

Lease.

This Indenture, Made the fifteenth day of January, Anno Domini one thousand eight hundred and seventy-five (1875), between THE FREDERICK AND PENNSYLVANIA LINE RAILROAD COMPANY, a corporation existing under the laws of the State of Maryland, parties of the first part, and THE PENNSYLVANIA RAILROAD COMPANY, a corporation existing under the laws of the State of Pennsylvania, parties of the second part.

Whereas the railroads of the parties hereto connect with each other by means of intervening railroads, and the said parties are desirous to enter into a lease and contract with each other in respect to the use, management, and operation of the railroads of the parties of the first part.

NOW THIS INDENTURE WITNESSETH, that the said parties of the first part, for and in consideration of the covenants and agreements which, on the part of the said parties of the second part, are to be kept and performed, as hereinafter mentioned, have let, leased, and demised, and by these presents do let, lease, and demise unto the said parties of the second part, and their successors and assigns; and the said parties of the second part do take the railroad of the parties of the first part, now constructed and ready for use and operation, extending from its terminus at or near the city of Frederick, in county of Frederick, in the State of Maryland, through the counties of Frederick and Carroll, to its present terminus and junction with the Littlestown Railroad, at or near the town or village of Kingsdale, upon or near the Pennsylvania and Maryland State boundary line, being in length about twenty-eight miles; together with all the branch roads, sidings, depots, stations, buildings, appurtenances, and property, real and personal, and franchises, to the said demised railroad

belonging and appertaining, as well those now owned as those which may hereafter be acquired by the said parties of the first part at and between the said before-mentioned termini of the said railroad, or as appertaining thereto, or extending from the terminus of said railroad in the city of Frederick to the Baltimore and Ohio Railroad, and all the corporate rights and franchises of the said parties of the first part which may, in the judgment of the parties of the second part, be requisite and necessary for the use, operation, and management of the said railroad and property.

To have and to hold the said demised railroad and property, real and personal, and franchises, unto the said parties of the second part, their successors and assigns, to and for the full end and term of nine hundred and ninety-nine years, from and after the first day of January, Anno Domini one thousand eight hundred and seventy-five (1875), fully to be completed and ended, unless sooner determined, as hereinafter mentioned. *Provided always*, That the said parties of the second part shall have the right, at any time after the first day of January, eighteen hundred and eighty, after having given one year's notice in writing to the parties of the first part, or to their successors or assigns, of their intention so to do, to cancel and annul this lease and agreement, and surrender the said demised railroad, property, and premises, to the said parties of the first part, or to their successors or assigns, or in the event of any sale of the said railroad, property, and premises, or of any part thereof, under any decree of any court, or under any mortgage or other lien; then, and in any such event, the parties of the second part shall have the right, at any time thereafter, after having given ten days' notice in writing to the said parties of the first part, or to their successors or assigns, of their intention so to do, to cancel and annul this lease and agreement, and surrender the said demised railroad, property, and premises, to the said parties of first part, or to their successors or assigns; and such cancellation and surrender to be made and accepted without prejudice to any claim which the said parties of the second part may have for moneys advanced over and above the amount received from such gross revenues and receipts.

And this indenture further witnesseth, that, in consideration of

the premises, the parties of the first part hereby covenant and agree as follows:—

FIRST.—That the parties of the second part shall at all times, during the term aforesaid, have full and exclusive power, right, and authority to use, manage, and work the said railroad and property of the said parties of the first part, and shall have the right to fix the tolls thereon; *and further*, that the said parties of the second part shall have full, free, and exclusive right to charge, collect, and receive all the said tolls on, and freight charges, dues, income, and profits to accrue from said railroad and property during said term, and to appropriate the same in the manner hereinafter mentioned; and shall have, use, exercise, and enjoy all the rights, powers, and authority aforesaid, and all other lawful powers and privileges which can or may be lawfully exercised and enjoyed on and about the said demised railroads and property, as exclusively, fully, and entirely as the same might or could have been used, exercised, and enjoyed by said parties of the first part had this lease and contract not have been made; and as exclusively, fully, and entirely, as said parties of the first part have authority by law to grant the same.

SECOND.—That the parties of the first part hereby agree to furnish and provide all such permanent additions, improvements, betterments, and increased facilities to or upon the said demised railroad and property which may be required or deemed necessary by the parties of the second part for the full and complete accommodation of the traffic of the said demised railroad; and that, if the parties of the first part shall fail to provide such additions, improvements, betterments, and facilities, when required in writing by the parties of the second part, then said parties of the second part may proceed to furnish and provide the same, and to repay themselves the cost thereof out of the net earnings of said railroad and property, as hereinafter mentioned; and if at any time said net earnings shall be insufficient therefor, then the parties of the first part hereby agree to pay the deficiency in cash, or, at the option of the parties of the first part, in bonds of the parties of the first part, to be issued and secured as hereinafter mentioned; and the parties of the first part hereby promise and agree to issue their bonds for such amounts as may be approved by the parties of the

not exceeding three hundred thousand dollars, to bear interest at the rate of six per centum per annum in gold, and to be convertible at the option of the holders into stock at par; and that,

in order to secure the said bonds, the said parties of the first part shall and will execute and deliver a mortgage upon all the railroads, property, and appurtenances and franchises of the parties of the first part, and that the said bonds and mortgages shall be of such form and tenor as may be approved by the parties of the second part. And the parties of the first part do further covenant and agree that the said bonds, or the proceeds thereof, shall be applied only to the payment of the cost of such additions, improvements, betterments, and facilities as may be made from time to time to or upon said railroad and property as aforesaid, unless the parties of the second part shall consent in writing that the said bonds may be otherwise applied; and the said parties of the first part do also hereby covenant and agree that they shall not and will not issue any other bonds, nor execute any other mortgage upon their said railroads, property, and franchises, or create any other obligation or indebtedness in any form than as aforesaid without the consent and approval of the parties of the second part in writing.

And in consideration of the premises, the parties of the second part do hereby covenant and agree to and with the said parties of the first part as follows, viz. :—

FIRST.—That the parties of the second part shall and will, at all times during the hereby demised term, or until this lease be cancelled, as hereinbefore mentioned, work, use, manage, maintain, operate, and keep in public use the said railroad of the parties of the first part, with the appurtenances, and will so work, use, and efficiently operate said railroad and appurtenances, with all such locomotives, cars, and rolling stock, owned and to be owned, controlled or used by them, the parties of the second part, as shall in the judgment of the parties of the second part reasonably be required for and properly adapted to

which shall accrue as aforesaid, and apply and appropriate the same in the manner following, to wit: *Firstly*, To the payment of the semi-annual cost of repairing, maintaining, and perpetuating for public use the said railroad and property, and the equipment used thereon, and all the expense of working, using, managing, and operating the same, including compensation for the use of engines and cars actually employed thereon; such compensation to be at the rate of eight per centum per annum on the cost of such engines and cars, to be estimated at their cash market value at the time they are placed on said railroad for use; and a further reasonable allowance for depreciation, wear and tear of the same, premiums for insurance, and all tolls, taxes, or assessments now levied or assessed, or that may hereafter be levied or assessed by the laws of the United States, or of the State of Maryland, upon the traffic passing over said railroad, and the property of the said parties of the first part now or hereafter acquired by the parties of the second part by and under this lease; but it is hereby agreed that no part of the salary of the General Superintendent, or of any officers or employees of the parties of the second part of a grade superior to him, shall be charged or considered as a part of or embraced in the cost and expenses of repairing, maintaining and perpetuating, working, using, managing, and operating the said railroad and property as aforesaid; and it is also agreed that freight cars shall not be included in the cost of equipment upon which eight per centum is to be allowed for use as aforesaid, but that a charge per ton per mile for all freight transported shall be allowed to the parties of the second part for the use of such freight cars; which charge shall be at the rate which will cover the actual cost of repairs, depreciation, and interest, as shown from time to time by the books of the parties of the second part for their entire line. *Secondly*, To the payment of the interest upon a judgment to be given by the parties of the first part to the parties of the second part, for the sum of one hundred and fifteen thousand dollars, to be paid in four months after date, with interest at the rate of six per centum per annum; the said sum of one hundred and fifteen thousand dollars having been advanced by the said parties of the second part to pay off the present floating debt of the said parties of the first part. *Thirdly*, To the payment of the interest on such other floating debt of the parties of the first part as may hereafter be incurred by the consent in writing of the parties of

the second part. *Fourthly*, To the payment over to the parties of the first part semi-annually out of the surplus, if any then remaining, of such sum or sums of money as may be necessary to pay the matured and maturing coupons for interest on the bonds of the parties of the first part, secured by two several mortgages

on the said railroad and appurtenances as described in said mortgages, as follows: One dated the first day of October, 1870, to secure bonds to the amount of two hundred and fifty thousand dollars; and the other dated the tenth day of July, 1872, to secure bonds to the amount of two hundred and fifty thousand dollars, and as may be necessary to pay the accrued and accruing interest on any other bonds of the parties of the first part that may then have been issued under the provisions of this lease, and be then outstanding, and as may be necessary to pay any and all taxes, assessments, duties, imposts, or charges imposed by law upon the parties of the first part; the said sums to be applied specifically by the parties of the first part to the payment of said interest and taxes, assessments, duties, imposts, and charges; but if the residue of the said net earnings of said railroad and property, applicable to the payment of said coupons for interest as above provided, shall at any time during the period of five years from the date hereof, be insufficient to pay the said coupons for interest as they mature during said period, then the said parties of the second part agree that they will purchase, or cause to be purchased, all such unpaid coupons at their maturity at their par value; the parties purchasing the same to be thereupon subrogated to the position and all the rights of the previous holders of said coupons as security for the sum or sums paid for the purchase of said coupons, which they agree to hold, and upon which they agree not to institute proceedings for the foreclosure of the mortgages securing the same until after the expiration of said five years from the date hereof, unless such proceedings for foreclosure shall be instituted by other holders of any of said bonds.

including the amount secured by the above-mentioned judgment to be given by them to the parties of the second part. *Sixthly*, To the repayment to the parties of the second part (after paying over such sum or sums as may be necessary for the payment of interest on bonds and taxes as aforesaid) of the cost of any additions, improvements, betterments, or increased facilities made or furnished by them to or upon the said demised railroad and property which they may require or deem necessary as above mentioned, and which may not be furnished or provided and not paid for by the parties of the first part as aforesaid. *Seventhly*, To the payment over to the said parties of the first part, semi-annually, of the residue of the surplus, if any thereafter remaining, to be by them applied to such uses and purposes as they may deem proper, and to their own use, benefit, and behoof.

SECOND.—That the said parties of the second part shall and will, at all times during the hereby demised term, except in the event of the cancellation of this lease, as hereinbefore provided, keep the buildings upon the lands hereby demised insured against loss by fire, paying the premium therefor as aforesaid out of said earnings, income, and profits, and will keep said demised railroad and property in good order and repair; and will, at the expiration of the hereby demised term, or other sooner determination of this lease and contract, yield and deliver up the hereby demised railroad, property and appurtenances, in the same good order and repair that the same are now in or may be put in during the hereby demised term; reasonable wear and tear, and damage or loss from fire or other casualties, excepted.

THIRD.—That the parties of the second part shall keep accounts of all the receipts and revenues arising from the business and traffic of, over and upon the said demised railroad and property, and of the cost and expense of repairing, maintaining, perpetuating, working, using, and operating the said railroad and property; and the books of the said parties of the second part relating thereto shall be subject to examination by the President of the parties of the first part, or by any agent duly authorized by them to examine the same. And the parties of the second part shall furnish to the parties of the first part monthly accounts of all the gross receipts, and semi-annual accounts of all the said business,

receipts, revenues, and expenses and payments as aforesaid. And the said President, or duly appointed agent of the parties of the first part, shall be supplied with the necessary authority giving them the right at all times to travel without charge on the cars of the said parties of the second part over the said demised railroad, for the purpose of examining and inquiring into the business and management of the said railroad, and of reporting thereon to the parties of the first part.

FOURTH.—That if any difference shall arise between the parties hereto in relation to the terms of this lease, or in relation to any matter, cause, or thing, arising hereunder, then each of the parties hereto shall select a disinterested referee of experience and skill in railway management, and the said referees shall select another of like experience and skill, and the three so chosen shall hear and decide such differences, and their decision, or that of a majority of them, shall be final and conclusive upon the parties hereto. And in case either of the said parties should fail to appoint a referee as aforesaid for the space of twenty days after written notice to make such appointment, then and in that event the referee appointed by the parties not in default shall appoint a referee for the defaulting parties, and the said two referees so appointed shall select a third referee, and the three so chosen shall hear and decide such differences, and their decision, or that of a majority of them, shall be final and conclusive upon all the parties hereto.

FIFTH.—And it is further covenanted and agreed by and between the parties hereto, that as the said railroad of the parties of the first part, or any branches thereof, shall from time to time be extended and completed and ready for operating, the parties of the second part shall have the right and option to take and operate the same upon like terms and conditions as are hereinbefore specified, and that the parties of the first part shall and will from time to time, and at any time hereafter, when requested by the parties of the second part, execute and deliver such further or other instruments of writing as may be necessary to carry into effect the full intent and meaning of these presents, or to transfer

And this indenture further witnesseth, that the said parties of the first part do hereby appoint James McSherry their attorney, to appear for them before any Notary Public, or other officer authorized to take the acknowledgment of deeds or other instruments of writing required by the law of Maryland to be recorded, and to acknowledge these presents as the act and deed of the Frederick and Pennsylvania Line Railroad Company.

And this indenture further witnesseth, that the said parties of the second part do hereby appoint Joseph Lesley their attorney, to appear for them before any Notary Public, or other officer authorized to take the acknowledgment of deeds or other instruments of writing required by the law of Maryland to be recorded, and to acknowledge these presents as the act and deed of the Pennsylvania Railroad Company.

In Witness whereof, the said parties to these presents have caused their respective common or corporate seals to be hereunto affixed, and these presents to be signed by their respective Presidents, and the execution hereof to be attested by their respective Secretaries. Dated the day and year first above written.



JOHN D. LOATS,
President F. and P. L. R. R. Co.

JAS. McSHERRY,
Secretary pro tem.

The Pennsylvania Railroad Company, by authority of the Board of Directors.

G. B. ROBERTS,
Vice-President.

JOS. LESLEY,
Secretary.

Attest:



Sealed and delivered in the presence of us:
P. JANNEY,