WITNESSES,

## AGREEMENT

THIS AGREEMENT, made and entered into this the 10th day of September, 1926, by and between the Louisville & Nashville Railroad Company, first party, and Paramount Coal Company, a corporation, of Birmingham, County of Jefferson and State of Alabama, second party.

- (1) That the first party agrees and binds itself to furnish the necessary rails and other track material, and construct a system of tracks of about 4535 feet in total length. Said tracks located at or near Helena in the County of Shelby, State of Alabama, diverging from Acton Branch, on the S & N A Division of said railroad on the west side thereof 581 feet south of mile post No. 411 from Louisville Ky, and running in a southerly direction in accordance with the following sketch; attached hereto.
- (1-A) The first party agrees to do the necessary grading, furnish switch ties, cross ties, and all other track material and labor for that portion of track from head block in Acton Branch to Clearance Point, (122 feet) at the expense of the second party.
- (2) The second party agrees to do the necessary grading and pay the actual cost of labor of laying said tracks, and the costs of all other material except rails and splices; from clearance point to end of tracks, and the second party also agrees to pay rents at \$2.10 per gross ton per annum, payable semi-annually in advance from the date of completion of the thacks for the use of the rails and splices used in the construction of said tracks from clearance point to end of tracks.
- The second party also grants and conveys to first party a right of way 8 feet in width on each side of the center line of each and every track constructed under this contract for the full length thereof, excepting such portion of said tracks as may be located on the land of first party; but the right of way so granted shall revert to second party when said tracks are removed by first party.
- (4) The value of the materials for the purpose of this contract is fixed as follows:

ARTICIES	*** - [TT]	RATE
Bolts, track	per keg	9.98
Frogs, No. #8-80 lb. Stiff	each	83.28
Guard rails complete 11 ft. 80 lb.ea.20.70		
Guard rail clamps Weir 80 1	lb. each	4.91
Nut locks per M.		14.33
Spikes, per keg	•	6.85
Switches 16.5, ft. 80 lb.	each	98.25
Switch derails, Hayes with	stand, eac	ch 43.95
Switch lamps each		13.15
Switch locks each		75
Switch stands high, each		24.97
" N.C. each		20.48
Tie plates, intermediate T.	.C.I. each	28
joint T.C.I. ea	ch	28
Ballast (cinder) Cu. yd.		50
Cross ties (creosoted) ea.		2.29
Switch " per M.		54.56

(5) Said rails and splices and any renewals thereof, are and shall remain the exclusive individual personal property of first party, together with the entire control of same; and first party hereby reserves the right, and it is fully authorized at its pleasure without let or hindrance, or previous notice, to take up and remove the rails and splices

from said tracks and to take up and remove all other track material from so much of said tracks as is located on first party's land or original right of way.

- (6) The said tracks shall be maintained and kept in good condition at the expense of second party; and if, at any time, first party shall deem it necessary to make any repairs to or renewals of said tracks or if, because of a change in the standard of rail in first party's tracks or for any other beason, first party shall deem it necessary to substitute heavier rails, frogs and switches for the ones originally used, second party agrees to pay the actual cost of materials used and labor expended for such repairs, renewals or replacements, except the rails and splices, according to accounts kept of same by first party; the increased weight of such heavier rails and splices to be added to the amount on which second party pays rent.
- (7) It is agreed that the entire cost of all switch ties required by or on account of tracks constructed under this contract, including those used in the connection of the tracks of second party of first party, and the cost of all repairs to or renewals of said switch ties shallbe paid by second party as a part of the cost of construction or maintenance of said tracks.
- (8) In case any tracks, constructed under this contract or within territory where train movements are protected or controlled by automatic or other signals, or train control devices, the cost of all changes or additions to such signal system or train control devices required because of the construction of such track or tracks shall be paid by second party, as a part of the cost of constructing such track or tracks.
- (9) In case any track or tracks constructed under this contract are not within territory where train movements are protected or controlled by automatic or other signals or train control devices, second party agrees that should first party, at any future time, construct or install any system of signals or train control devices in the territory within which the said track or tracks are located, second party should pay to first party the additional cost of such signal system or train control devices caused by the existence or location of such track or tracks.
- (10) Second party agrees to pay the cost of maintaining and operating any additional signal system or train control devices that it may be necessary to install because of the construction existence or location of any track or tracks constructed under this contract as provided in the two precedings paragraphs.
- (11) Second party also agrees to take care of and keep in order, fill, trim, light and extinguish the lamps of the switches of said tracks, in accordance with first party's rules and regulations, or pay the cost of such work done by first party.
- (12) Upon the termination of this contract for any reason second party hereby agrees and binds itself to pay to first party the actual cost of removing the said tracks, according to accounts kept of same by first party.
- (13) Second party further agrees that it will, within ten days after demand therefor by first party, pay to first party cash in advance the estimated cost of any of the several expenditures hereinabove provided to be made by first party subject to reimbursement by second party, in paragraphs numbered 2 and 6 to 12, both inclusive; any excess of actual expenditures over the estimate to be paid by second party promptly on demand, and any excess thereof to be promptly repaid to second party without demand.
- (14) And second party further covenants and agrees with first party that it will hold first party harmless against the claims of abutting property owners who may claim damages for, or on account of, the construction or operation of the said track.

And second party also agrees to place no overhead structures more than 22 feet above the top of the rail of said tracks, and to place no structure closer than eight feet from the center of the track, and to keep the track free from obstruction; and agrees to hold first party harmless from the claims and demands of any and all persons on account of any damages or injuries caused directly or indirectly by the existence location, or condition of any structures or obstructions of any kind on the premises of second party, by any obstructions on said tracks, or which may, either directly or indirectly, arise out of the maintenance of said tracks or the operation of the rolling stock of first party nn said tracks. Knowledge of or notice to first party of the existence location or condition of any structures or obstructions of any kind on the premises of second party and its continued operation of the tracks thereafter, shall not be a waiver of this covenant.

(15) It is understood that the movement of railroad locomotives involves some risk of fire, and second party assumes all responsibility for and agrees to indemnify first party against loss or damage to property of second party or to property upon its premises, regardless of railroad negligence, arising from fire caused by locomotives operated by first party on said track, or in its vicinity for the purpose of serving second party except to the premises of first party and to rolling stock belonging to first party or to others, and to shipments in the course of transportation.

Second party also agrees to indemnify and hold harmless first party for loss, damage or ibjury from any act or omission of second party, its employees or agents to the person or property of the parties hereto and their employees and to the person or property of any other person or corporation, whole on or about said track; and if any claim or liability other than from fire shall arise from the joint or concurring negligence of both parties hereto it shall be bornee by them equally.

- (16) In case it is necessary for second party to move cars from place to place, either loaded or empty on any of the tracks covered by this contract, second party will delegate for that purpose only employes experience in the handling of cars; and if any cars or rolling stock, belonging to first party or for the safe condition of which it is responsible are damaged or destroyed, or the lading thereof damaged or destroyed, or damage result to the tracks or equipment or structures or property of first party, or any damage to person or loss of life occur as a consequence of such movement, then, whether such damage to property or injury to person or loss of life shall result from improper handling of said cars on the part of the second party's employes or from or by reason of the defective conditions of such cars or their equipment, or otherwise, second party will, on demand, reimburse first party for all damage to its property or property for which it is responsible, and it will indemnify and save harmless first party against the claims and demands of any and all persons on account of damage to property, injury to person or loss of life.
- (17) Second party agrees to indemnify and save harmless first party against all assessments for public improvements which may be assessed against first party on account of the right of way conveyed to it by second party in paragraph three hereof.
- (18) Second party further agrees that in the event of a default in the payment of rental reserved in paragraph 2, or in the payment of the several expenditures contemplated in paragraphs 6 to 12 both inclusive, or in the advance payment of the estimated cost of such expenditures, or in reimbursement and indemnify contemplated in paragraphs 14, 15, 16 and 17 first party may, without notice, cease to deliver cars to or remove cars from the tracks constructed under this contract until such default or defaults have been remedied. The right herein granted shall be without prejudice to the rights reserved in paragraph 19, or any

other rights or remedies at law or in equity.

- First party retains a lien upon all track material and the land herein conveyed as a right of way until second party shall have completed payment for said track material, and all other expenditures incurred by first party in the construction of said tracks. Whenever and as often as the payment of any sums of money due by second party to first party under any of the provisions of this contract shall become due, a lien to secure said sums shall forthwith become fixed upon said track material and the right of way herein granted, which lien shall become extinguished only by the payment of the sum or sums due.
- It is expressly understood and agreed that this contract is personal to second party, (20) and can be assigned only with the written consent of first party, and that as a condition precedent to such consent, first party will require the assignee to assume any indebtedness due from second party. arising under any of the provisions of this contract.
- It is further expressly stipulated and agreed that the second party will install suitable track scales, at location designated by the first party, when the output reaches ten cars in any one day. The type and capacity of the track scales and their foundations shall be approved by the first party before arrangements are therefore made. The second party is to maintain andkeep saidtrack scales in good conditions at all times and as loaded cars are handled from the tipple to the loaded car or truck, carefully weigh the cars andmake records of the initial and number of the car, together with the gross, tare and net weights of the car. This information to be furnished to the agent of the railroad company when billing the shipments. The proper record of the weight of all shipments will be kept by the second party and acceptable to the representative of the first party at all times. All cars on the loaded track are to be coupled by the second party.
- The first party agrees and binds itself to refund that part of the cost of said grack from switch point to clearance point (1221) at the rate of \$2.00 per car on freight shipped to and from said track on which the L & N receives the longest direct haul, the refund to continue until the en tire cost of track, from switch point to clearance, has been refunded or until the expiration of five years from the date of the completion of the track after which the railroad company will own and maintain the track from switch point to clearance point (122')

Witness the signatures of the parties hereto, the day and date first above written.

Louisville & Nashville Railroad Company By: C. E. Brooks, General Manager

Paramount Çoal Company

By T. S. Abernathy, President

Attest:

J. M. Donaldson, Secretary

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, M. Wildsmith, a Notary Public, in and for said State and County, hereby certify that T. S. Abernathy and J. M. Donaldson whose names as President and Secretary respectively of the Paramount Coal Company, a corporation, are signed to the foregoing sinstrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such offices and with full authority executed the same volintarily

for and as the act of the said corporation.

M. Wildsmith--Notary Public

County Jefferson

My commission expires March 1927

STATE OF KENTUCKY

SCT

JEFFERSON COUNTY

I, C. W. haft, a Notary Public in and for said County in said State, hereby certify

that  $T_{ullet}/E_{ullet}$ . Brooks, whose name as General Manager of the Louisville and Nashville Railroad Company, a corporation, is signed to the foregoing contract, and who is known to me, acknowledged before me on this day that being informed of the contents of the contract, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 18th day of November, 1926.

C. W. Shaft--Notary Public Jefferson County Kentucky

My commission expires June 7, 1930 THE STATE OF ALABAMA

SHELBY COUNTY

I, L. B. Riddle Judge of Probate hereby certify that the within agreement was filed in this office for record Dec. 7th 1926 at 3 oclock P.M. and recorded in Deed record 81 page 112 and examined.

L. B. Riddle--Judge of Probate

