

PRIVATE SIDETRACK AGREEMENT

In the year Two Thousand Thirteen.....

Resolved by the Board of Directors of the Burlington Community Development Corporation, as follows:

That Whereas, BCDC owns property north of Sears Lane, east of the railroad mainline, and west of the proposed Champlain Parkway route that was formerly planned as the site of the South End Transit Center; and

Whereas, the property is crossed by a rail spur track known as the Grocery Spur; and

Whereas, the rights to use and maintain the spur are governed by a Private Sidetrack Agreement to which BCDC is a party as a successor in interest to the original signatory parties; and

Whereas, the Private Sidetrack Agreement provides that it may be cancelled by any party with 30 days written notice to the other parties; and

Whereas, BCDC has no need to use and no desire to have the responsibility to maintain the Grocery Spur as provided under the Private Sidetrack Agreement; and

Whereas, the City of Burlington has determined that cancellation of the Agreement will aid in the necessary planning and eventual construction of the Champlain Parkway, which must cross the Grocery Spur at a location just east of the BCDC-owned land; and

Whereas, BCDC has previously resolved that its intent is to convey all of this property to the City of Burlington; and

Whereas, BCDC has previously resolved to cooperate with the City in related matters with respect to this property; and

Now therefore be it resolved:

1. BCDC grants Mayor the authority to cancel the Private Sidetrack Agreement by providing the appropriate written notice to the other parties to the Agreement at whatever future time it is deemed appropriate by the Mayor
2. This resolution shall take effect immediately.

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PRIVATE SIDE TRACK AGREEMENT

THIS AGREEMENT, made and executed in triplicate ^{4th} day of December, 1953, between RUTLAND RAILWAY CORPORATION, party of the first part, hereinafter called the "Railroad" and HOLGER C. PETERSON, party of the second part, and BURLINGTON GROCERY COMPANY, INC., party of the third part, being hereinafter called the "Industry,"

WITNESSETH:

WHEREAS said second party owns a sidetrack connecting with said Railroad's line of railroad in the City of Burlington, County of Chittenden, and State of Vermont, and

WHEREAS said second and third parties have requested the Railroad to construct a spur track connecting with the side track of said party.

NOW THEREFORE, it is mutually covenanted and agreed:

FIRST Said sidetrack is and said spur track shall be constructed as shown in red, yellow and green colors on the white print hereto attached dated August 25, 1953 and made a part of this agreement. The tracks shall be constructed and owned, and the cost of constructing and maintaining the same shall be borne by the parties hereto as follows:

- (a) The Industry shall, without cost to the Railroad, obtain all licenses, franchises or privileges necessary for the construction, maintenance and operation of the track, in, upon, or across any public road, street or other public property or reservation which may be traversed or intersected thereby, and the necessary right of way for the portion of the track extending beyond the Railroad right of way;
- (b) The Railroad shall, at its own expense, maintain that part of the sidetrack on the Railroad right of way from the switch point of connection with the track of the Railroad to the clearance point; such part being 110 feet and indicated in red on the said white print;
- (c) The party of the second part shall at its own expense maintain those parts of said sidetrack beyond the clearance point "B" to "C" about 740 feet and "D" to "E" about 360 feet and indicated in yellow color on said white print, and shall maintain jointly with said third party that part of said track from "C" to "D" 68 feet and indicated in green color on said white print.
- (d) The party of the second part has at its own expense done the grading necessary to construct the roadbed of that portion of said sidetrack from the point of switch at "A" to the point of clearance at "B", and has paid to the Railroad the entire cost of constructing that portion of said track from said point of switch to said point of clearance, such part being 120.61

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CORRECTION

Form Approved

110 feet in length and indicated in red color on said white print, it being understood, however, that the Railroad will refund to said second party at the rate of two Dollars per car of Railroad Freight yielding road haul revenue, delivered on or shipped from said tracks, until the cost of the portion from the switch point of connection with the passing track of the Railroad to the clearance point, except grading, is paid for, and thereafter the Railroad shall own the material in said part of said track.

(e) The party of the third part at its own expense shall bear the entire cost of constructing the spur track from the point of switch of connection with the side-track of said second party at "C" to the end thereof at "F" 368 feet and indicated in green and yellow colors on said white print. Said party of the third part shall maintain jointly with said second party that part of said track from "D" 68 feet and indicated in green color on said white print, and shall at its own expense maintain that part of said track from "D" to "F" 300 feet and indicated in yellow color on the said white print.

(f) The word "Industry" where it occurs hereafter in paragraphs second through and including ninth of this agreement shall not be construed to include the Burlington Grocery Company except in the instance where some obligation, duty or responsibility is placed on the industry with reference to the spur track which it is contemplated will be or has been constructed under the terms of this agreement.

Said tracks being described as follows:

Said sidetrack beginning at a point of switch of connection in the passing track of the Rutland Railway Corporation at Chaining Station, 6368/20 and running thence northwardly and eastwardly on a curve to the right across lands of said Rutland Railway Corporation and lands of Champlain Realty Company, a distance of 1278 feet, as shown in red, green, and yellow colors upon the said attached white print.

Said spur track beginning at a point of switch of connection in the sidetrack of said second party 880 feet from the point of switch of connection of said sidetrack and running thence eastwardly across lands of lands of said Champlain Realty Company and said Burlington Grocery Company, a distance of 368 feet, as shown in green and yellow colors on said white print.

This Agreement supersedes Agreement No. 5194 dated April 16, 1949 with Champlain Realty Company.

Form Approved

General Attorney

CONNECT

CHIEF ENGINEER

(SPECIFY ANY FURTHER PARTICULARS OF THE AGREEMENT)

- (a) The Industry shall, without cost to the Railroad, obtain all licenses, franchises or privileges necessary for the construction, maintenance and operation of the track, in, upon, or across any public road, street or other public property or reservation which may be traversed or intersected thereby, and the necessary right of way for the portion of the track extending beyond the Railroad right of way; (b) The Railroad shall, at its own expense, construct, own and maintain that part of the proposed track on the Railroad right of way from the switch point of connection with the track of the Railroad to the clearance point; such part being indicated in red on the said blue print; (c) The Industry shall, at its own expense, construct and maintain that part of the proposed track beyond the clearance point and shall own the track material therein; such part being indicated in yellow on the said blue print.

hereto as follows: (a) The Industry shall, without cost to the Railroad, obtain all licenses, franchises or privileges necessary for the construction, maintenance and operation of the track, in, upon, or across any public road, street or other public property or reservation which may be traversed or intersected thereby, and the necessary right of way for the portion of the track extending beyond the Railroad right of way; (b) The Railroad shall, at its own expense, construct, own and maintain that part of the proposed track on the Railroad right of way from the switch point of connection with the track of the Railroad to the clearance point; such part being indicated in red on the said blue print; (c) The Industry shall, at its own expense, construct and maintain that part of the proposed track beyond the clearance point and shall own the track material therein; such part being indicated in yellow on the said blue print.

First: Said track shall be constructed as shown in red and yellow colors on the blue print hereto attached, dated _____, and made a part of this agreement. The track shall be constructed and owned, and the cost of constructing and maintaining the same shall be borne by the parties hereto as follows: (a) The Industry shall, without cost to the Railroad, obtain all licenses, franchises or privileges necessary for the construction, maintenance and operation of the track, in, upon, or across any public road, street or other public property or reservation which may be traversed or intersected thereby, and the necessary right of way for the portion of the track extending beyond the Railroad right of way; (b) The Railroad shall, at its own expense, construct, own and maintain that part of the proposed track on the Railroad right of way from the switch point of connection with the track of the Railroad to the clearance point; such part being indicated in red on the said blue print; (c) The Industry shall, at its own expense, construct and maintain that part of the proposed track beyond the clearance point and shall own the track material therein; such part being indicated in yellow on the said blue print.

(e) The party of the third part at its own expense shall bear the entire cost of constructing the track from the point of switch of connection with the side-track of said second party at "C" to the end thereof at "F". 388 feet and 66 feet and indicated in green color on the said white print. Said party of the third part shall maintain jointly with said second party that part of said track from "C" to "D" 66 feet and indicated in green color on said white print, and shall at its own expense maintain that part of said track from "D" to "F" 300 feet and indicated in yellow color on the said white print.

(f) The word "Industry" where it occurs hereafter in paragraphs second through and including ninth of this agreement shall not be construed to include the Burlington Grocery Company except in the instance where some obligation, duty or responsibility is assigned on the industry with reference to the construction, maintenance and operation of the track.

SECOND: The Industry shall keep said track clear of obstructions and shall not place or maintain or allow to be placed or maintained any temporary or permanent structure of any kind within the space of 22 feet 6 inches above base of rail of the said track, or within 10 feet from the center line of main or passing track, or within 8 ft. 4 in. from the center line of any other track, excepting platforms which shall not be within 8 ft. 3 in. from the center line of any track, provided, however, that platforms not over 4 ft. 6 in. above the base of rail may be not less than 1 ft. 4 in. from the center line of industrial and yard tracks. No material shall be placed within 10 ft. from the center of any track.

In case present structures do not afford said clearance, the Industry agrees to indemnify and save harmless the Railroad from all loss, damage or expense on account of injury or damage by reason of said clearance being less, and no structure shall so remain without the approval of the Railroad.

THIRD: In the event that the Railroad shall furnish material or labor herein undertaken to be furnished by the Industry, the Industry shall and will pay to the Railroad, promptly upon rendition of bills, the entire cost thereof, inclusive of the expense of superintendence, supervision and use of tools, handling and storing of material, workmen's compensation and liability insurance, and accounting, and if such payment shall be in default beyond the period of thirty (30) days after bill rendered, the Railroad, in addition to all other remedies, may discontinue all operations over and remove said track. If the Industry fails to maintain in reasonably safe condition, in the judgment of the Railroad, the part of the track which it is required to maintain, the Railroad may discontinue the track or refuse to operate over it when not in such condition, or may without consent of Industry make repairs which it deems necessary and Industry will pay for same as above provided.

FOURTH: Except only as the parties hereto shall in writing stipulate otherwise, all provisions herein as to the aforementioned track shall apply to any and all additions thereto or extensions thereof; and maps or prints showing such additions or extensions may at the option of the Railroad be by it annexed herunto or to its original hereof and shall thereby become and be a part of this agreement.

FIFTH: The Railroad may use the said track for general railroad purposes and expressly reserves the right to connect such part of said track as may be on the premises with other tracks for its own use or that of third parties, provided that said use and connections shall not interfere with the reasonable use of the track which is the subject of this agreement for the business of the Industry. In the event of such use to serve other patrons of the Railroad, or as a connection with other tracks owned or used by the Railroad, there shall be a reduction in the Industry's expense of maintenance, and an adjustment of interest upon the Industry's original outlay for such track, to be determined by the character and extent of such use. The Industry agrees not to extend such part of said track as may be on the premises of Industry or to connect it with any other track, or permit the use thereof by anyone not a party hereto, without first obtaining the written consent of the Railroad.

SIXTH: It is understood that the movement of railroad locomotives involves some risk of fire, and the Industry assumes all responsibility for and agrees to indemnify the Railroad against loss or damage to property of the Industry or to property upon its premises, whether due to Railroad's negligence or not, arising from fire caused by locomotives operated by the Railroad on said track, or in its vicinity for the purpose of serving said Industry, except to the premises of the Railroad and to rolling stock belonging to the Railroad or to others and to shipments in the course of transportation.

The Industry also agrees to indemnify and hold harmless the Railroad for loss, damage or injury from any act or omission of the Industry, 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, while 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 borne by them equally.

The Industry agrees not to handle petroleum products, or other inflammable or explosive materials upon said sidetrack, unless express written permission is given by the Superintendent of the Railroad.

SEVENTH: This agreement shall terminate thirty (30) days after written notice by either party to the other to that effect, such notice on the part of the Railroad may at its option, be given by posting it upon a conspicuous part of the premises, and this agreement in such case shall terminate thirty (30) days after such posting; after which period either party may remove all property belonging to it under this agreement, except as herein otherwise provided.

Until terminated as above provided, this agreement shall enure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

EIGHTH: In the event of termination of this agreement, from any cause whatsoever, the Railroad, if it desires to use that portion of said track located upon its right of way or property beyond the clearance point, shall within thirty (30) days after such termination, pay the Industry the then fair value of the track material belonging to the Industry in such portion of the track. If the Railroad does not desire to use such portion of said track it shall so notify the Industry, in writing, within thirty (30) days after such termination and the Industry shall thereupon be entitled to remove and dispose of the track material belonging to it upon the railroad right of way, beyond the clearance point, within thirty (30) days thereafter.

NINTH: It is understood and agreed that this contract shall apply to all portions of the track shown on the blue prints attached as hereinbefore provided, which may have been constructed under this or any other agreement or otherwise prior to the making of this contract, which portions shall be and become subject to all of its terms applicable subsequent to construction, as fully as though originally constructed, maintained and operated hereunder.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate this
7th day of December, 1953.

In presence of

[Signature]
Makuerstin

x [Signature]

x [Signature]

[Signature]

[Signature]

RUTLAND RAILWAY CORPORATION

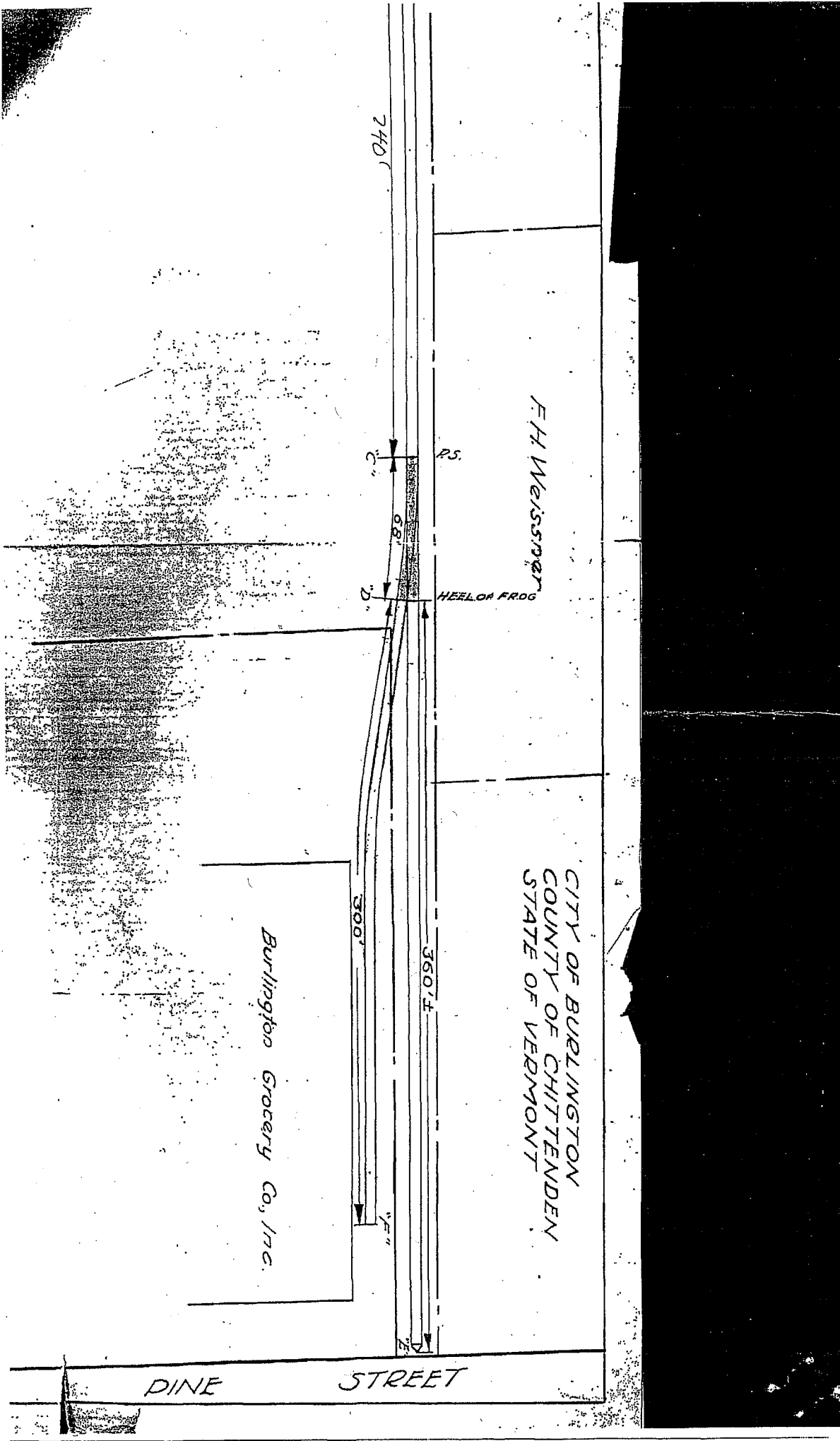
By [Signature]
Executive Assistant [L. S.]

HOLGER C. PETERSON^E

By [Signature]
[L. S.]

BURLINGTON GROCERY COMPANY, ~~INC.~~

By [Signature]
[L. S.]



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