$ | Alta | 12 |
| Section 20: SW $\frac{1}{4}$ | Alta | 13 |
| Section 30: E $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 17 |
| Section 30: W $\frac{1}{2}$ E $\frac{1}{2}$ | Alta | 18 |
| Section 30: E $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 19 |
| Section 30: W $\frac{1}{2}$ W $\frac{1}{2}$ | Alta | 20 |
| Section 31: NW $\frac{1}{4}$ | Alta | 21 |

TOWNSHIP 11 SOUTH, RANGE 25 EAST, S.L.M.

| | | |
|---|------------|----|
| Section 1: Lot 6, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ and W $\frac{1}{2}$ of SW $\frac{1}{4}$ | Oil Dome | 1 |
| Section 1: Lot 5, SE $\frac{1}{4}$ of NW $\frac{1}{4}$ and E $\frac{1}{2}$ of SW $\frac{1}{4}$ | Oil Dome | 2 |
| Section 1: Lots 4, 7, 14, 15..... | Oil Dome | 3 |
| Section 1: Lots 3, 8, 13, 16..... | Oil Dome | 4 |
| Section 1: Lots 2, 9, 12, 17..... | Oil Dome | 5 |
| Section 1: Lots 1, 10, 11, 18..... | Oil Dome | 6 |
| Section 12: Lots 1, 8, 9, 16..... | Oil Dome | 7 |
| Section 12: Lots 2, 7, 10, 15..... | Oil Dome | 8 |
| Section 12: Lots 3, 6, 11, 14..... | Oil Dome | 9 |
| Section 12: Lots 4, 5, 12, 13..... | Oil Dome | 10 |
| Section 12: E $\frac{1}{2}$ W $\frac{1}{2}$ | Oil Dome | 11 |
| Section 12: W $\frac{1}{2}$ W $\frac{1}{2}$ | Oil Dome | 12 |
| Section 23: SE $\frac{1}{4}$ | Shale Park | 1 |

TOWNSHIP 11 SOUTH, RANGE 25 EAST, S.L.M.
(Continued)

| | | |
|---|------------|----|
| Section 24: SW $\frac{1}{4}$ | Shale Park | 2 |
| Section 24: SE $\frac{1}{4}$, (Lots 11, 12, 13, 14) | Shale Park | 3 |
| Section 25: NE $\frac{1}{4}$, (Lots 3, 4, 5, 6) | Shale Park | 4 |
| Section 25: NW $\frac{1}{4}$ | Shale Park | 5 |
| Section 26: NE $\frac{1}{4}$ | Shale Park | 6 |
| Section 26: NW $\frac{1}{4}$ | Shale Park | 7 |
| Section 23: S $\frac{1}{2}$ SW $\frac{1}{4}$ | Shale Park | 8 |
| Section 24: NE $\frac{1}{4}$, (Lots 3, 4, 5, 6) | Shale Park | 9 |
| Section 24: NW $\frac{1}{4}$ | Shale Park | 10 |
| Section 23: NE $\frac{1}{4}$ | Shale Park | 11 |
| Section 13: NW $\frac{1}{4}$ | Shale Park | 17 |
| Section 13: SW $\frac{1}{4}$ | Shale Park | 18 |
| Section 25: SW $\frac{1}{4}$ | Shale Park | 19 |
| Section 26: SE $\frac{1}{4}$ | Shale Park | 20 |
| Section 13: SE $\frac{1}{4}$, (Lots 11, 12, 13, 14) | Shale Park | 21 |
| Section 13: NE $\frac{1}{4}$, (Lots 3, 4, 5, 6) | Shale Park | 22 |
| Section 13: Lots 1, 2, 7, 8 | Shale Park | 23 |
| Section 13: Lots 9, 10, 15, 16 | Shale Park | 24 |
| Section 24: Lots 1, 2, 7, 8 | Shale Park | 25 |
| Section 24: Lots 9, 10, 15, 16 | Shale Park | 26 |
| Section 25: Lots 1, 2, 7, 8 | Shale Park | 27 |

TOWNSHIP 12 SOUTH, RANGE 25 EAST, S.L.M.

| | |
|------------------------------|--------------|
| Section 24: NW $\frac{1}{4}$ | Chief Atchee |
| Section 24: SW $\frac{1}{4}$ | Chief Atchee |
| Section 25: NW $\frac{1}{4}$ | Chief Atchee |
| Section 25: SW $\frac{1}{4}$ | Chief Atchee |

OPTION

THIS AGREEMENT, made as of the day of, 196..., between FRED V. LARSON and ETHEL B. LARSON, hereinafter referred to as Optionor, and The Oil Shale Corporation, hereinafter referred to as Optionee,

WITNESSETH:

For and in consideration of the sum of \$5,000.00 paid to Fred V. Larson and the sum of \$5,000.00 paid to Ethel B. Larson and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Optionor hereby grants to Optionee the exclusive option to lease the patented placer mining claims (herein called "the Claims") described in the Mining Lease and Option to Purchase (hereinafter called "the Lease") attached hereto as Exhibit A. The Lease shall be in the form of Exhibit A and shall contain the option to purchase set forth therein and shall be subject to the reservations, rights, titles, claims and leases specified on pages 1 and 2 of the Lease.

1. TERM. This Option shall commence as of 12 o'clock noon on the date hereof and shall expire at 12 o'clock noon *six months thereafter*.

2. PURCHASE. At any time during the term of this Option or at any time during the term of the Lease, or any renewal or extension thereof, if the option herein granted is exercised, Optionee shall have the right to

purchase the Claims at the price and upon the same terms and conditions as are set forth in the option to purchase contained in the Lease.

3. TITLE DOCUMENTS. Immediately upon execution of this Agreement, Optionor will deliver to Optionee such abstracts of title, copies of title opinions, maps, plats, geological and engineering reports, patent applications, briefs, opinions, correspondence, and other writings relating to the Claims then in the possession or control of Optionor and which are requested by Optionee. In the event Optionee does not elect to exercise the option granted in this instrument, any and all documents delivered to Optionee pursuant to this paragraph shall be returned to Optionor within thirty (30) days after the expiration date of the option granted herein.

4. EVALUATION. Optionor grants to Optionee the right during the term of this Option to enter upon the Claims for the purpose of conducting thereon exploratory and/or development work, including the right to construct drifts, adits, shafts and tunnels, access roads, drill sites, electric power and telephone facilities, radio towers and other radio facilities, camp sites, air strips and housing facilities. Optionor grants to Optionee the further right during the term of this Option to remove from the Claims so much oil shale and to perform such work as, in the opinion of Optionee, is necessary to evaluate the oil shale deposits contained in the lands covered by the Claims and to determine the feasibility of extracting oil shale therefrom. If the option is not exercised, Optionee agrees to furnish Optionor with

copies of all drilling and other data obtained or acquired by Optionee with respect to the Claims.

5. INDEMNIFICATION. Optionee agrees to indemnify and save Optionor harmless from and against any and all lawful claims for expense, loss, liability or damages arising from any injuries (including death) or damage to persons or property resulting from Optionee's operations on the Claims and also from and against any and all expenses or liability incurred by reason of the liens of workmen, mechanics and materialmen and all other persons or corporations who may acquire liens against the Claims by reason of labor performed, services rendered, or materials, supplies or equipment incorporated in, or under the Claims at the direction of Optionee, its employees or agents, or in connection with Optionee's operations or activities on or about the Claims.

6. INSURANCE. Optionee shall, at all times during the term of this Option, (a) insure at its sole cost and expense, to each and every workman employed in, about or upon the Claims, the compensation and benefits provided for in and by each and every applicable statute, rule or regulation relating to Workmen's Compensation, Occupational Disease or Disability, and Employer's Liability; (b) pay and discharge or otherwise dispose of any and all claims, liabilities, suits and demands, of every kind and nature whatsoever, for injury to or death of persons and loss of or damage to property caused by or in connection with the Optionee's operations or activities on the Claims; and (c) procure and maintain, at the sole cost and expense of Optionee, direct and con-

tractual bodily injury liability insurance and property damage liability insurance issued by reputable and financially responsible insurance company or companies, properly safeguarding Optionor against direct and assumed liability for injuries to or death of persons and loss of or damage to property in amounts acceptable to Optionor, but in no event less than \$150,000.00 for injury to or death of any one person, \$350,000.00 for injuries to or death of two or more persons, and \$50,000.00 for loss of or damage to property in any one incident. Optionee shall also furnish Optionor written certificates from insurance carriers or from appropriate Government agencies verifying and establishing that the insurance provided for in this paragraph has been obtained, is being properly maintained, the premiums therefore paid, and specifying the names of the insurers and the respective policy numbers and the expiration dates thereof. All such policies of insurance shall provide (unless by statute applicable thereto it is otherwise provided) than in the event of cancellation thereof, written notice of such cancellation shall be given to Optionor at least fifteen (15) days prior to the effective date of cancellation.

7. NOTICES. All notices provided for herein shall be sufficient if given in writing and mailed by registered mail with return receipt requested to the parties at the following addresses:

Fred V. Larson
Ethel B. Larson
14960 Alva Drive
Pacific Palisades, California
OPTIONOR

The Oil Shale Corporation
45 Rockefeller Plaza
New York 20, New York

OPTIONEE

or if delivered personally and a receipt is signed therefor either by the person to whom addressed or by an officer of a corporate addressee.

8. ASSIGNMENT. The interest of each of the parties hereto may be assigned at any time in whole or in part. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, heirs and personal representatives of the parties.

9. REPRESENTATIONS AND WARRANTIES. Optionor represents and warrants that he is the owner of good and merchantable title to the Claims, free and clear of all conflicting rights, titles, claims, interests, liens and encumbrances, except the rights, if any, of those persons who claim an interest in a portion of the surface of the Claims. The names of such persons, the nature of their claims, and a description of the lands affected thereby, are attached hereto as Exhibit B. *Delivery of the common stock referred to in Paragraph One of Exhibit A is subject to delivery to Optionee of appropriate investment representations from the Optionor and subject to such other terms and conditions as may, in the opinion of Optionee's counsel, be required for compliance with Federal Securities laws.*

IN WITNESS WHEREOF, we have executed this document on the day and year first above written.

Fred V. Larson

Ethel B. Larson

OPTIONOR

THE OIL SHALE CORPORATION

By -----
President

OPTIONEE

ATTEST:

Secretary

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss.

On the day of, 196....
personally appeared before me Fred V. Larson and
Ethel B. Larson, the signers of the above instrument,
who duly acknowledged to me that they executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

STATE OF NEW YORK }
COUNTY OF } ss.

On the day of, 196....
personally appeared before me H. I. Koosbergen, who
being by me duly sworn did say that he is the President
of The Oil Shale Corporation, and that said instrument
was signed in behalf of said corporation by Resolution
of its Board of Directors, and said H. I. Koosbergen
acknowledged to me that said corporation executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

EXHIBIT A

MINING LEASE
AND
OPTION TO PURCHASE

THIS LEASE executed on this day of, 196..., between FRED V. LARSON and ETHEL B. LARSON (hereinafter referred to as "Lessor") and THE OIL SHALE CORPORATION (hereinafter referred to as "Lessee").

1. LEASE. (a). For and in consideration of the royalties to be paid by Lessee, and the delivery to Fred V. Larson of 1250 shares of the common stock of The Oil Shale Corporation by Lessee, and the delivery to Ethel B. Larson of 1250 shares of the comon stock of The Oil Shale Corporation by Lessee, and other good and valuable consideration, Lessor hereby leases to Lessee the patented placer mining claims situated in Uintah County, Utah, described in the list attached hereto as Exhibit A, which are hereinafter referred to as "the Leased Claims," for the purpose of exploring, developing, mining and operating the Leased Claims and of extracting, processing and removing therefrom for sale or further processing and sale all oil shale, products derived therefrom, and other minerals, metals, and metalliferous and non-metalliferous substances in, on or under the Leased Claims, except oil, gas and all other minerals lying below the Green River formation. To the extent the Lessor has the right to grant the same, Lessor hereby grants to Lessee:

(i) The right to use so much of the surface of said land as may be reasonably necessary, desirable or convenient for the conduct of Lessee's operations on the Leased Claims;

(ii) The right, license and easement to construct and maintain buildings, shops, plants and structures of all kinds, to construct and maintain roads and roadways, ore bins, shafts, inclines, tunnels, drifts, adits, open pits, waste dumps, ore stockpiles and any and all other facilities necessary, desirable or convenient for the conduct of mining, processing, and related operations on the Leased Claims;

(iii) The right, license and easement to construct and maintain on the Leased Claims pipelines, telephone lines, electric transmission lines, transportation facilities for other utilities, and the right to construct thereon facilities for the operation and use of aircraft and the maintenance thereof, and facilities for the operation and use of radio and other communication facilities and the maintenance thereof;

(iv) All rights of way, easements and other rights of access of every kind and nature owned by Lessor giving Lessor access to the Leased Claims through, on or across the lands of others; and

(v) All of Lessor's interests in and to all water and water rights, ditches and ditch rights, reservoirs and reservoir rights used in, on or upon the Leased Claims or in connection therewith;

Provided, that this Lease and Lessee's rights hereunder are subject to an existing oil and gas lease granted to Mid America Minerals of Oklahoma City, Oklahoma. **RESERVING AND EXCEPTING** to Lessor, and the

successors in interest of Lessor, all oil, gas and other minerals, of any kind whatsoever, underlying the Leased Claims below the Green River formation, together with the right of ingress and egress and the right to use so much of the surface as may reasonably be necessary to explore for, develop, mine, remove and produce the reserved oil, gas and other minerals.

(b). If any of the claims described in Exhibit A are surrendered pursuant to the provisions of paragraph 8 hereof, such surrendered claims shall no longer be considered a part of the Leased Claims.

2. **PRIMARY TERM.** The term of this lease shall be for a period of fifteen (15) years commencing at 12:00 o'clock noon on *the day of exercise* and as long thereafter as oil shale or other minerals are produced from the Leased Claims, or any part thereof, in commercial quantities.

3. For the purpose of this lease the following definitions shall apply:

A. The term "Lease Year" shall mean the period commencing February 1 of each year and ending January 31 of the next succeeding year.

B. The term "Minimum Annual Royalties" shall mean amounts payable to Lessor pursuant to and as provided in subparagraph 3.1 hereof.

C. The term "Earned Royalties" shall mean the amounts payable pursuant to and as provided in subparagraph 3.2 hereof.

3.1 Lessee agrees to pay Lessor the following amounts as Minimum Annual Royalties:

A. For the first Lease Year an amount equal to \$2.50 multiplied by the number of surface acres contained in the Leased Claims.

B. For the second Lease Year an amount equal to \$3.50 multiplied by the number of surface acres contained in the portion of the Leased Claims which are subject to the provisions of this lease as of the first day of the second Lease Year.

C. For the third Lease Year an amount equal to \$4.50 multiplied by the number of surface acres contained in the portion of the Leased Claims which are subject to the provisions of this lease as of the first day of the third Lease Year.

D. For the fourth and each subsequent Lease Year an amount equal to \$5.00 multiplied by the number of acres contained in the Leased Claims which are subject to the provisions of this lease as of the first day of the applicable Lease Year.

Provided, that in no event shall Minimum Annual Royalties payable pursuant to the provisions of paragraph 3.1 be less than the sum of \$2,075.00 irrespective of the number of surface acres contained in the Leased Claims subject to this lease.

3.2 Lessee agrees to pay Lessor, as Earned Royalty, an amount equal to two and one-half percent (2½%) of the gross value of all crude shale oil or other oil extracted or removed by Lessee from oil shale or oil shale formations contained in the Leased Claims; provided, that if there is no market for shale oil or other oil in the crude form and by reason thereof, or for any

other reason, Lessee shall not sell shale oil or other oil in the crude form, then Lessee shall pay Lessor, as Earned Royalty, an amount equal to two and one-half percent (2½%) of the gross value of the first marketable product or products derived by Lessee, directly or indirectly, from processing or refining of crude shale oil or other oil. Earned Royalties due hereunder shall be paid on or before the 20th day of each month for all shale oil or other oil (or products thereof if not sold in crude form) produced and sold from the Leased Claims during the preceding calendar month.

3.3 All advance Minimum Annual Royalties paid by Lessee to Lessor shall be credited against all Earned Royalties payable hereunder.

3.4 Minimum Annual Royalties shall be payable semi-annually on the 15th days of February and August of each Lease Year; provided, that such Minimum Annual Royalties shall become a firm obligation as of the first day of the applicable Lease Year and no surrender of any part of the Leased Claims or termination of the lease made by Lessee subsequent to the first day of the applicable Lease Year shall relieve Lessee of the obligation to pay the portion of the Minimum Annual Royalties which become payable as of the 15th day of August of the applicable Lease Year.

4. TAXES. Lessee agrees to pay all taxes levied and assessed against the Leased Claims and/or the production therefrom before the date such taxes became delinquent.

5. ASSIGNMENT. If the interest of Lessor or Lessee in the Leased Claims, or the royalties provided for herein, or any part thereof, is assigned or otherwise transferred (and the privilege of assigning is hereby reserved to each party), the covenants and conditions hereof shall be extended to and be binding upon the heirs, executors, administrators, successors and assigns of the transferee; but no transfer of ownership in the Leased Claims, this instrument or advance or actual royalties payable hereunder shall be binding upon Lessor or Lessee until copies of the instrument creating such transfer are delivered to the other party.

6. ENCUMBRANCES. Lessor consents and agrees that Lessee may, but shall have no obligation to, pay and discharge any valid mortgage, lien or encumbrance now or hereafter existing against any part of the Leased Claims and/or the production therefrom, resulting from the act of Lessor, his agents or employees. If Lessee pays and discharges any such mortgage, lien or encumbrance, Lessee shall be subrogated to the rights of any holder or holders of the mortgage, lien or encumbrance so paid and shall be entitled, at its option, to credit for any sum so applied against rentals or other monies, including the purchase price if the option to purchase is exercised, due and payable to Lessor, which right of subrogation shall be in addition to all other rights which Lessee may have under this lease or under law.

7. SURRENDER. Lessee may, at any time, surrender this lease as to any one or more of the Leased

Claims by delivering to Lessor a quitclaim deed conveying to Lessor any such claim or claims to be so surrendered. From and after date of surrender of any of the Leased Claims, Lessee shall be relieved of all obligations contained herein with respect to the claims so surrendered, except any Earned Royalties due and payable on account of oil shale removed from the claims so surrendered prior to the effective date of such surrender.

8. REMOVAL OF IMPROVEMENTS. Lessee shall have the right at any time within ninety (90) days after termination or expiration of this lease (if at such time all royalties and other sums required to be paid by Lessee to Lessor under the terms of this lease shall have been paid) to remove any and all property, including but not limited to any and all buildings, structures, plants, shops, machinery and equipment, placed or used by Lessee on the Leased Claims during the term, or any extensions or renewals of the term hereof, whether or not any such property was originally personalty but has under law become attached to the land as a fixture or otherwise.

9. DEPOSITORY. The First National Bank of Grand Junction, Colorado, or its successor is hereby named as Lessor's agent to receive royalty payments and all such royalty payments may be made by paying or tendering the same to Lessor or for Lessor's credit at said bank. Such bank shall continue as depository of all royalty payments hereunder during the term of this lease regardless of changes of ownership of said property, or the right to payment of royalties hereunder. If

at any time it appears that one or more persons who are not parties to this lease agreement may be entitled to any part of the royalties payable hereunder, Lessee may withhold all of said payments until such person or persons together with Lessor shall deliver to Lessee a recordable instrument wherein such person or persons and Lessor consent to the terms of this lease agreement and designate a mutually acceptable person or bank as agent to receive all royalties and other payments due hereunder and execute division and transfer orders on behalf of Lessor and all of said persons and their respective successors in title.

11. LESSER INTEREST. In the event Lessor owns less than the entire and undivided mineral estate in and to the minerals leased hereunder, royalties and other payments provided for herein shall be paid to Lessor only in the proportion which Lessor's interest bears to the entire mineral estate of the minerals subject to this lease.

12. INDEMNIFICATION. Lessee agrees to save Lessor harmless from and to indemnify him against any and all lawful claims for damages arising from any injuries or damage to persons or property resulting from Lessee's operation of the Leased Claims and from and against the claims of all workmen, mechanics and materialmen, and all other persons who may acquire rights in the Leased Claims by reason of labor performed, services rendered, or materials, supplies or equipment incorporated in, on or under the Leased Claims at the

direction of Lessee, its employees or agents, or used in connection with Lessee's operations thereon.

13. **INSURANCE.** Lessee shall at all times, during the term of this lease, insure at its sole cost and expense, to each and every workman employed in, about or upon the work, the compensation and benefits provided for in and by each and every statute, rule or regulation applicable thereto with respect to Workmen's Compensation, occupational disease or disability, and Employer's Liability; to pay and discharge or otherwise dispose of any and all claims, liabilities, suits and demands of every kind and nature whatsoever, for injury to or death of persons and loss of or damage to property caused by or in connection with the Lessee's operations or activities on the Leased Claims; to procure and maintain, at the sole cost and expense of Lessee, direct and contractual bodily injury liability insurance and property damage liability insurance in a reputable and financially responsible insurance company, properly safeguarding Lessor against direct and assumed liability for injuries to or death of persons and loss of or damage to property in amounts acceptable to Lessor, but in no event less than \$150,000.00 for injury to or death of any one person, \$350,000.00 for injuries to or death of two or more persons, and \$50,000.00 for loss of or damage to property in any one accident. Lessee shall also furnish Lessor written certificates from insurance carriers or from appropriate governmental agencies verifying and establishing that the insurance provided for in this paragraph has been obtained, is being properly maintained, the premiums therefor paid, and specifying the names

of the insurers and the respective policy numbers and the expiration dates thereof. All such policies of insurance shall provide (unless by statute applicable thereto it is otherwise provided) that in the event of cancellation thereof, written notice of such cancellation shall be given to Lessor at least fifteen (15) days prior to the effective date of cancellation.

14. **DEFAULT.** If Lessee fails to make any payment herein required or fails to comply with any of its other obligations and covenants contained herein, Lessor may notify Lessee, in writing, setting forth in detail the covenants and conditions of this lease which Lessee has failed to perform. Lessee shall then have a period of thirty (30) days after receipt of such notice within which to perform or commence to perform the covenants or conditions specified in said notice, and unless, within such 30-day period, Lessee shall perform or commence to perform the covenants and conditions specified in said notice, this lease shall be terminated. If Lessee performs the covenants and conditions specified in said notice within said 30-day period, or if Lessee commences to perform said covenants and conditions within said 30-day period and thereafter completes the performance of said covenants and conditions with erasonable diligence, this lease shall continue in full force and effect. Service of the notice referred to in this paragraph shall be a condition precedent to the commencement of any legal proceedings by Lessor under the lease for any cause and no such proceedings shall be commenced until the lapse of the aforementioned 30-day period.

15. NOTICES. Any notice provided for herein shall be sufficient if given in writing by certified or registered mail with return receipt requested, or delivered personally and a signed receipt therefor is obtained. All notices shall be addressed to:

LESSOR: Fred V. Larson
Ethel B. Larson
14960 Alva Drive
Pacific Palisades, California

LESSEE: The Oil Shale Corporation
45 Rockefeller Plaza
New York 20, New York

The parties may change the person to whom notices are to be addressed by giving the other party written notice of such change. Notices shall be deemed given when personally delivered to the parties or, if mailed, when such notice is placed in the United States mail properly addressed and bearing proper and sufficient postage.

16. OBLIGATION TO PRODUCE. No statement contained in this lease shall be construed by implication or otherwise to obligate Lessee to mine or produce any oil shale or other metal or metalliferous substances from the Leased Claims during the term hereof or any extensions or renewals.

17. LESSEE'S OPERATION. Lessee agrees to conduct all of its operations on the Leased Claims in a good and workmanlike manner and in compliance with

all applicable laws, rules, regulations and orders of any state or federal authority having jurisdiction of such operations.

18. **OPTION TO PURCHASE.** At any time during the term of this lease, or any extension or renewal hereof, Lessee shall have the right and option to purchase the Leased Claims. *The purchase price will be computed on the formula basis: The present worth of the recoverable amount of oil, at 5c per barrel, discounted over 20 years at a rate of 12%.*

18.1 The Leased Claims purchased by Lessee under paragraphs 18 and 18.1 hereof shall be conveyed to Lessee, or its nominee, by warranty deed in the form customarily used in the State of Utah; provided, such deed shall be subject to the rights, titles, claims and interests specified on page 2 hereof, encumbrances, liens, defects or reservations resulting from the acts or operations of Lessee, and such deed shall reserve and except to Lessor, his successors and assigns, the same and like minerals and rights as are reserved and excepted from this lease on page 2 hereof.

19. **CONSTRUCTION.** When necessary for proper construction, the masculine of any word used in this agreement shall include the feminine and neuter gender, and the singular, the plural and vice versa. The entire agreement shall be construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, the parties hereto have
executed these presents the day and year first above
written.

Fred V. Larson

Ethel B. Larson

LESSOR

THE OIL SHALE CORPORATION

By -----

President

LESSEE

ATTEST:

Secretary

STATE OF CALIFORNIA }
COUNTY OF MESA } ss.

On the day of, 196....
personally appeared before me Fred V. Larson and
Ethel B. Larson, the signers of the above instrument,
who duly acknowledged to me that they executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

STATE OF NEW YORK }
COUNTY OF } ss.

On the day of, 196....
personally appeared before me H. I. Koosbergen, who
being by me duly sworn did say that he is the President
of The Oil Shale Corporation, and that said instrument
was signed in behalf of said corporation by Resolution
of its Board of Directors, and said H. I. Koosbergen
acknowledged to me that said corporation executed the
same.

My Commission expires :

.....

.....
Notary Public
Residing at

EXHIBIT A
TO
MINING LEASE AND OPTION TO PURCHASE

PATENTED CLAIMS

All of the patented shale mining claims owned by Fred V. Larson and Ethel B. Larson and covering the following described lands in Uintah County, Utah:

TOWNSHIP 10 SOUTH, RANGE 25 EAST, S.L.M.

Section 9: E $\frac{1}{2}$

Section 10: W $\frac{1}{2}$, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$,
N $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

and any and all other lands not specifically described in Section 10, Township 10 South, Range 25 East, Salt Lake Meridian, Uintah County, Utah, and continuing 830 acres, more or less.