

Agreement

Dated: 22 Nov 1867

Recorded:

FROM: George Filer (Dunmore), Frank M Marsh (Scranton), Levi E Judd (Blakely)  
DBA Filer & Company

TO: Delaware and Hudson Canal Company

FOR: Filer (Green Ridge) Colliery

Summary

Filer & Co have rights to mine 1,500,000 tons of coal on land in Dunmore and Scranton leased from Edward Dolph and Jonathan Apgar.

- Deliver to the D&H 375 tons per day between 15 Apr and 1 Dec
- Deliver to the D&H 250 tons per day between 30 Nov and 15 Apr
- Required annual quantity is 100,000 tons until the whole 1.5 million are delivered (implies maximum 15 year contract)
- Sizes as specified by the superintendent of the D&H coal dept
- Rates specified by size
- D&H will build a railroad siding from their mainline to Filer & Co Breaker if Filer does the grading
- D&H will loan Filer & Co \$30,000 to build and furnish the colliery

free will and accord, sign, seal and as her act and Deed deliver the above written Indenture Deed or bonorance, without any coercion or compulsion of her said husband.

Witness my hand and seal the day and year aforesaid.

Recorded Dec. 14, 1861.

J. P. Kelle [S] Associate Judge

Consolidated... 201...

George Filer et al with Delaware and Hudson Canal Co.

This Agreement made and concluded this Twenty second day of November A. D. one thousand eight hundred and sixty seven 1867. Between George Filer of the Borough of Dunmore, James B. Marsh of the City of Scranton and John E. Fudd of the Township of Blakely, All of the County of Luzerne in the State of Pennsylvania Comprising the Partnership Firm of Filer and Company Party of the first part and the President Managers and Company of the Delaware and Hudson Canal Company by Edward W. Weston Superintendent of the Coal Department of said Company Party of the second Part. Witnesseth that the said Party of the first part as well for and in consideration of the covenants and Agreements hereinafter contained and mentioned to be kept and performed by the said Party of the second part as for and in consideration of the sum of one Dollar to them in hand well and truly paid by the said Party of the second Part the receipt whereof is hereby acknowledged. Item granted bargained and sold And by these presents Do grant bargain and sell unto the said Party of the second Part their Successors and assigns One Million five hundred thousand (1,500,000) tons of the Anthracite Coal in and upon those certain pieces or parcels of land situate in the Borough of Dunmore and City of Scranton which have been leased or are to be leased for mining purposes by Edward Dolph Filer, Riley and Company and Jonathan Agar and Cornelia D. his wife to said Party of the first Part or upon any other lands contiguous or convenient thereto upon which the said Party of the first Part may acquire the right by purchase lease or otherwise to mine coal. Provided they shall acquire the right in manner aforesaid to mine the above mentioned quantity. And in case of their failure to secure the right to mine said quantity then this agreement to cover all the coal they may have the right to mine and no more. And the said Party of the first part also for the considerations aforesaid covenant and agree to and with the said Party of the second Part their Successors and assigns to Mine and deliver to the said Party of the second part upon suitable and convenient side tracks to be Provided and furnished by the said Party of the first Part and connected with the Main line of the Rail Road of the said Party of the second Part, the location of such side tracks to be fixed upon and approved by the Superintendent of the Rail Road of the said Party of the second Part. Three hundred and Twenty five (325) tons of coal on each and every day as nearly as may be practicable between the fifteenth day of April and the first day of December And so much not exceeding two hundred and fifty (250) tons per day on each and every day between the last day of November and the fifteenth day of April as the said party of the second part may require Sunday and the usual holidays excepted it being the intention of the Parties hereto that Maximum Annual Quantity of coal to be delivered and received under this Agreement shall be one hundred thousand (100,000) tons until the whole of said One Million five hundred thousand (1,500,000) tons hereby bargained and sold shall be delivered. All the said coal to be delivered as aforesaid by the said Party of the first Part shall be in such proportions of the different Sizes viz Furnace Lump Steamer Lump, Gate, Egg, No. and Chestnut as the Superintendent of the Coal Department of the said Party of the second part may from time to time order and direct, said Superintendent being hereby authorized and having the right by virtue hereof

Side for the board... Stud... to my... legal... my... ita... 20... sign... or... their... cal... cal... Steel... wife... act... with... ion... own

to require the delivery of the same proportion of the different sizes as for the time then being may be produced at any of the mines owned or worked by the said Party of the second Part. And the said Party of the first Part further covenants and agrees as aforesaid that all the said coal shall be free from dust, slate and all foreign substances and it shall be of as good a quality and be cleaned and prepared in as perfect a manner as any coal which the said Party of the second Part at the time then being may mine, clean and prepare at any mines by them owned or leased.

And that all the coal delivered under this agreement shall be subject to the inspection of the Superintendent of the Coal Department of the said Party of the second Part or such other Person as they may employ for that purpose whose decision as to the quality of said coal and the manner in which the same is cleaned and prepared shall be final and conclusive.

And that all the prepared coal viz: Grite, Egg, Stone and Chestnut shall be broken by breakers and well screened through screens of the proper size and mesh.

And All chestnut coal shall be passed through a square mesh of at least one inch and over a square mesh of not less than one half an inch. And sizes of all the prepared coal shall correspond with those made by the said Party of the second Part for the time then being at their own mines and breakers. Provided however that if the said Party of the first Part prefer to do so they shall be permitted to pass coal coming from the Mines of Stone or Chestnut size through the screens as above required without passing it through breakers.

And that all switching and removing of bars necessary to be done from the time they are delivered by the said Party of the second Part upon the track prepared for the standing of Empty bars until they are properly loaded and placed in a suitable position to be taken away shall be done by and at the expense of the said Party of the first part.

And the said Party of the second Part on their part in consideration of the sale to them of said coal and of the covenants and agreements hereinbefore mentioned and contained to be kept and performed by and on the part of the said Party of the first part Do consent and agree to and with the said Party of the first Part that they will (the said Party of the first Part keeping and observing the covenants and Agreements herein before contained on their part) deliver with as much regularity as practicable upon the side tracks to be prepared for that purpose bars for the reception of said coal. And that they will receive good pay for said coal at the following rates to wit:

For Every Ton of twenty two hundred and forty (2240) pounds of clean merchantable coal in Drums, dunnage, or Steamer dunnage Eighty (80) cents, Grite Ninety (90) cents, Egg one Dollar and five (1.05) cents, Stone one Dollar and twenty five (1.25) cents, and Chestnut Fifty (50) cents.

Payments shall be made between the first and fifteenth days of each Month for all the coal delivered during the preceding Month.

And the said Party of the second Part further agree to construct and maintain at their own cost and expense an amount of Railroad track, for Sidings or Road leading from the main line of Rail Road of the said party of the second Part to the proposed battery of the said Party of the first Part equal to the average amount of Sidings provided and in use for the standing of Empty and loaded bars at the Breakers and Breakers located directly on the main line of their Rail Road and producing an amount of coal equal to the maximum annual quantity contracted to be delivered under this agreement. Provided always that the said Party of the first part shall prepare and furnish free from cost and charge the right of way for said tracks, and the Road bed graded and completed ready for the laying of the rails. This to the satisfaction and acceptance of the said Superintendent

of the Rail Road - the said Party of the Second Part being required hereby only to furnish lay down and maintain the ties and Iron track for the amount of road as above stated.

And the said Party of the Second Part hereby further agree to furnish motive power to place the Empty cars in such position on tracks to be provided by the said Party of the first Part that they may be moved by gravitation to and under the Chutes for the purpose of being loaded by the said Party of the first Part. And the said Parties hereby mutually agree each to and with the other that the coal delivered under this Agreement shall be weighed by a person employed by the said Party of the Second Part and upon Scales placed in the Rail Road track at or near the said bolliery said Scales to be mutually approved by both Parties hereto. That in weighing said coal an allowance shall be made sufficient to compensate for ice or snow that may be upon the coal cars and for wet coal. And any number of pounds in the weight of a car of coal less than one hundred shall not be counted. And any fractional part of one hundred pounds in the weight of a car shall be counted as one hundred pounds in deducting the weight of the car. The Account of such weight shall be open to the inspection of both parties. That in case of any question of difference arising between the parties hereto as to the proper construction of any provisions of this agreement relating to the quality, inspection or weighing of said coal such question shall be referred to three disinterested persons one of whom shall be chosen by each of the parties hereto the two persons thus chosen shall select a third and the decision of the said referees shall be final and conclusive and binding on both parties. - That said Party of the second Part shall have the right to use so much land at or near said bolliery as they may desire to use for a Repair Shop, Office or necessary side tracks or switcher so far as said Party of the first part may have the power to confer or grant such right with the right to remove any buildings or improvements, which they may have erected thereon at the pleasure of the said Party of the second Part. That if in consequence of a general strike among Employees of either of said Parties or of the breaking of Machinery or hindrances, delays or other disabilities in getting said coal to market which may occur without the connivance, consent or neglect of the respective parties whereby either of said Parties shall be temporarily prevented from fully performing that part of the foregoing agreement which relates to the quantity of coal to be delivered and received daily the deficiency thereby caused shall and may be made up by an increase of the daily deliveries to the extent of the ability of the said parties to deliver and receive the same. And neither party shall in consequence of any such temporary failure arising from any of the above mentioned causes be considered as violating this agreement. The delivery of coal under this agreement shall commence on the first day of December A. D. 1868.

And it is further hereby mutually covenanted and agreed by and between the parties hereto that the said Party of the second Part shall loan to the said Party of the first Part such sum of Money not exceeding in amount thirty thousand (\$30,000) dollars for the purpose of constructing, furnishing and equipping the bolliery and Works and opening the mines for the mining preparing and delivering of the coal sold and bargained under this agreement. As the said Party of the first Part may require and upon the following conditions. The said Party of the first Part shall before receiving any part of said sum first expend the sum of Twenty thousand (\$20,000) dollars to be by them otherwise provided in prosecuting the Work of opening said mines and erecting said bolliery. And the said Party of the second Part shall thereafter when called upon therefor advance to the said Party of the first Part such sums of money as they from time to time may require in the prosecution of the Work of erecting such bolliery and appurtenances and of opening said mines said

Advances to be used and expended in the completion of said improvements, and for no other purpose whatever, provided the aggregate amount of such sums loaned from time to time as aforesaid shall not exceed thirty thousand (\$30,000) dollars.

And the amount of money so as aforesaid loaned by the said Party of the second Part to the said Party of the first Part, shall be repaid to the said Party of the second Part with lawful interest thereon in manner following, to wit: The said Party of the second Part shall be and by virtue of this agreement are hereby authorized and empowered to deduct from and retain in their own hands the sum of eight cents per ton on each and every ton delivered and received from and out of the amount herein before provided to be paid by the said party of the second part to the said party of the first part, for the coal to be delivered under this agreement until the whole and entire amount of the money so as aforesaid loaned together with the interest thereon shall have been fully paid to the said party of the second part. And the said party of the first part shall in order to secure to the said party of the second part the Payment of the money so loaned as aforesaid assign to them the said party of the second part their Successors and Assigns the leases or rights to mine and remove the coal to be sold and delivered under this agreement, And shall by such good and sufficient obligations and assurances as shall in law be a first lien upon the property, improvements, buildings, terms of years and appurtenances connected in any manner with and for the purpose of mining and delivering the said coal fully secure the payment to the said party of the second part of the money so by them as aforesaid loaned. - And it is further hereby mutually covenanted and agreed by and between the parties hereto that in case the said party of the first part shall for the space of thirty days at any time during the existence of this agreement fail, neglect or refuse to deliver to the said party of the second part, the average daily quantity of coal in accordance with the provisions of this agreement unless prevented from so doing by causes as herein before recited, they shall and will in that event if the said party of the second part so elect and desire, Assign to them the said party of the second part, their Successors or Assigns the aforesaid leases and rights to mine, prepare and deliver coal and erect buildings and other improvements acquired by them as aforesaid hereby releasing to the said party of the second part all the Property, Improvements, rights, privileges, buildings, machinery, mines, fixtures and appliances of any kind or nature whatever used and employed by them the said party of the first part for the purpose of and in the prosecution of the business of mining, preparing and delivering of coal as contemplated by this agreement. And it is further mutually covenanted and agreed by and between the said parties hereto that if the said party of the first part shall at any time during the existence of this agreement divert such coal and caused the same to be carried by any other line or lines of transportation or use any other avenue to reach a market therefor, then and in either case the said party of the second part if they so elect and desire shall be entitled and they are hereby expressly and fully authorized and empowered to enter into and take possession of the aforesaid bolliery, coal Mines, Lands and premises. And all and singular the Mines, Breakers, Buildings, Machinery, Rail Roads, Mine roads, Mine bars, fixtures and appurtenances thereto belonging, or in any way connected therewith or used by the said party of the first part in their business of mining, preparing and delivering coal and thereafter to use, work occupy and enjoy the same as hereinafter stated. And the said Party of the first part upon such default shall and will voluntarily deliver to the said party of the second part their Successors or

Assigns the full quiet and peaceable possession of the aforesaid property and effects to be used worked occupied and enjoyed as aforesaid and in case of their neglect or refusal to give possession then the said party of the second part may if they so did proceed to take possession thereof by law and in the way and manner following: that is to say, the said party of the second part hereto upon filing an Affidavit made by their President or other Officer stating such default of the said Party of the first Part may enter into an Exemption or other proceedings against the said Party of the first part in the Court of Common Pleas of Luzerne County for the Mines Lands Improvements and Premises hereinbefore described or mentioned and thereupon any Attorney of said Court and to whom and for which this shall be a full and sufficient Warrant and authority may appear for the said Party of the first Part in such action or proceedings and sign an agreement or stipulation or otherwise consent that a Judgment be entered in the said Court in favor of the said Party of the second Part against them the said Party of the first Part and all Persons claiming under them for the possession of the said premises property and effects, and upon such Judgment the usual writ of Habere Facias possessionem may forthwith issue and be executed without any stay of proceedings Writ of Error, Certiorari or appeal therefrom, and all users in such Actions and proceedings and in the entry of such Judgment and the proceedings thereon are hereby released and the Attorney so appearing and acting under this Authority forever discharged from liability therefor. Provided that nothing herein contained shall be so construed as to prevent the said party of the first part from selling coal at retail at their colliery for use and consumption within ten miles thereof. It being understood and agreed that in case the said party of the second part shall so take possession of the said property and premises and use and occupy the same that they shall pay to the party or parties entitled to receive the same the amount of Mine Rents accruing on the coal that may be mined by them in the same manner as the said party of the first part is required to do, and may occupy and enjoy the said colliery Mines and appurtenances upon the same conditions as the said party of the first part might or could have done prior to such default. - I Witness Whereof, the said Parties have hereto set their hands, Dated the day and year first above written.

In presence of

The word buildings being first inserted in the forty second line of the fifth page, the words "paid Advances to be used and expended" in the completion of said improvements and for no other purpose, whatever inserted between the forty ninth and fiftieth lines of the fourth page and the words "and consumption within ten miles" within two or an incase all before signing

John Robertson  
As to the signatures of Frank B. Marsh  
L. E. Judd, E. W. Weston  
H. J. Altherton as to the signature of George Filer

Geo. Filer  
Frank B. Marsh  
L. E. Judd

E. W. Weston Supt  
of Coal Dept. of Ed. & Ind. Canal Company  
Subject to the approval of the Vice President  
of said Company.  
Approved

Mrs. Dickson  
D. Priest

Commonwealth of Pennsylvania  
City of Scranton

Before me the Subscriber an Alderman in and for said City personally appeared the above named George Filer, Frank B. Marsh and Levi E. Judd composing the copartnership firm of Filer and Company and severally acknowledged in due

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