

LEASE

Clause 1. This indenture, made this 11th day of October, A. D.

blacked out
year is 1881

between the Trustees of the Cincinnati Southern Railway, appointed under and by virtue of an Act of the General Assembly of the State of Ohio, passed on the 4th day of May, one thousand eight hundred and sixty-nine, entitled "An Act relating to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants," party of the first part, and The Cincinnati, New Orleans and Texas Pacific Railway Company, party of the second part.

WITNESSETH: That the said party of the first part, under and in pursuance of an Act of the General Assembly of the State of Ohio, passed on the eighteenth day of March, one thousand eight hundred and eighty-one, entitled "An Act supplementary to the Act relating to cities of the first class, having a population exceeding one hundred and fifty thousand inhabitants, passed May 4, 1869," in conformity to the terms and conditions which have been fixed and provided by the Trustees of the said railway and the Trustees of the Sinking Fund of said city, and in pursuance of an award made under said last mentioned act, and with the approval of the said Trustees of said Sinking Fund, evidenced by the signature of Joseph Longworth, President of the Board of Trustees of said Sinking Fund, hereto affixed, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, by the said party of the second part to be paid, kept, and performed, does hereby grant, demise, and lease unto the said party of the first part, for the term of twenty-five years, from the 12th day of October, one thousand eight hundred and eighty-one, the line of railway known as the Cin-

Grant of term.

Cincinnati Southern Railway, extending from its terminus in Cincinnati, Hamilton County, Ohio, to its terminus in Chattanooga, in the County of Hamilton, in the State of Tennessee, and which railway is now completed so as to admit of the passage of cars from one terminus to the other, together with all the works and conveniences of the said railway, including the offices, stations, shops, sheds, depots, car houses, and other grounds, buildings, bridges, viaducts, fences, culverts, tunnels, water stations, wharves, jetties, yards, telegraph posts, and wires, and the road-bed and superstructure of said railway, with the tracks, turn-outs, turn-tables, and the rights of way belonging to or hereafter acquired by said party of the first part, whereas the said and other the works and conveniences used or to be used in constructing, maintaining, or operating said railway may be placed, together with all such rights, privileges, and franchises appertaining to said road, held by said party of the first part, as may be necessary to enable the party of the second part to carry out and perform the provisions of this lease, and to maintain, operate, and conduct the business of said railway,

Clause 2. *To Have and to Hold* to the said party of the second part for and during the full term of twenty-five years from the date first above written, the said party of the second part yielding and paying therefor unto the said party of the first part, their successors and assigns, every year, the rents, taxes, assessments, and charges hereinafter specified, and keeping and performing all and singular the covenants and agreements hereinafter set forth, and by said party of the second part to be kept and performed. The annual rent hereby reserved, which the party of the second part covenants and agrees for itself, its representatives and assigns, to pay to the said party of the first part, its successors and assigns, in lawful money of the United States of America, at the Ter-

minary of the City of Cincinnati, Ohio, payable quarterly on the 12th days of January, April, July and October, in each and every year of said term hereby granted, shall be the sums following, to-wit:

During the first period of five years of the term hereby granted, the annual rental of eight hundred thousand (\$800,000) dollars; during the second period of five years of the term hereby granted, the annual rental of nine hundred thousand (\$900,000) dollars; during the third term of five years of the term hereby granted, the annual rental of one million (\$1,000,000) dollars; during the fourth period of five years of the term hereby granted, the annual rental of one million and ninety thousand (\$1,090,000) dollars; during the fifth period of five years of the term hereby granted, the annual rental of one million two hundred and fifty thousand (\$1,250,000) dollars.

Clause 3. And the said party of the second part further covenants and agrees to pay and discharge, as often as they shall become due, any and all taxes, assessments, duties, imposts and charges whatsoever which may be levied, assessed or imposed during the term hereby granted, by any government or lawful authority whatsoever upon the premises hereby leased, or any part thereof, or upon any business or earnings, or income of the same, or by reason of the ownership thereof, it being the true intent and meaning hereof that all governmental charges upon the aforesaid property or income therefrom, which may be imposed by any governmental authority capable of enforcing such charges, through, upon or against said property, or the corporation owning or the party leasing the same, shall be assumed and satisfied by the party of the second part hereby, however the same may change during the term hereby granted.

Clause 4. And the said party of the second part further covenants and agrees with the party of the first part, that before possession is given under this

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Lease to purchase equipment and supplies of the lessee.

lease, the said party of the second part shall pay, or cause to be paid, to said first party, or secure to be paid, to the satisfaction of said first party the value of all locomotives, rolling stock, machinery, tools, implements, furniture, fuel, material, cross ties, rails, telegraph poles, and other railway supplies which shall then belong to said party of the first part, who shall thereupon assign, transfer and deliver the same to the said party of the second part for use upon said leased railway. The value of said property shall be ascertained by a majority of five disinterested and impartial valuers, to be chosen as follows: two by each of the parties hereto, and the fifth by the valuers so chosen.

Clause 5. And the party of the second part further covenants and agrees with the party of the first part that said party of the second part will, whenever needed, do all repairs, replacements and renewals on the said line of railway and its appendages, including the line of telegraph between the terminal, and will maintain, preserve and keep the same, and every part thereof, in thorough repair, working order and condition, and at the end of this lease will relinquish and surrender the same, with all additions to and improvements thereon, in such thorough repair, working order and condition in which they are required to be put and kept by this lease, and such repairs and renewals to be made by the party of the second part shall include, among other things, the arching, with brick or stone, of the tunnels now lined with timber, or un-limbered tunnels which require arching; the filling of all wooden trestle-works requiring to be filled, and replacing all other wooden trestle-works and bridges with permanent structures of stone and iron; the construction of not less than twenty-five miles of additional side tracks and switches, and the thorough ballasting of the entire road; a suitable block signal equipment, and all necessary station houses, plat

Expense to the first party, replacements and renewals.

Timbered arching.

Timbered arching.

Replacement bridges, stone and iron.

ferns, cattle pens, tool houses, engine houses, contingencies, reservoirs, tanks, fencing and other similar works; and shall be such that upon the surrender of the premises, upon the termination of this lease, the entire line of railway shall be complete in all respects and in the condition of a first-class single-track railroad, with the rails of the main track of the most approved form, and of steel, or the most approved material, and of not less weight than sixty pounds to the yard, and throughout the entire line of the road in a safe condition for the rapid and smooth movement of passenger trains, and the regular transaction of the freight business of the road.

Clause 6. And the said party of the second part further covenants and agrees with the party of the first part, that the said party of the second part will provide and keep the said line of railway supplied with rolling stock and equipment so that the business of the same shall be preserved, encouraged and developed, and that the same shall at all times be done with safety and expedition, and the public accommodated in respect thereto with all practicable conveniences and facilities, and that all future growth of such business, as the same may arise or be reasonably anticipated, shall be fully provided for and secured, and that all reasonable efforts shall be used to maintain, develop and increase the business of said line of railway, and further that it will pay and save hereon the party of the first part from the payment of any costs, expenses, claim, liabilities, damages and demands whatsoever arising out of the possession, control, management and operation of said line of railway and its appendages, or any part thereof, the said party of the second part taking upon itself the same duties, liabilities and obligations in respect thereto as if it had become the owner thereof, and doing every act and thing that may by law be required of, or be obligatory upon the lessee or said

Expense to equip road and develop trade.

Expense to pay interest, taxes and so forth; other liabilities and obligations.

Upon termination of lease, entire line to be surrendered in condition of a first-class single track railroad.

Lease not to em-
ploy Trustees of
the land or of the
Sinking Fund.

Trustees to acquire
additional land
necessary at the
expense of the
Sinking Fund.

the first part, a suitable and convenient car, for the inspection of said leased line of railway and its appendages. And the said party of the second part will not during the term and continuance of this lease employ or retain in its employ as officer, agent, attorney, or employee, or to render any service for hire or reward, any person or persons who at the time of such employment, or the rendering of such service, is a member of the Board of Trustees of the Cincinnati Southern Railway, or of the Board of Trustees of the Sinking Fund of said city.

Clause 10. And whereas it will or may be necessary, in the proper management and operation of said line of railway, to provide lands in the City of Cincinnati, or at other points or places on the line of said railway, for workshops, depots and other terminal facilities and the rights of way thereto, or for the purpose of changing the location or grade, or of providing additional side tracks, or other appendages of said railway, or for other like purposes; and whereas, there is vested in the said Trustees of the Cincinnati Southern Railway, under the laws of the States of Ohio, Kentucky, and Tennessee, a continuing power to acquire or to enter upon, take and appropriate such lands or rights of way for the purposes aforesaid. It is therefore mutually covenanted and agreed by and between the parties hereto that, whenever it shall be found necessary for any of the purposes aforesaid, and the said party of the first part have the lawful power and authority so to do, they shall and will, upon the request of the said party of the second part at the proper cost and expense of the said second party, and without any deduction from the rents and other payments herein reserved and to be paid by said party of the second part, acquire or enter upon, take, and appropriate such lands and rights as may be necessary for the purposes aforesaid; provided, however, that no change of location shall involve a departure from

the general route originally selected for said line of railway. And nothing in this instrument contained shall be so construed as to prevent said party of the first part from selling or conveying any superfluous land or lands now held by them, and included in this lease, which may become unnecessary for the maintenance, use and operation of said line of railway.

Clause 11. It is further mutually covenanted and agreed by and between the parties hereto, that said Trustees of the Cincinnati Southern Railway shall and will, to the extent of their trust funds, provided by law for that purpose, being the residue of the sum of three hundred thousand dollars, as provided in the act of the General Assembly of the State of Ohio, entitled "An act supplementary to the act relating to cities of the first class having a population exceeding one hundred and fifty thousand inhabitants, passed May 4, 1859," passed April 9, 1880, provide lands in the City of Cincinnati for workshops, depots and other terminal facilities and rights of way thereto; provided that said Trustees of the Cincinnati Southern Railway shall, as between the parties hereto, be the sole judges of the location and extent of such lands and rights, and of the amount to be expended therefor. And it is further covenanted and agreed, by and between the parties hereto, that upon the termination of this lease the property to be surrendered to the lessor shall not include the engines, equipment, rolling stock, railway supplies and other personal property then on hand and used in operating said line of railway, nor any workshops, depots, or terminal freight or passenger buildings at Cincinnati, which may be built upon lands not so provided or paid for, or otherwise provided and paid for, by the Trustees of the Cincinnati Southern Railway.

Right of Trustees
to sell superfluous
lands.

Trustees to expend
for terminal facilities
in Cincinnati.

Property surrendered
at termination of lease
to include engines,
equipment, etc.

Lease to operate
Cincinnati Southern
Railway under
Articles Ten of
License to Cincinnati
and Hamilton Co.

Clause 12. It is further covenanted and agreed by and between the parties hereto, that whenever, the said party of the first part, by a certain memorandum

of agreement made between them and the Cincinnati Railroad Company, dated on the nineteenth day of May, in the year one thousand eight hundred and seventy-nine, to which reference is hereby made for the terms and conditions of the same, granted to said railroad company, a determinable license with the rights therein stated, among which is, that said party of the first part, upon the expiration of said license, or other termination of the same, should provide for the reimbursement of the said company's outlay and the assumption of its contracts as in the tenth article of said agreement is provided. Now, the said party of the second part hereby undertakes and agrees to carry out, fulfill, and observe all the obligations of the said Trustees of the Cincinnati Southern Railway, as in said tenth article provided, and to submit to rehabilitation any dispute arising out of said article as provided by the said article of said agreement.

And, whereas, the said party of the first part has sanctioned a certain agreement, dated on the fifth day of September, A. D. 1879, between the Western and Atlantic Railroad Company and the said Cincinnati Railroad Company, for the use of the track of the Western and Atlantic Railroad between Rogers's Station and Chattanooga for two years from December 1, A. D. 1879, at a rental payable to said first named company of two hundred and fifty dollars per month, and have likewise entered into the following agreements:

FIRST. An agreement dated April 16, A. D. 1880, between the Marietta and Cincinnati Railroad Company (as reorganized), the said Cincinnati Railroad Company, the Trustees of the Cincinnati Southern Railway, and the Cincinnati and Baltimore Railway Company, providing for connection tracks and freight depot accommodations in Cincinnati.

SECOND. An agreement dated April 17, A. D. 1880, between the Cincinnati, Indianapolis, St. Louis and

Contract with
Cincinnati and
Marietta R. R.

Letter to assume
contract with
Western and A.
Atlantic R. R.

Chicago Railroad Company, the said Cincinnati Railroad Company, and the Trustees of the Cincinnati Southern Railway, providing for a connection track accommodation in Cincinnati.

THIRD. An agreement dated July 31, A. D. 1880, between the same parties named in the second clause heretofore, providing for a connection track with the grain elevator of said Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company in Cincinnati.

FOURTH. An agreement dated July 31, A. D. 1880, between the same parties named in the second clause heretofore, providing for a car truck transfer on the grounds of the said Cincinnati, Indianapolis, St. Louis and Chicago Railroad Company in Cincinnati.

FIFTH. An agreement dated April 27, 1880 between the Trustees of the Cincinnati Southern Railway and H. H. Squair & Co., and an agreement dated December 27, 1880, between the same parties, modifying the former contract between them, for work to be done on said line of railway in arching the tunnels therein specified.

SIXTH. An agreement dated May 14, 1881 between the Trustees of the Cincinnati Southern Railway and the Keystone Bridge Company for the manufacture and delivery of material for the superstructure of two iron viaducts therein specified, to all of which agreements reference is hereby made for the terms and conditions of the same.

Now the said party of the second part hereby undertakes and agrees to carry out, fulfill and observe all the obligations remaining to be performed of the said party of the first part and the said Cincinnati Railroad Company, as in said agreements provided.

CLAUSE 13. It is further covenanted and agreed by and between, the parties hereto that in case the said party of the second part shall, at any time or times hereafter, during the term herein granted, fail to pay the rent herein reserved or provided to be

same.

same.

Contract with H.
H. Squair & Co.

Contract with
Keystone Bridge
Co.

To further define
the obligations
of contract.

paid by the said party of the second part, or any part of such rent, when the same shall become payable as herein specified, or shall fail to pay the rates, taxes, assessments or other charges herein provided to be paid by the said party of the second part, or shall fail or omit to keep and perform any of the covenants and agreements herein contained by the said party of the second part to be kept and performed, and shall continue in default in respect to the performance of such covenant and agreement for the period of thirty days, then, and in either, any and every such case, it shall be lawful for the said party of the first part, without having made any demand for such rent, or the performance of such covenant, to re-entire into and upon the said railway and premises hereby leased, and every part thereof, and remove all persons therefrom, and from thenceforth the said leased railway and premises, with the appurtenances thereof and all additions and improvements which shall or may have been made to the same, to have, hold, possess and enjoy, as in the first and former estate of the said lessor therein; and upon such re-entire all the estate, right, title, interest, possession, claim and demand whatsoever, of the said party of the second part, in and to the said leased railway and premises, or any part thereof, shall wholly and absolutely cease, determine and become void, any thing herein contained to the contrary in any wise notwithstanding. In case of such re-entire, the rent reserved herein from the time of the last preceding payment of any installment thereof up to the time of such re-entire shall be apporportioned, and such portion thereof as would have been payable in respect to the intervening time, if the whole period in respect to which such installments were payable had elapsed, shall be deemed and taken to be due and payable, and shall be paid by said party of the second part, and such re-entire shall not waive or prejudice any claim or right of said party

It is hereby and is
understandable matter
of no public and
relation or right.

of the first part to or for damages against the party of the second part on account of the non-performance or breach of any of the terms of this lease, and all such claims and rights are expressly preserved to the said party of the first part. And a right and power of re-entire shall arise on each and every forfeiture, breach or default as herein provided, notwithstanding the waiver of any prior right of re-entire or forfeiture under the foregoing provisions.

Arbitration clause.

Clause 14. It is further mutually covenanted and agreed by the parties hereto, that all questions of difference arising between the parties hereto in relation to the construction of this agreement, or otherwise in reference to the rights of the parties under this lease, shall, upon the written demand of either party, stating in such demand the question or questions claimed to be in dispute, be submitted to the arbitration of five disinterested arbitrators, who are neither citizens nor tax-payers of the said City of Cincinnati, two of whom shall be selected by each of the parties hereto, but if either party shall fail so to appoint two arbitrators within ten days after written notice of the selection of two by the other party, then the arbitrators selected by the party giving notice, shall select the other two, and a majority of the four thus chosen shall select the fifth arbitrator, and the award, in writing, of said arbitrators, or a majority of them thus selected, shall be final and conclusive between the parties hereto, their successors and assigns. The said arbitrators shall meet at Cincinnati within ten days after the selection of the fifth arbitrator as herein provided, and, on notice to the parties, proceed, after being duly sworn, to hear and determine the controversy, and they shall have power to direct either party to do all such acts as they may determine to be necessary or expedient to carry their award into effect; and if the subject-matter of the arbitration relates to a forfeiture or right of re-entire as heretofore provided, they, or the majority of

Power of attorney to substitute or vary the name of the party of the second part.

them concurring in such award, shall have power, and the party of the second part does hereby irrevocably appoint them, or a majority of them concurrently as aforesaid, as its attorneys in fact, with authority in the name and in behalf of the said party of the second part, to execute and deliver to the party of the first part a surrender of this lease and all rights under the same, and with power and authority to take possession of and deliver to said parties of the first part the said line of railway and its appendages, with all additions to and improvements thereof, and all other property by said party of the second part to be surrendered upon the termination of this lease as hereinbefore provided; and the arbitrators, or the majority of them, may determine and award what amount of rent may be due and unpaid under this lease, and what amount of damages the party of the first part may or shall be entitled to or from the party of the second part on account of such non-payment of rent, or the non-performance or breach of any of the covenants or terms of this lease, and to provide as to how such rent and damages shall be paid, and the lien herein provided therefor, enforced upon the engines, rolling stock, equipment, and other property of said party of the second part. And said arbitrators shall also have power to determine the amount of the costs of arbitration, and award which party is to pay them.

CLAUSE 13. And for the better assuring and confirming the estate, title and interest of the party of the second part in the property hereby leased and assigned and intended to be leased and assigned, the party of the first part hereby covenants and agrees with the party of the second part that at any time hereafter, and as often as may be requisite to the better carrying out of the objects and intents of the parties hereto, the said party of the first part will do such acts and make such further assurances in law as the party of the second part shall demand and be reasonably advised are necessary therefor. And it is

further hereby mutually covenanted and agreed by the parties hereto, that this lease and all the articles, covenants, agreements, terms and conditions thereof, shall be binding on the parties hereto respectively, and their respective successors and assigns, and that upon the cessation of the powers of the said Trustees of the Cincinnati Southern Railway the covenants and agreements with them shall pass to and be kept and performed with the City of Cincinnati, her successors and assigns, the same as if said city was expressly named therein.

IN WITNESS WHEREOF, Miles Greenwood, Richard M. Bishop, Edward A. Ferguson, Henry Mack and Aaron H. Bugher, Trustees of the Cincinnati Southern Railway, authorized by a resolution of said Board of Trustees of the Cincinnati Southern Railway, have on this 11th day of October, in the year of our Lord, one thousand eight hundred and eighty-one, hereunto affixed their hands and seals. And the Board of the Trustees of the Sinking Fund of Cincinnati, in evidence of their approval hereof, have caused these presents to be attested upon the day and year above mentioned, by the signature of Joseph Longworth, President of said Board of Trustees of the Sinking Fund. And the said Cincinnati, New Orleans and Texas Pacific Railway Company has, upon the day and year above mentioned caused this lease to be signed and sealed by Theodore Cook, its President, and George F. Dougherty, its Secretary, as the act and deed of the said Cincinnati, New Orleans and Texas Pacific Railway Company and its corporate seal to be hereunto affixed by its said Secretary. Executed in triplicate upon the day and year above mentioned.

The Cincinnati, New Orleans & Texas Pacific Railway Company Seal. way Company. [Seal.]
By Theodore Cook, President, [Seal.]
And George F. Dougherty, Secretary, [Seal.]
Miles Greenwood, Richard M. Bishop,
Edward A. Ferguson, Henry Mack,
Aaron H. Bugher,