

Side Track Agreement

BETWEEN

RAHWAY VALLEY COMPANY

LESSOR

AND

WOOLLEY COAL COMPANY, INC.

BURNETT & SPRINGFIELD AVENUES

MAPLEWOOD, N.J.

Location

RAILROAD NAME : NEWARK HEIGHTS, N.J.

Dated MARCH 15th, 1929 .

Agreement, Made this **FIFTEENTH** day of
MARCH, nineteen hundred and **TWENTY NINE**, between
THE RAHWAY VALLEY COMPANY, LESSEE, a corporation of the State of New
Jersey,

party of the first part, and **the**

WOOLLEY COAL COMPANY, INC .

par **ty** of the second part, WITNESSETH:

That the parties hereto, in consideration of the mutual covenants and agreements herein contained, do covenant and agree to and with each other as follows:

First.—That the party of the first part will construct and maintain **a**
private siding or ~~trestle~~ at or near **Burnett & Springfield Avenues**
Maplewood, in the County of **Essex**, State of
New Jersey, for the purpose of receiving from and delivering
to the party of the second part its freight on said side track
subject to rules, regulations and conditions of the said party
of the first part and of the Interstate Commerce Commission and
New Jersey State Public Utility Commission .

Siding already constructed and this agreement being
entered into to protect all concerned and cover all future
operations of the party of the first part over this said siding.

This contract cancels any and all other agreements
of any kind covering this siding effective prior to March
15th, 1929 .

Second. The cost and expense of the construction and maintenance of said siding or
trestle shall be borne

**ENTIRELY BY THE PARTY OF THE SECOND PART
FOR THAT PORTION EXTENDING OVER THEIR
PROPERTY HOLDINGS .**

The party of the first part shall be the sole judge
of the necessity of repairs, including the extent of
maintenance which shall be required from time to time and
may make such repairs and the expenses thereof to be paid
by the party of the second part .

Third.—All payments to be made by the part **y** of the second part, for construction,
shall be made within ten days after the completion of said siding or trestle . All payments
for maintenance shall be made within ten days after the expense is incurred and payment is requested.

All material used in the construction or maintenance of such siding or trestle on the

land of the part **Y** of the second part, and not paid for by the part **Y** of the second part, shall always remain the property of the party of the first part, and be removable by it on termination of this agreement.

Fourth.—The part **Y** of the second part, in order to promote and insure the safety of the operations of the party of the first part on and over said siding or trestle and of its employees engaged in such operations, shall not erect or place or permit to be erected or placed any building, structure or obstructions of any kind in dangerous proximity to said siding or trestle or in any instance with a side clearance of less than seven and one-half (7½) feet from the center line thereof or with an overhead clearance of less than twenty-two (22) feet above the same, nor shall the part **Y** of the second part lay, construct or place any pipes, conduits, or other structures underneath said siding or trestle at a depth of less than three (3) feet without the written approval of the party of the first part of the plans therefor to be first prepared, and submitted, by said part **Y** of the second part.

Fifth.—All freight or coal which the part **Y** of the second part has to offer for shipment from or which is to be received at said siding or trestle, so far as the part **Y** of the second part can control the routing thereof to or from points on or reached *via* the lines of the party of the first part, shall be shipped over such lines and their connections whenever the rates charged for such service shall not exceed those charged to others for a generally similar service, and whenever such rates shall not exceed the rates charged by other railroad companies for like transportation between the same points.

Sixth.—So much of said siding or trestle as shall be on the land of the part **Y** of the second part shall always be under the direction and control of the party of the first part while the same is in use in placing cars thereon or taking cars therefrom.

Seventh.—The party of the first part shall be liable for all loss or damage not caused by the negligence of the part **Y** of the second part, which may occur to any car or cars on said siding or trestle while they are being placed thereon or being removed therefrom, and the part **Y** of the second part shall be similarly liable for any cars and contents placed thereon for purposes of **any** business after such cars have been placed thereon.

Eighth.—If at any time hereafter the party of the first part shall desire to lay down one or more railroad tracks upon its right of way, or to change the point of connection of the said siding or trestle with its present tracks, or other tracks hereafter to be laid, or to change the location of the said siding or trestle on its own land, it is hereby authorized so to do without further permission from the part **Y** of the second part; provided, however, that the part **Y** of the second part shall be at no cost or expense by reason of the party of the first part exercising any of the above specific privileges. **SEE SECTION MARKED "TWELFTH A" OF THIS**

AGREEMENT
Ninth.—This agreement shall continue in force so long as the part **Y** of the second part shall continue to receive at or ship from said siding or trestle reasonable quantities of freight or coal, and when in the opinion of the party of the first part such reasonable quantities of freight or coal are not received at or shipped from said siding or trestle as to justify it in the expense of maintaining its portion of the same, then the party of the first part, at its option, may declare this agreement at an end and may remove that portion of said siding or trestle on its land from its said land and any of its track material from the land of the part **Y** of the second part, without being liable in damages for such removal. This agreement may also be terminated by either party in case of breach of any covenant or agreement by the other to be performed, if such breach be not compensated within ten days after written notice.

This agreement may also be terminated by the party of the first part, upon thirty (30) days' written notice to the part **Y** of the second part of intention to so terminate the same, in any of the following events, to wit:

(1) Should future change of the grade of said railroad render, in the judgement of the Chief Operating Official of the party of the first part, the continuance of such siding or trestle as located hereunder unduly burdensome to it or not reasonably practicable; or

(2) Should the continuance of said siding or trestle as so located, in the judgement of such Official, be rendered burdensome or not reasonably practicable by reason of the elimination of grade crossings and the separation of grades thereof at or near said siding or trestle, whether such elimination and separation shall be on the initiative of the party of the first part itself, or be required by public authorities having jurisdiction, or by the provisions of any statute now in force or which may hereafter be enacted;

it being, however, further understood and agreed that, should a new installation of said siding or trestle at or near said point be reasonably practicable, it may be reconstructed by mutual agreement upon conditions generally similar to those herein contained.

Tenth.—The part y of the second part agrees, in view of the fact that the operation of the engines and trains on or in connection with the use of said side-track at the request and for the use of said part y, will bring said engines in dangerous proximity to buildings and other structures of the part y of the second part, that the party of the first part, shall not be liable for any loss or damage sustained by part y of the second part to any such buildings, structures, or other property, caused by fire communicated by such engines, and the part y of the second part further agrees that the party of the first part shall not be liable for any damage to the property, buildings or structures, arising out of or resulting from the construction, use, maintenance or operation of said side-track, and said part y of the second part hereby releases the party of the first part from all liabilities therefor; and the said part y of the second part also hereby assumes all liability for all loss, damage and injury, including injury resulting in the death of any and all persons whomsoever, occasioned by or arising out of such construction, use, maintenance or operation of said side-track, unless said such injury, loss or damage is shown to have been caused solely by the negligence of the party of the first part, and the said part y of the second part hereby agrees to indemnify and save harmless the party of the first part from all claims for such loss, damage, injury or death from all cost and expenses connected therewith.

ELLEVINTH.--

The party of the second part agrees not to authorize or permit the use of said side-track by or for the benefit of any other person or persons without the written consent of the party of the first part .

Twelfth.—The part y of the second part shall not allow any property or material of any kind, belonging to it or any other party, to be or remain on the ground alongside said side-track at a point too near that would prove dangerous to the operation of engines and cars.

"TWELFTH A"

IF THE PARTY OF THE SECOND PART IS UNDER ANY COST OR EXPENSE FOR THE MOVEMENT OF BUILDINGS OR ANY OTHER STRUCTURES TO MEET ANY SUCH TRACK CHANGES AS OUTLINED IN DETAIL UNDER THE EIGHTH SECTION OF THIS AGREEMENT THE PARTY OF THE FIRST PART WILL ASSUME THE FULL COST AND EXPENSE .

"TWELFTH B"

THIS CONTRACT MAY BE CANCELLED BY THE PARTY OF THE FIRST PART UPON THIRTY DAYS WRITTEN NOTICE TO THE PARTY OF THE SECOND PART . THIS CONTRACT MAY ALSO BE CANCELLED BY THE PARTY OF THE SECOND PART UPON 10 DAYS WRITTEN NOTICE TO THE PARTY OF THE FIRST PART) Thirteenth.—This agreement shall bind the parties hereto and their respective personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be properly executed as of the day and year first aforesaid.

RAHWAY VALLEY COMPANY, Lessee,

By

R.A. Clark

President and General Manager.

Attest:

R.A. Clark

Secretary.

WOOLLEY COAL COMPANY, INC .

BY

W.S. Woolley
PRESIDENT

SECRETARY