

Luzerne County Deed

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Agreement

Dated: 22 Nov 1867

Recorded:

BY: Edward Dolph (Pittston)

To and With: George Filer (Dunmore), Frank B Marsh (Scranton), Levi Judd (Blakely) DBA Filer & Co.

FOR: Lease in Dunmore for 30,000 tons of coal. Agreement to ship on the D&H.

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assigns also be the said party of the first part his heirs or assigns may elect to abandon that portion of the said
 line said party assigns or to direct the said party of the second part to mine through said party assigns to the
 said party of the second part all the expenses incidently incurred in ordering on and about the line of the same
 it being understood that said party of the second part agrees to pay the whole cost of mining through a tunnel said party has
 out has not exceed five hundred dollars. Provided however that the said party of the second part shall not be
 bound by the said party of the first part his heirs or assigns to drive through a tunnel any shaft face against the payment
 or advice of the said party of the second part except on the following conditions to wit: The said party of the first
 part may make require in writing to have said party of the second part driven through a tunnel said party in
 opposition to the advice of the said party of the second part when the said party of the second part shall in writing
 in the course of said mining to remove said shaft and shaft continue until the said party of the first part
 shall conclude to abandon said work when if the same be not so come the said party of the first part his
 heirs or assigns shall pay to the said party of the second part his heirs or assigns the price of purchasing
 said work. It is to be further understood and agreed that in case the quantity of coal mine being mined
 shall fall below the quantity agreed to be taken out in such year in consequence of the same quality of
 coal or in consequence of a unusual expense and difficulty in mining and clearing said coal or in consequence of a unusual
 said work shall be found so far exhausted as to render it impracticable or unprofitable to mine the stipulated
 quantity in any one year then in such case the said party of the second part their heirs or assigns are only to pay for the quantity
 of coal that can be safely and judiciously taken out and it is further agreed that if in consequence of the same quality of
 of the haulage of the second part or the breaking of machinery or of hindrance delays or other disabilities in getting said
 coal to market which may occur without the default or negligence of the said party of the second part
 their heirs or assigns or of any time during the continuance of this lease the party of the second part their
 heirs or assigns claim a continuance or suspension of business necessary a dividend then in that case they may reduce the
 quantity to be mined and paid for in any one year then being to the same proportion as the production of coal
 mined by other parties and previous to market by the Delaware and Hudson Canal Co. shall be received
 provided the whole quantity mined in such year shall not be less than Ten thousand Tons

* And the said party of the second part their heirs or assigns hereby agree to pay for the same the same as
 taken out in pursuance of this lease at the rate of seven cents volume of said coal a bushel for any size of cutting two
 and a half (2240) pounds of clean merchantable coal of size large than Chesnut Chestnut coal being of
 coal that will pass through a mesh one inch square and one inch half an inch square including
 and minus and in case the quantity of Chesnut Coal shall exceed eight percent of the total quantity mined
 then they pay sixteen cents per bushel as above for such excess of Chesnut coal. This rent to be paid
 between the first and fifteenth days of each month for the coal mined during the preceding month the
 amounts of said rent to be left in the hands of the Delaware and Hudson Canal Co. and to be
 on the order of the party of the second part or said company to the order of the party
 first part. It is to be further agreed and understood that if the said party of the second part their
 heirs or assigns elect to do so they may increase the quantity beyond that stipulated to mine in any
 year and as often as they desire the quantity for any succeeding year or years to be mined
 but they shall not be bound to do so and it is further agreed that the said party of the second part their
 heirs or assigns shall be bound to deliver to the said party of the first part their heirs or assigns
 the same amount of coal as they shall have mined in any one year and to be delivered to the said party
 of the first part their heirs or assigns at the same time and place as the coal shall be mined in any one year

of mining and charging as good as the coal taken from the mine of and out to market of the Delaware & Hudson Canal Co and that it shall be subject to the inspection of the Superintendent of the Delaware & Hudson Canal Co
 a such person as he shall think proper to employ as to the quality of the coal shall be final and conclusive
 Said person that of the party of the first part during the inspection Captains and time as to the same
 in dispute shall be referred to the arbitrators persons one of whom shall be chosen by each of the parties
 to the law the person chosen shall hear and decide and the decision of said referees shall be final and
 conclusive and binding upon both parties And as to any proceedings of appraisement under the
 law shall be subject of receipt and due

And it is further agreed that the said party of the first part shall pay all taxes and
 in this case made that the party of the second part shall be required to pay the taxes and
 all expenses incurred or constructed by them

And it is further agreed and understood by and between the parties that this
 lease is made subject to all the provisions and agreements made and entered into in and by a certain
 contract in writing bearing even date herewith made between the said party of the second part and
 the President Managers & Company of the Delaware and Hudson Canal Company a City of
 which a note attached and made parts hereof and to which contracts and all covenants and
 provisions therein contained the said party of the first part hereby goes and acknowledges in
 full and unqualified assent acquiescence and approval and hereby agrees that all the provi-
 sions and agreements therein contained and mentioned may and shall be enforced and con-
 sidered as their covenants for as the rights interests and property of the said party of the
 first part may be affected hereby And it is further understood and agreed by and between the parties
 that in case of the failure of the said party of the second part in any manner to comply with
 the terms of this lease and of the aforesaid contracts between said party of the second part and the
 said Delaware & Hudson Canal Company whereby the said Canal Co. may be entitled
 to take possession of the mine Lands premises and fixtures hereby leased as provided in said contract
 then and in that case the said Canal Co. may enter upon and into the said premises and may
 put thereon and occupy and enjoy the said premises hereby leased and may put thereon
 as fully and in the same manner as the said party of the second part did might or could have
 done here to said parties Complying with all the covenants and agreements therein upon the part
 of the party of the second part

And it is further understood and agreed that the said party of the second part
 their heirs and assigns may use and occupy the rights and privileges hereby granted and the said
 openings buildings fixtures and appurtenances made and constructed by them for mining preparing
 and forwarding coal under this agreement for the purpose of mining preparing and forwarding coal
 from said adjoining a contiguous lands to the amount of one hundred and fifty acres and
 within the lands hereby leased and the party of the second part shall have the right to re-
 build or construct or remove any or all of their buildings fixtures machinery appurtenances
 or improvements during the continuance of this lease And it is further understood and agreed
 by and between the said parties that in case the said party of the second part shall
 be unable to comply with the terms of this lease and the said party of the first part
 shall be entitled to take possession of the said premises and fixtures hereby leased and
 to use and occupy the same for the purpose of mining preparing and forwarding coal

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party of the second part shall elect to use and enjoy said lands rights and privileges for a longer term than twenty years they shall be permitted to do so and have all the rights and privileges mentioned and granted hereby provided they shall pay the said rent of the first part on annual rent at the rate for so much of said surface as they may desire to retain and occupy. The amount of such rent to be determined and fixed and subject to rate. The average value per acre of surface not adjoining shall be ascertained and the rent per acre to be paid shall be equal to the legal amount on such ascertained value. The quantity of coal mined from this lease shall be divided by the number of cars and the amount shall be the quantity of each car.

In witness whereof the said parties have hereunto set their hands and seals this day and year first above written

In presence of
 The said "right" and "order" made as may be necessary in this thing being done of first part, and the same to be done in person and in person in the thirty eighth line from lot of second page here written before signing
 G. P. Hester

Edward Orph L.S.
 Geo. Filer L.S.
 Frank B. Marshall L.S.
 L. E. Judd L.S.

Nov. 22nd 1867

Luzerne County S.S.

Personally appeared before me one of the associate judges of Luzerne County and State of Pennsylvania the above named Edward Orph and hereby acknowledged and declared the foregoing instrument to be his act and deed and claims that the same may be recorded as such.

G. P. Hester
 Associate Judge

Commonwealth of Pennsylvania
 City of Scranton S.S.

Before me the Subscribes an Alderman in and for said City personally appeared the above named Geo. Filer, Frank B. Marshall and L. E. Judd Company the firm of Filer and Company and severally acknowledged in due form of law the foregoing agreement to be their act and deed and the act and deed of said Filer and Company and claims the same might be recorded as such. In witness whereof I have hereunto set my hand and seal this twenty day of March A.D. 1868

B. Jay Alderman L.S.

Jonathan Hager & Co.

Memorandum of Agreement made and entered this day of March A.D. 1868 between the above named parties of the first part and the above named parties of the second part of the above written instrument of Luzerne County and State of Pennsylvania and the same to be done in person and in person in the thirty eighth line from lot of second page here written before signing