

Released
Mar - 7-1951
See Attached Released
COUNTERTPART NO. 33

THE WESTERN PACIFIC RAILROAD COMPANY

TO

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK,

Trustee

General Mortgage

Dated as of January 1, 1939

This instrument is, among other things, a mortgage of chattels.

File No. 25287
Filed as a Chattel Mortgage at the request of
W. H. Smith, Jr.
April 4-1945 at 4:43 PM

Peter Merrials
Recorder

Released
See Book "H" Page 365 of Mortgages
For
Deed of Release and Reconveyance

This instrument is, among other things, a mortgage of chattels.

THIS INDENTURE, dated as of the first day of January, 1939, between THE WESTERN PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of California (hereinafter referred to as the "Company"), party of the first part, and THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, a corporation organized and existing under the laws of the United States, and having its principal office and place of business in the Borough of Manhattan, City and State of New York (hereinafter referred to as the "Trustee"), party of the second part;

WHEREAS, the Company is authorized to own and operate, and does own and operate, certain lines of railroad in the States of California, Nevada and Utah;

WHEREAS, on August 2, 1935, the Company duly commenced reorganization proceedings pursuant to Section 77 of the Bankruptcy Act, as amended, by filing a petition in the United States District Court for the Northern District of California, Southern Division (hereinafter referred to as the "Court"), alleging that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization;

WHEREAS, on June 21, 1939, the Interstate Commerce Commission duly issued its order in Finance Docket No. 10913 approving a plan of reorganization of the Company which is set forth in said order and is hereinafter referred to as the "Plan"; on August 15, 1940, the Court entered its order approving said Plan; and by its order entered on October 11, 1943, the Court confirmed said Plan;

WHEREAS, pursuant to the Plan and the order of the Court dated November 27, 1944, the Company has executed and delivered to Crocker First National Bank of San Francisco, as trustee, its indenture of mortgage dated as of January 1, 1939, known as and hereinafter referred to as its "First Mortgage", to secure an issue of bonds of the Company (hereinafter referred to as "First Mortgage Bonds") issued and to be issued thereunder, which mortgage constitutes a first lien upon the property and franchises therein described, subject only to the liens therein expressly mentioned;

WHEREAS, the Plan provides for the execution of a new mortgage, referred to therein as the "income mortgage", to secure bonds referred to therein as "income-mortgage bonds", and contains sundry provisions with respect to the amounts, interest rates, maturities and redemption provisions of, and sinking funds for, the bonds to be issued thereunder originally, the original security and the after-acquired property clauses of the mortgage, the restrictions on the issuance of additional bonds, certain covenants to be contained in the income mortgage, and other matters;

WHEREAS, as provided in the Plan the Reorganization Committee designated pursuant thereto has duly determined the form and, except as otherwise provided in the Plan, the provisions of this Indenture and the bonds and coupons provided for therein;

WHEREAS, on November 27, 1944, the Court duly entered its order in said reorganization proceedings finding that the execution of this Indenture is necessary and proper to put into effect and carry out the Plan, and authorizing and directing the execution of this Indenture by the parties thereto;

WHEREAS, the Company by virtue of the provisions of said order and the Plan is obligated upon the execution of this Indenture to issue its General Mortgage Income Bonds, Series A, due January 1, 2014 (hereinafter sometimes called the "Series A Bonds") in the principal amount of Twenty-One Million, Two Hundred Nineteen Thousand Dollars (\$21,219,000) for delivery pursuant to the Plan and the Court's order of November 27, 1944, and desires to issue additional bonds from time to time as hereinafter provided;

WHEREAS, the Company is duly authorized to issue its bonds for the purposes herein set forth and to mortgage its property, real and personal, and its franchises to secure the payment of such bonds;

WHEREAS, the Board of Directors of the Company has duly adopted resolutions authorizing the creation of a bonded indebtedness as provided for in this Indenture and the execution and delivery by the Company of a mortgage or deed of trust upon the properties of the Company, substantially in the form of this Indenture, to the Trustee and its successor or successors to secure bonds issuable from time to time for the purposes and upon the conditions herein set forth, and all corporate action requisite under the laws of the State of California to authorize

the execution and delivery of this Indenture by the Company has been duly taken;

WHEREAS, the bonds issuable hereunder (designated generally as "General Mortgage Income Bonds" and hereinafter referred to as the "Bonds"), are issuable in series and, in the case of each particular series, other than Series A, the designation of the series, the date of the Bonds thereof, the date of maturity, the rate of interest, the interest payment dates, the denominations of such Bonds, the redemption provisions, if any, the sinking fund provisions, if any, the conversion privileges, if any, and any limitation upon the aggregate principal amount of the Bonds of such series (except as otherwise provided in this Indenture), as well as such additional provisions as are required or permitted by this Indenture, are to be determined by the Board of Directors of the Company at the time of the authorization of such series;

WHEREAS, the Series A Bonds, all of which are to be in registered form without coupons, and the Trustee's certificate of authentication to be endorsed on all of the Bonds are to be, severally, substantially as follows, with such appropriate omissions, substitutions and variations as are provided for or permitted in this Indenture:

[FORM OF SERIES A BOND]

No. \$.....

THE WESTERN PACIFIC RAILROAD COMPANY

General Mortgage 4½% Income Bond, Series A
due January 1, 2014

The Western Pacific Railroad Company, a corporation organized and existing under the laws of the State of California (hereinafter called the "Company") for value received hereby promises to pay to _____ or registered assigns, on January 1, 2014 (unless this Bond shall have been converted or shall have been called for redemption and payment thereof duly provided for) the principal sum of _____ Dollars (\$ _____), and to pay interest on said principal sum as and to the extent provided in the Indenture, hereinafter mentioned, at the rate of four and one-half per cent (4½%) per annum on May 1 of each year (in each case through the December 31, next preceding) until the payment of said principal sum, provided that interest through December 31, 2013 shall be payable on January 1, 2014 and provided further that, except as otherwise provided herein or in the Indenture, until maturity,

whether by declaration or otherwise, such interest shall be payable only if and to the extent that the amounts applicable thereto under the provisions of the Indenture are sufficient to make such interest payments. Unpaid interest will accumulate to an amount not exceeding prior to maturity (exclusive of the interest earned as provided in the Indenture but unpaid) $13\frac{1}{2}\%$ of the principal hereof at any one time and such accumulated interest will be payable thereafter if earned, as provided in the Indenture, or in any event, at the maturity of this Bond, whether by declaration or otherwise.

The principal of and interest on this Bond are payable at the office or agency of the Company in the Borough of Manhattan, City and State of New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

This Bond is one of a duly authorized issue of Bonds of the Company designated generally as its "General Mortgage Income Bonds" (hereinafter called the "Bonds"), unlimited as to aggregate principal amount at any one time outstanding, all issued and to be issued in series under and pursuant to, and irrespective of the time of issue all equally and ratably secured by, an indenture of mortgage or deed of trust (herein called the "Indenture") dated as of January 1, 1939, executed by the Company to The Chase National Bank of the City of New York, as Trustee, to which Indenture and any and all supplements thereto reference is hereby made for a description of the property mortgaged and pledged, the nature and extent of the security and the rights of the holders of the Bonds and of the Trustee in respect of such security. The Bonds of the series in which this Bond is included are designated as General Mortgage $4\frac{1}{2}\%$ Income Bonds, Series A, which series is limited to an aggregate principal amount of Twenty-one Million, Two Hundred Nineteen Thousand Dollars (\$21,219,000) at any one time outstanding.

In case an event of default as specified in the Indenture shall occur, the principal of the Bonds may be declared or may become due and payable, in the manner and with the effect provided in the Indenture.

In the manner and subject to the terms and provisions set forth in the Indenture, the Bonds of this series are redeemable before maturity, at the option of the Company, or through the operation of a Sinking Fund provided for in the Indenture, on May 1 of any year as a whole or in part by lot, after the mailing of written notice of such redemption at least thirty days before the date designated for such redemption, to the registered holders of the Bonds designated for redemption, at a redemption price equal to the principal amount thereof plus (1) interest at the rate of $4\frac{1}{2}\%$ on the principal amount from January 1 of the preceding calendar year to the redemption date, (2) any interest earned in any previous year, except the preceding calendar year and not theretofore paid, and (3) all accumulated and unpaid interest to an amount not in excess of $13\frac{1}{2}\%$ of the principal thereof.

Under the conditions and to the extent provided in the Indenture, this Bond is entitled to the benefits of the Sinking Fund provided in the Indenture.

This Bond is convertible at the option of the registered holder as provided in the Indenture into shares of the common stock of the Company at the rate of 2 shares of such stock for each \$100 principal amount hereof.

On the conditions prescribed in the Indenture, this Bond is transferable by the registered holder hereof in person or by attorney duly authorized, at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, or at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, upon surrender and cancellation of this Bond, together with a duly executed written instrument of transfer, in form approved by the Company, and upon payment, if the Company shall require it, of the transfer charges prescribed in the Indenture. Thereupon a new fully registered Bond or Bonds of the same series for a like aggregate principal amount will be issued to the transferee in exchange therefor as provided in the Indenture.

Bonds of this series are issuable in the form of registered bonds without coupons in denominations of \$100, \$500, \$1,000, \$5,000 and \$10,000, and such other denominations, if any, as may be authorized by the Company and the several denominations of bonds are interchangeable (provided, however, that Bonds may not be exchanged for Bonds of lesser denominations when any such lesser denomination is less than \$1,000) upon presentation thereof for that purpose at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, and upon payment of charges, all as provided in the Indenture.

On the conditions, in the manner and to the extent permitted by the Indenture, the provisions of the Indenture may be changed or altered and the rights of the bondholders, whether arising under the Indenture or otherwise, may be modified or compromised, by the action of the registered holders of at least 66⅔% in principal amount of the Bonds then outstanding, and certain other powers set out in the Indenture may be exercised by the action of such percentage in principal amount of the Bonds then outstanding as is specified in the Indenture; provided, however, that as set forth in the Indenture no such change, alteration, modification or compromise, nor any exercise of any such powers shall change the maturity, redemption price, or principal amount, of any of the Bonds or otherwise modify the terms of payment of the principal thereof or the accumulated unpaid interest thereon (the Company's obligation in those respects being unconditional) or effect a reduction of the percentages required for the exercise of any of the powers of the bondholders above referred to, without the affirmative vote or written consent of the registered holder of each Bond thereby affected.

No recourse shall be had for the payment of the principal of or interest on this Bond, or any part thereof, or for any claim based hereon or because of the creation of the indebtedness represented hereby, or in respect of the obligations, covenants and agreements contained in the Indenture, or implied therefrom, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company, or of any predecessor or successor company, either directly or through the Company or any such predecessor or successor company, whether by virtue of any statute, constitutional provision or rule of law, or by the enforcement of any assessment or otherwise, all such liability being by the acceptance hereof and as a part of the consideration for the issue hereof expressly waived and released.

This Bond shall not be valid or obligatory for any purpose unless and until the certificate of authentication hereon endorsed shall have been executed by the Trustee or its successor in trust under the Indenture.

IN WITNESS WHEREOF, The Western Pacific Railroad Company has caused this Bond to be signed by its President or one of its Vice Presidents and its corporate seal or a facsimile thereof to be impressed or imprinted hereon and to be attested by its Secretary or one of its Assistant Secretaries, and this Bond to be dated as of

THE WESTERN PACIFIC RAILROAD COMPANY

By
Vice President

Attest:

.....
Assistant Secretary

[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

This Bond is one of the Bonds, of the series designated therein, described in the within-mentioned Indenture.

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK, *as Trustee,*

By
Assistant Cashier

and

WHEREAS, all acts and things prescribed by law and by the articles of incorporation and by-laws of the Company have been duly performed and complied with, and the Company has executed this Indenture in the exercise of the legal right and power in it vested, and all things necessary to make the Bonds and coupons, when executed by the Company, and when the Bonds are authenticated by the Trustee, the valid and binding obligations of the Company, and to make this Indenture a valid and binding mortgage, deed of trust and agreement for the security of the Bonds and coupons, have been done and performed;

NOW, THEREFORE, THIS INDENTURE WITNESSETH: That in order to secure the payment of the principal of, premium, if any, and interest on all of the Bonds at any time issued and outstanding under this Indenture, according to their tenor, purport and effect, and to secure the performance and observance of all the covenants and conditions therein and herein contained, and to declare the terms and conditions upon which the Bonds and coupons are issued, received and held, and for and in consideration of the premises and pursuant to and in accordance with the order of the Court entered in the said reorganization proceedings on November 27, 1944, and in consideration of the acceptance or purchase of the Bonds and coupons by the holders thereof, and of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, to the Company duly paid by the Trustee at or before the delivery of this Indenture, the receipt whereof is hereby acknowledged, the Company has executed and delivered this Indenture, and has mortgaged, pledged, granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does mortgage, pledge, grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the Trustee, its successors in the trust, and its and their assigns:

FIRST: All and singular, the lines of railroad owned by the Company, including specifically, but not exclusively, the following:

PART I

Main Line—San Francisco to Salt Lake City

A main line of railroad commencing in the City and County of San Francisco, California, thence across San Francisco Bay to the City of Oakland, Alameda County, California; thence in a gen-

eral northerly and easterly direction through the Counties of Alameda, San Joaquin, Sacramento, Sutter, Yuba, Butte, Plumas and Lassen, in the State of California, and in a general easterly direction through the Counties of Washoe, Pershing, Humboldt, Lander, Eureka, and Elko, in the State of Nevada, and in a general easterly direction through the Counties of Tooele and Salt Lake, in the State of Utah, to and into Salt Lake City, Utah; said line of railroad being about 926.41 miles in length.

Main Line—Keddie to Bieber

A main line of railroad having its initial point and connection with said main line at or near Keddie, Plumas County, California, and extending thence in a general northerly direction through Plumas and Lassen Counties, to a point near Bieber, Lassen County, California; said line of railroad being about 106.54 miles in length.

PART II

Branch—Niles to San Jose

A branch line of railroad having its initial point and connection with the Company's main line at or near Niles, Alameda County, California, and extending thence in a general southerly direction through Alameda and Santa Clara Counties to and into the City of San Jose, County of Santa Clara, California; being about 23.07 miles in length.

Branch—Carbona to Moy

A branch line of railroad having its initial point and connection with the Company's main line at or near Carbona, San Joaquin County; California, and extending thence in a general southwesterly direction to Moy, San Joaquin County, California; being about 4.43 miles in length.

Branch—Terminous Junction to Terminous

A branch line of railroad having its initial point and connection with the Company's main line at or near Terminous Junction, San Joaquin County; California, and extending thence in a general westerly direction to Terminous, San Joaquin County, California; being about 7.92 miles in length.

Branch—Hawley to Loyalton

A branch line of railroad having its initial point and connection with the Company's main line at or near Hawley, Plumas County, California, and extending thence in a general southeasterly direction through Plumas and Sierra Counties to Loyalton, Sierra County, California; being about 13 miles in length.

Branch—Reno Junction to Reno

A branch line of railroad having its initial point and connection with the Company's main line at or near Reno Junction, Lassen County, California, and extending thence in a general southeasterly direction through Lassen and Sierra Counties, California, and through Washoe County, Nevada, to and into the City of Reno, Washoe County, Nevada; being about 33.11 miles in length.

Branch—Wells to connection with Oregon Short Line Railroad

A branch line of railroad having its initial point and connection with the Company's main line at or near Wells, Elko County, Nevada, and extending thence in a general northeasterly direction to a connection with the Oregon Short Line Railroad in Elko County, Nevada; being about 1.18 miles in length.

Branch—Ellerbeck to Dolomite and Flux

A branch line of railroad having its initial point and connection with the Company's main line of railroad at or near Ellerbeck, Tooele County, Utah, and extending thence in a general southwesterly direction to a junction point, thence westerly to Dolomite, Tooele County, Utah, and also from said junction point southeasterly to Flux, Tooele County, Utah; being about 5.85 miles in length.

Branch—Burmester to Warner

A branch line of railroad having its initial point and connection with the Company's main line of railroad at or near Burmester, Tooele County, Utah, and extending thence in a general southeasterly direction to Warner, Tooele County, Utah; being about 15.52 miles in length.

SECOND: All right, title and interest of the Company in and to all real estate, whether used or held for transportation or other purposes, located in the City and County of San Francisco and in the Counties of Alameda, Butte, Lassen, Plumas, Sacramento, San Joaquin, Santa Clara, Sierra, Sutter and Yuba in the State of California, in the counties of Elko, Eureka, Humbolt, Lander, Pershing and Washoe in the State of Nevada and in the counties of Box Elder, Salt Lake and Tooele in the State of Utah, or in any other county in any of said states, and any other real estate wherever located, held, owned, possessed or claimed by the Company.

THIRD: All of the Company's estate, right, title and interest, terms and remainders of terms, franchises, privileges and rights of action of whatsoever name or nature in law or in equity, in or under any and all leases, and any and all trackage, terminal, joint facility or operating contracts or agreements.

FOURTH: Any and all rights of way, lands, fixtures, structures, improvements, tenements and hereditaments of whatever kind or description and wherever situated, now owned by, or at any time hereafter acquired by or for, the Company and contiguous or appurtenant to, or used in connection with any of the Company's lines of railroad, including in the property comprised in the description in this paragraph any and all main, branch, spur, industrial, switch, connecting, storage, yard and terminal tracks, rights of way, easements, superstructures, roadbeds, bridges, trestles, culverts, viaducts, buildings, depots, stations, stockyards, warehouses, elevators, car houses, engine houses, freight houses, machine shops and other shops, turntables, fuel stations, fuel supply lines and fuel supply sites, water stations, water supply lines and water supply sites, signals, interlocking plants, telephone and telegraph and other communication lines and systems, fences, docks, structures and fixtures, and other things of whatsoever kind in any wise or at any time appurtenant to, or used in connection with, any of the Company's lines of railroad or real property at any time subject to the lien hereof.

FIFTH: All the right, title and interest, of every name and nature, of the Company in and to all engines, locomotives, tenders, cars, coaches, busses, trucks and other rolling stock and equipment, all steamships, ferries, boats, barges, tugs and other floating equipment, and all aircraft, whether now owned or hereafter acquired, and whether owned

directly by the Company, or used and enjoyed by it subject to an equipment trust agreement, lease, conditional sale agreement, mortgage or otherwise; *provided, however*, that as to any equipment hereafter constructed by the Company, if the Company shall (a) prior to beginning the construction of any such equipment deliver to the Trustee written notice that it intends to construct the same and on or before a specified date, not later than ninety days after the completion of such equipment, to subject it to an equipment trust agreement, lease, conditional sale agreement, mortgage or other lien to provide, or to reimburse the Company for, any part of the cost of such equipment and (b) on or before such specified date execute and deliver an equipment trust agreement, lease, conditional sale agreement, mortgage or other instrument of lien to which such equipment shall be so subjected, then and in such event the lien of this Indenture upon such equipment shall be subject to such equipment trust agreement, lease, conditional sale agreement, mortgage or other lien.

SIXTH: The following bonds and other evidences of indebtedness and shares of capital stock now owned by the Company and which (except for directors' qualifying shares) have been delivered to the trustee under the First Mortgage on the execution and delivery thereof:

| <i>Stock</i> | <i>Name of Company</i> | <i>Par Value Per Share</i> | <i>No. of Shares</i> | <i>Total Par Value</i> |
|--------------|---|--------------------------------|--------------------------|-----------------------------|
| | Sacramento Northern Railway | \$100. | 10,000 | \$1,000,000.00 |
| | Tidewater Southern Railway Company | 1. | 1,147,968 | 1,147,968.00 |
| | The Salt Lake City Union Depot and Railroad Company, Common | 100. | 1,000 | 100,000.00 |
| | The Salt Lake City Union Depot and Railroad Company, Preferred | 100. | 3,000 | 300,000.00 |
| | The Oakland Terminal Railway | 100. | 1,125 | 112,500.00 |
| | Alameda Belt Line | 100. | 4,711 | 471,100.00 |
| | Central California Traction Company, Common.... | 100. | 967 $\frac{2}{3}$ | 96,766.67 |
| | Central California Traction Company, Preferred... | 100. | 2,642 $\frac{2}{3}$ | 264,266.67 |
| | Standard Realty and Development Company | 100. | 4,005 | 400,500.00 |
| | Railway Express Agency, Incorporated | — | 2 | — |
| <i>Bonds</i> | <i>Name of Company and Description</i> | | | <i>Principal Amount</i> |
| | Sacramento Northern Railroad, First Mortgage Bonds (assumed by Sacramento Northern Railway) | | | \$5,213,475.35 |
| | Central California Traction Company, First Mortgage Bonds | | | 270,000.00 |
| <i>Notes</i> | <i>Name of Company</i> | | | <i>Principal Amount</i> |
| | Sacramento Northern Railway | | | \$4,524,744.38 |
| | Standard Realty and Development Company | | | 251,273.07 |

SEVENTH: Any and all other property of every kind and description, real, personal or mixed, owned by the Company at the actual date of the execution and delivery hereof, acquired by it from the Reorganization Trustees, and all right, title and interest of the Company in and to any and all other property of every kind and description, whether or not used or useful in the transportation operations of the Company.

EIGHTH: All right, title and interest of the Company in and to any and all additions, betterments and improvements to or upon or in connection with any and all lines of railroad, premises and property of any character whatsoever now or at any time hereafter subject to the lien hereof.

NINTH: Any and all corporate rights, powers, franchises, privileges and immunities now or hereafter owned or possessed by the Company which now or at any time hereafter may be necessary for or appurtenant to the use, operation, management, maintenance, renewal, alteration or improvement of the Company's lines of railroad or of any other property now or hereafter subject to the lien hereof.

TENTH: Any and all property of every kind and description, real, personal or mixed, which at any time hereafter by delivery or by writing of any kind shall be expressly conveyed, mortgaged, pledged, delivered, assigned or transferred to the Trustee hereunder by the Company, or by a successor corporation, or with its consent by anyone on its behalf, for the purposes hereof; the Trustee being hereby authorized at any and all times to receive such conveyance, mortgage, pledge, delivery, assignment or transfer and to hold and apply any and all such property subject to the terms hereof.

ELEVENTH: Any and all property of every kind and description, real, personal or mixed, whether owned by the Company at the date of the execution hereof or hereafter acquired by it, which by any provision hereof the Company is required to convey, mortgage, pledge, deliver, assign or transfer to the Trustee hereunder.

TWELFTH: Any and all property of every kind and description, real, personal or mixed, which from time to time shall hereafter be constructed or acquired by the Company, whether or not such property is required to be specifically subjected to the lien hereof pursuant to the provisions of Granting Clause Eleventh hereof or shall have been so

specifically subjected pursuant to the provisions of Granting Clause Tenth hereof.

THIRTEENTH: Any and all property of every kind and description, real, personal or mixed, which may at any time be subject to the lien of the Company's First Mortgage executed pursuant to the Plan and the order of the Court dated November 27, 1944, it being the intention that this Indenture shall constitute a lien subordinate to the lien of said First Mortgage on any and all property which may at any time be subject to the lien of said First Mortgage.

FOURTEENTH: All the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in equity as in law, which the Company now has or at any time hereafter may acquire in and to any of the property of every kind and description, real, personal or mixed, mortgaged, conveyed, pledged, delivered, assigned or transferred hereunder.

FIFTEENTH: All the revenues, rents, issues, tolls, profits and other income from the premises and property of every kind and description, real, personal or mixed, herein or hereafter mortgaged, conveyed, pledged, delivered, assigned or transferred.

IT BEING THE INTENT OF THIS INDENTURE, that except as otherwise provided in Articles Eleven, Fourteen and Sixteen hereof this Indenture shall, at all times when any Bonds are outstanding hereunder, be a lien upon all the property of the Company and of its successors or assigns of every kind and description, real, personal or mixed, wheresoever located and whensoever and howsoever acquired;

PROVIDED, HOWEVER, that unless and until some one or more of the events of default specified in Section 8.02 hereof shall have happened, it is not intended to include under the lien of this Indenture, and this grant shall not be deemed to apply to (1) any cash, government securities, Federal, State or local, bills, notes or accounts receivable, or materials and supplies (except cash deposited with the Trustee pursuant to any of the provisions hereof, and cash at the time subject to the lien of the First Mortgage or government securities, bills, notes or accounts receivable specifically subjected to the lien hereof and assigned to or deposited with the Trustee or at the time subject to the lien of the First Mortgage), or (2) any revenues, rents, issues, tolls, profits or other income of the premises or property constituting the trust estate (except

as otherwise provided in Articles Seven and Eight hereof); but upon the happening of any such event of default all such cash, government securities, bills, notes or accounts receivable, materials and supplies and all such revenues, rents, issues, tolls, profits or other income shall immediately become subject to the lien hereof to the extent permitted by law;

PROVIDED FURTHER, that there is hereby excepted and reserved out of the grants hereby made the last day of the term of each leasehold estate (whether created orally or by written instrument) now or hereafter enjoyed by the Company, whether falling within the general or particular description of property herein described;

AND PROVIDED FURTHER, that (a) if the Company shall at any time hereafter acquire all, or substantially all, of the properties of any corporation (other than Sacramento Northern Railway and Tidewater Southern Railway Company or any successor of either of them) constituting a Class I carrier as defined by the rules of the Commission at the time in force, the properties so acquired shall not become subject to the lien hereof by reason of such acquisition unless such properties or the securities of such corporation shall have been made the basis in whole or in part for the authentication and delivery of Bonds hereunder or the authentication and delivery of bonds under the First Mortgage, or the payment of cash or the release of property hereunder or under the First Mortgage, or the cost thereof shall have been charged in whole or in part to the Capital Fund account provided for in Article Five hereof; and (b) if the Company shall be consolidated with or merged into, or shall sell its assets substantially as an entirety to, any corporation which at the time of such transaction is a Class I carrier, as so defined, the properties theretofore owned or thereafter acquired by the corporation with which the Company is so consolidated or into which it is so merged, or to which its assets are sold as aforesaid shall become subject to the lien hereof only to the extent provided in Section 14.02 hereof;

TO HAVE AND TO HOLD all said premises, property, rights, franchises and appurtenances hereby conveyed, mortgaged, pledged, delivered, assigned or transferred or intended so to be, as well as all property which shall at any time become subject to the lien hereof (hereinafter sometimes collectively referred to as the "trust estate") unto the Trustee and its successors and assigns forever;

SUBJECT, HOWEVER, to the prior lien of the Company's First Mortgage, upon all property (including without limitation any property acquired with the proceeds of Bonds) which may now or hereafter be subject to the lien of this Indenture, except cash deposited with the Trustee hereunder;

SUBJECT, ALSO, to any and all presently existing easements over, on or under any of the property above described and any presently existing contracts, leases and other agreements affecting such property, to the extent, but only to the extent, that in law any such easement, contract, lease or agreement shall constitute a lien or charge of record against any part of the trust estate prior to the lien of this Indenture; to Permitted Encumbrances, as hereinafter defined; and in so far as the trust estate may now be subject to the liens of taxes and assessments lawfully levied or assessed against the same, to any and all such liens;

SUBJECT, ALSO, as to shares of stock of carrier or terminal corporations, to such rights, if any, as other railroad corporations, states or municipalities may have with respect to the acquisition or disposition of such stock;

SUBJECT, ALSO, as to the property affected thereby, to the title or lien and other rights, if any, of the lessors, trustees, noteholders, certificate holders or vendors, however designated, under presently existing equipment trust agreements, leases and conditional sale agreements relating to equipment;

AND SUBJECT, ALSO, to the title of any owner, whether as trustee or otherwise, to any equipment hereafter leased or conditionally sold to the Company, and to any lien hereafter created as set forth in Granting Clause Fifth hereof to provide, or to reimburse the Company for, any part of the cost of constructing equipment, and, with respect to any property which the Company may hereafter acquire, to any lien existing thereon at the time of such acquisition or created by the Company contemporaneously with such acquisition to secure the purchase price thereof in whole or in part;

IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of all holders of the Bonds or coupons, without preference, priority or distinction as to lien or otherwise of any Bond over any other Bond by reason of priority in the issue or negotiation thereof, or otherwise, subject to the provisions of Section 8.01 hereof, and to the

terms, provisions and stipulations in the Bonds contained; and for the uses and purposes and upon and subject to the terms, conditions, provisions and agreements herein expressed;

AND IT IS HEREBY COVENANTED AND DECLARED that all the Bonds and coupons are to be issued, authenticated and delivered, and that the trust estate is to be held and disposed of by the Trustee, upon and subject to the following covenants, terms, conditions, agreements, uses and trusts; and the Company hereby covenants and agrees to and with the Trustee for the benefit of the respective holders from time to time of the Bonds and coupons, as follows:

ARTICLE ONE.

FORM, EXECUTION, DELIVERY, REGISTRY AND EXCHANGE OF BONDS.

SECTION 1.01. The Bonds, if registered Bonds without coupons, shall be in substantially the form hereinbefore recited, with such variations (either to reflect any determinations made by the Board of Directors with respect to Bonds of any series other than Series A, or otherwise) as may be permitted by this Indenture. If any Bonds shall be in coupon form the coupons shall be in such form as determined by the Board of Directors. Any Bonds may include or may have imprinted or endorsed thereon any legend or legends required in order to conform to the rules of any securities exchange or to general usage. Definitive Bonds shall be fully engraved.

The Bonds shall be signed on behalf of the Company by its President or a Vice President, and its corporate seal or a facsimile thereof shall be impressed or imprinted thereon, and attested by its Secretary or an Assistant Secretary. The coupons shall bear the facsimile signature of the Treasurer of the Company. In case any of the officers of the Company who shall have signed or sealed any Bond, or any Treasurer of the Company whose facsimile signature appears on any of the coupons, shall cease to be such officer before such Bonds, or the Bonds to which such coupons appertain, shall have been actually authenticated and delivered by the Trustee, such Bonds may nevertheless be authenticated by the Trustee and such Bonds and coupons issued and delivered, as though such person had not ceased to be such officer. Any of the Bonds may be signed or sealed on behalf of the Company by any person who at the actual time of the execution thereof shall be the proper officer to sign or seal the same, and any coupon may bear the signature of the Treasurer of the Company at the time of such

actual execution, although at the nominal date of such Bonds such persons shall not have been such officers.

Only such Bonds as shall bear thereon endorsed a certificate of authentication substantially in the form hereinbefore recited, executed by the Trustee, shall be secured by this Indenture or entitled to any lien, right or benefit hereunder; no Bond and no coupon appertaining thereto shall be valid or obligatory for any purpose until such Bond has been so authenticated; and such authentication by the Trustee upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and that the owner is entitled to the benefits of the trust hereby created.

Before authentication and delivery of any coupon Bond, all coupons for interest instalments then matured and for the payment of which provision has been duly made shall, subject to the provisions of Sections 1.03 and 1.06 hereof, be detached and cancelled and, on its written request, delivered to the Company.

SECTION 1.02. The Bonds shall be issuable in series and the Bonds of each series shall be distinctively designated. All Bonds of the same series shall be identical in form, except that they may be in different denominations, and may be in coupon form and in registered form without coupons, and except that as between Bonds of different denominations and as between coupon Bonds and registered Bonds without coupons there may be such appropriate differences authorized or permitted by this Indenture as may be determined by the Board of Directors at the time of the creation of such series.

The Bonds of any series may be issued originally as coupon Bonds or as registered Bonds without coupons. Coupon Bonds and registered Bonds without coupons of the same series may be interchangeable.

The coupon Bonds of each series shall bear such date as shall be fixed and determined by the Board of Directors at the time of the creation of such series and shall bear interest from the date thereof. The registered Bonds without coupons of each series shall, subject to the provisions of Sections 1.03 and 1.07 hereof, be dated the last preceding January 1 to which all accumulated interest on the Bonds of such series shall have been paid; *provided, however*, that in the case of the initial issue of Bonds of any series, part of which shall be issued as coupon Bonds, the date of any registered Bond without coupons constituting part of such initial issue shall be the date of the coupon Bonds of such series. Both coupon Bonds and registered Bonds without cou-

pons of each series shall bear interest at such rate and shall be payable on such dates, and shall mature at such time or times as shall be fixed and determined by the Board of Directors at the time of the creation of such series. All Bonds of each series shall be payable, both as to principal, premium, if any, and interest, at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, and at such other place or places, if any, as may be determined at the time of the creation of such series, in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

The coupon Bonds of each series shall be in the denomination of \$1,000, and if the Board of Directors shall so determine at the time of the creation of any series may also be in the denomination of \$500 or \$100, or both. The registered Bonds without coupons of each series may be in such denominations as the Board of Directors may by resolution from time to time authorize.

In authorizing the issue of any series of Bonds, the Board of Directors of the Company may provide for the redemption of Bonds of such series before the expressed date of maturity thereof (subject to the provisions of Article Four hereof), for a sinking fund for the retirement of Bonds of such series (subject to the provisions of Article Five hereof), and may also determine that there shall be applicable to the Bonds of such series, such variations from the form and terms hereinbefore specified for Series A Bonds and also such other and different terms and conditions as are not inconsistent with the provisions of this Indenture.

SECTION 1.03. The Company will keep at the office or agency to be maintained by it in the Borough of Manhattan, City and State of New York, and at such other place or places as may be designated in any of the Bonds, a sufficient book or books for the registration and transfer of the Bonds which shall, at all reasonable times, be open for inspection by the Trustee.

The holder of any coupon Bond expressed to be registerable as to principal may have the ownership thereof registered on said books of the Company and such registration noted on the Bond by the Company or its agent. After such registration, no transfer shall be valid unless made on said books by the registered holder in person, or by his attorney duly authorized, and similarly noted on the Bond. Upon presentation at such a place of registration of any such coupon Bond registered

as to principal, accompanied by a written instrument of transfer in form approved by the Company, executed by the registered holder or his duly authorized attorney, such Bond shall be transferred upon such register, and such transfer shall be noted upon such Bond. The registered holder of any such Bond shall also have the right to cause the same to be registered as payable to bearer, in which case transferability by delivery shall be restored, and thereafter the principal of such Bond when due shall be payable to the person presenting the Bond; but any such Bond registered as payable to bearer may be registered again in the name of the holder with the same effect as the first registration thereof. Registration of any coupon Bond as to principal shall not affect the negotiability of the coupons appertaining to such Bond, and every such coupon shall continue to be transferable by delivery and shall remain payable to bearer.

Every registered Bond without coupons shall be transferable only by the registered holder thereof in person or by his attorney duly authorized, on said books of the Company. Whenever any registered Bond without coupons shall be surrendered for exchange for registered Bonds without coupons of another denomination (if expressed to be so exchangeable), or for transfer, accompanied by a written instrument of transfer in form approved by the Company, executed by the registered holder or his duly authorized attorney, the Company shall execute, and the Trustee shall authenticate and deliver to the registered holder or to the transferee, as the case may be, on cancellation of the Bond or Bonds to be exchanged or transferred, a new registered Bond or Bonds of authorized denominations without coupons of the same series for an equal aggregate principal amount. In case any registered Bond without coupons is made transferable at any place or places other than the office of the Trustee, the Trustee may take any steps reasonably appropriate to facilitate the prompt transfer of such Bond at such other place or places.

Whenever any coupon Bond or Bonds of the denomination of \$1,000 or of denominations aggregating \$1,000, expressed to be exchangeable for a registered Bond without coupons, together with all appurtenant unmatured coupons, shall be surrendered for exchange for a registered Bond or Bonds without coupons, the Company shall execute and the Trustee shall authenticate and deliver on cancellation of the coupon Bond or Bonds so surrendered, a new registered Bond or Bonds without coupons of authorized denominations of the same series and for an equal aggregate principal amount.

Whenever any registered Bond or Bonds without coupons, expressed to be exchangeable for a coupon Bond or Bonds, shall be surrendered for exchange for a coupon Bond or Bonds, accompanied by a written instrument of transfer approved by the Company, executed by the registered holder or his duly authorized attorney, the Company shall execute and the Trustee shall authenticate and deliver, on cancellation of the registered Bond or Bonds without coupons so surrendered, a coupon Bond or Bonds of authorized denominations of the same series with all appurtenant unmatured coupons, and for an equal aggregate principal amount.

Whenever any coupon Bond or Bonds expressed to be exchangeable for a coupon Bond or Bonds of other denominations shall be surrendered with all appurtenant unmatured coupons, for exchange for a coupon Bond or Bonds, the Company shall execute and the Trustee shall authenticate and deliver, on the cancellation of the coupon Bond or Bonds so surrendered, a new coupon Bond or Bonds of authorized denominations, of the same series, with all appurtenant unmatured coupons for an equal aggregate principal amount.

In every case of exchange the Trustee forthwith shall cancel the surrendered Bond or Bonds and the coupons, if any, thereto appertaining and upon the written request of the Company shall deliver the same to it.

Each Bond delivered pursuant to the exercise of any privilege of transfer or exchange or in substitution for the whole or any part of one or more other Bonds shall carry all of the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part of such one or more other Bonds, and notwithstanding anything contained in this Indenture such Bonds if registered Bonds without coupons shall be so dated, or, if coupon Bonds, have attached thereto such coupons, that neither gain nor loss in interest shall result from such transfer or exchange or substitution.

For any exchange of coupon Bonds for coupon Bonds of another denomination, or of coupon Bonds for registered Bonds without coupons, or of registered Bonds without coupons for coupon Bonds, or of registered Bonds without coupons for registered Bonds without coupons of another denomination, and for any transfer of registered Bonds without coupons, the Company, except as otherwise provided in Sections 1.05, 4.02 and 16.09 hereof, at its option, may require the payment of a sum not exceeding \$2.00 for each new Bond issued upon such

exchange or transfer. In addition, the Company may, in connection with any such transfer, require the payment of any stamp taxes or other governmental charges connected therewith.

SECTION 1.04. As to all registered Bonds without coupons and all coupon Bonds registered as to principal, the person in whose name the same shall be registered on the books of the Company shall, for all purposes of this Indenture, be deemed and regarded as the absolute holder and owner thereof, and payment of, or on account of, the principal of any such Bond, if it be a registered coupon Bond, and of the principal of and interest on such Bond, if it be a registered Bond without coupons, shall be made only to, or upon the order of, such registered holder thereof. The Company and the Trustee and any paying agents may deem and treat the bearer of any coupon Bond which shall not at the time be registered as to principal, and the bearer of any coupon for interest on any coupon Bond, as the absolute holder and owner of such Bond or coupon for the purpose of receiving payment thereof, and for all other purposes whatsoever; and neither the Company nor the Trustee nor any paying agents shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bonds or coupons to the extent of the sum or sums so paid.

SECTION 1.05. Until definitive Bonds shall be prepared, the Company may sign and seal and, upon the written request of the Company, signed by its President or a Vice President and by its Treasurer or an Assistant Treasurer, the Trustee shall authenticate and deliver, temporary Bonds in any denomination substantially of the tenor of the definitive Bonds in lieu of which they are issued, in bearer or registered form, with or without coupons, and with such insertions, omissions, substitutions and variations as may be appropriate. Such temporary Bonds shall be exchangeable, without expense to the holder, for the definitive Bonds in lieu of which they are issued, and, upon surrender and cancellation of such temporary Bonds, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor definitive Bonds of the same series for an aggregate principal amount equal to that of the temporary Bonds surrendered. Until so exchanged the temporary Bonds shall be entitled to the same lien and security of this Indenture in all respects as definitive Bonds authenticated and delivered.

SECTION 1.06. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Company, in its discretion, may sign and seal, and thereupon the Trustee shall authenticate and deliver, a new Bond of the same series, with or without coupons as the case may be, of like tenor and date, bearing the same or a different number or numbers and bearing the same rights with respect to interest and otherwise, in exchange and substitution for and upon cancellation of such mutilated Bond or in lieu of and in substitution for the Bond so destroyed, stolen or lost. The applicant for such substituted Bond shall furnish the Company and the Trustee evidence satisfactory to them of ownership and of such mutilation, destruction, theft or loss; and such applicant shall also furnish indemnity satisfactory to the Company and the Trustee, and shall comply with such other reasonable regulations, including the payment of the expense incident to the preparation and issue of such substituted Bond, as the Company or the Trustee may prescribe. If any such mutilated, destroyed, stolen or lost Bond or any coupon appurtenant thereto shall have matured or shall be about to mature, the Company may pay the same without surrender thereof instead of issuing a substituted Bond or coupon.

SECTION 1.07. The foregoing provisions of this Article One are subject to the following specific provisions in respect of the Series A Bonds:

The Series A Bonds shall (a) be dated as provided in Sections 1.02 and 1.03 hereof (except that Series A Bonds authenticated and delivered to the Depositary and Exchange Agent named in the Court's order of October 23, 1944, or its successor, pursuant to Section 2.01 hereof, shall be dated January 1, 1939); (b) mature on January 1, 2014, unless the same shall become due and payable on an earlier date as hereinafter provided; (c) bear interest from the date thereof at the rate of $4\frac{1}{2}\%$ per annum, subject to the terms and conditions hereinafter in this Section 1.07 and in Article Five hereof contained; (d) be payable, as to principal and interest, at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts; (e) be issuable only in the form of registered Bonds without coupons in the denominations of \$100, \$500, \$1,000, \$5,000 and \$10,000 and such other denominations, if any, as the Company shall from time to time authorize, and be interchangeable as between authorized denominations except that Bonds

of one denomination may not be exchanged for Bonds of a lesser denomination when such lesser denomination is less than \$1,000; (f) be subject to redemption as provided in Article Four hereof; (g) be convertible into shares of common stock of the Company as provided in Article Three hereof; and (h) have the benefit of the sinking fund provided for in Article Five hereof.

Except as hereinafter provided, interest on the Series A Bonds accruing for each calendar year shall be payable on May 1 of the next succeeding year. Such interest shall be mandatorily payable (except as hereinafter provided) only out of Available Net Income remaining after any deductions required by paragraphs (1) and (2) of Section 5.04 hereof, and subject to the conditions specified in paragraphs (3) and (4) of said Section 5.04. Interest accruing for any calendar year which is not paid on May 1 of the next succeeding year shall accumulate *provided, however*, that the aggregate of such accumulations shall at no time exceed 13½% of the principal amount of the Series A Bonds on which such interest shall have accrued and that accrued interest earned but not theretofore paid shall be excluded for the purpose of such 13½% limit. Accumulated interest shall be mandatorily payable, subject to the conditions specified in paragraph (4) of Section 5.04, whenever and to the extent that Available Net Income for any subsequent calendar year remaining after any deductions required by paragraphs (1), (2) and (3) of said Section 5.04 shall be sufficient for the purpose. Whenever the principal of any Series A Bond shall have become due, whether at the expressed maturity thereof, or by declaration, or by call for redemption, or otherwise, there shall be mandatorily payable on such Bond (a) interest at the rate of 4½% per annum from January 1 of the preceding calendar year to the date on which such principal shall have become due, (b) any interest earned prior to the preceding calendar year and not theretofore paid, and (c) all unpaid accumulated interest up to but not exceeding the 13½% limit hereinabove prescribed. After maturity of the Bonds, whether by declaration or otherwise, the Bonds shall bear fixed interest at the rate provided therein from the date of such maturity to the date of payment of the principal thereof.

In view of the application of Available Net Income for the years 1939 to 1943, both inclusive, as provided in Section 5.03 hereof, interest on the Series A Bonds shall accrue only from January 1, 1944.

The Board of Directors may at any time, in its discretion, determine to pay on the next succeeding May 1 any interest accrued on the

Series A Bonds (even if not earned) out of any funds lawfully available for the purpose. Certified Resolutions setting out any such determination by the Board of Directors shall be delivered to the Trustee by the Company before the May 1 on which such interest is payable.

Anything herein contained to the contrary notwithstanding, no interest on any Bonds pledged to secure other obligations of the Company or its subsidiaries shall be taken into account in any computations of interest made pursuant to this Indenture if, at the time when such interest would be payable under the terms of such pledged Bonds, such interest is not required to be paid, or, if paid, would revert to the Company or its subsidiaries, under the provisions of the obligations which such Bonds are pledged to secure or of any indenture securing such obligations.

ARTICLE TWO.

AUTHENTICATION AND ISSUE OF BONDS.

SECTION 2.01. The aggregate principal amount of Bonds which may be authenticated and delivered under this Indenture is not limited, except as hereinafter in this ARTICLE Two hereof provided.

Upon the execution and delivery hereof, or from time to time thereafter the Company shall execute and deliver to the Trustee and thereupon the Trustee, without further action on the part of the Company, and without awaiting the filing or recording of this Indenture, shall authenticate and deliver to the Depositary and Exchange Agent named in the Court's order of October 23, 1944 or its successor, \$21,219,000 in aggregate principal amount of the Series A Bonds. Such Bonds shall be in such authorized denominations and in such amounts of each denomination and registered in such names as may be designated by said Depositary and Exchange Agent at any time or from time to time in written requisitions delivered to the Trustee. No additional Series A Bonds shall be authenticated or delivered except as provided by Sections 1.03, 1.05, 1.06, 4.02 and 16.09 hereof.

SECTION 2.02. Bonds of any series, other than Series A, may, from time to time, in accordance with and subject to the limitations of this Section 2.02 and Sections 2.05 and 2.06 hereof, be executed by the Company and authenticated by the Trustee and delivered to or upon the written order of the Company, signed by its President or a Vice President and by its Treasurer or an Assistant Treasurer, upon the basis of the surrender to the Trustee for cancellation or of the payment, redemption or other retirement of (i) Bonds there-

tofore authenticated, delivered and issued under this Indenture (excluding Bonds issued solely by way of pledge, except as hereinafter in this paragraph provided), (ii) obligations of the Company secured by the pledge of Bonds, but only in a principal amount not exceeding the principal amount of such obligations or the principal amount of the Bonds so pledged, whichever shall be the less, (iii) First Mortgage Bonds theretofore authenticated, delivered and issued under the Company's First Mortgage (excluding First Mortgage Bonds issued solely by way of pledge, except as hereinafter in this paragraph provided), (iv) obligations of the Company secured by the pledge of First Mortgage Bonds, but only in a principal amount not exceeding the principal amount of such obligations or the principal amount of the First Mortgage Bonds so pledged, whichever shall be the less, or (v) obligations (other than obligations for the deferred or serial payment of the purchase price of equipment) secured by a lien prior to the lien hereof upon property of the Company acquired after the execution and delivery of this Indenture and subject to the lien hereof, but only in a principal amount not exceeding 75% of the cost (determined as provided in Section 2.03 hereof) to the Company of acquiring such property. No Bonds shall, however, be authenticated and delivered on account of the surrender for cancellation, payment, redemption or other retirement of Bonds, of First Mortgage Bonds or of other obligations if such Bonds, First Mortgage Bonds or other obligations shall have been made the basis for the authentication and delivery of Bonds, or shall have been used in lieu of cash to satisfy any sinking fund obligation of the Company hereunder, or under the First Mortgage, or shall have been acquired, paid, redeemed or retired from the proceeds of property released from the lien hereof or through the operation of any sinking fund provided for hereunder or under the First Mortgage or through the application of any moneys held by the Trustee as security hereunder or held by the trustee under the First Mortgage as security thereunder, or if the acquisition, payment, redemption or retirement of any such First Mortgage Bonds or other obligations shall have been made the basis for the delivery of bonds or cash under the provisions of the First Mortgage.

Bonds in an aggregate principal amount not exceeding the principal amount of the Bonds, First Mortgage Bonds or other obligations so surrendered to the Trustee for cancellation or paid, redeemed or otherwise retired shall (subject to the limitations stated in the preceding paragraph hereof as to obligations secured by the pledge of Bonds

or of First Mortgage Bonds) be authenticated and delivered in accordance with the provisions hereof and said order of the Company upon receipt by the Trustee of the following:

(a) The documents required by Section 2.05 hereof;

(b) An Officers' Certificate stating that none of the Bonds, First Mortgage Bonds, or other obligations then made the basis for the authentication and delivery of Bonds have theretofore been made the basis for the authentication and delivery of Bonds, or have been used in lieu of cash to satisfy any sinking fund obligations of the Company hereunder or under the First Mortgage, or have been acquired, paid, redeemed or retired from the proceeds of property released from the lien hereof or through the operation of any sinking fund provided for hereunder or under the First Mortgage or through the application of any moneys held by the Trustee as security hereunder, or held by the trustee under the First Mortgage as security thereunder, and that the acquisition, payment, redemption or retirement of such First Mortgage Bonds or other obligations has not been made the basis for the delivery of bonds or cash under the provisions of the First Mortgage;

(c) In case the authentication and delivery of Bonds is to be based on the surrender, payment, redemption or other retirement of Bonds or of First Mortgage Bonds or of obligations of the Company secured by the pledge of Bonds or of First Mortgage Bonds, a further Officers' Certificate stating, as the case may be, either (i) that none of the Bonds or First Mortgage Bonds so surrendered, paid, redeemed or otherwise retired had been issued solely by way of pledge, or (ii) that said obligations are then secured by pledge of a specified principal amount of Bonds or First Mortgage Bonds, and that the principal amount of Bonds then proposed to be authenticated and delivered under this Section 2.02 is not in excess of the principal amount so stated or the principal amount of such obligations, whichever is less;

(d) In case the authentication and delivery of Bonds is to be based on the surrender, payment, redemption or other retirement of obligations, other than Bonds, First Mortgage Bonds and obligations secured by the pledge of Bonds or First Mortgage Bonds, a further Officers' Certificate stating (i) that none of such obligations are obligations for the deferred or serial payment of the

purchase price of equipment, (ii) that such obligations are, or were prior to such retirement, secured by a lien prior to the lien hereof upon property of the Company subject to the lien hereof acquired after the execution and delivery of this Indenture, and (iii) that the principal amount of such obligations does not exceed 75% of the cost (determined as provided in Section 2.03 hereof) to the Company of acquiring such property, together with an opinion of Counsel stating that such obligations are, or were prior to such retirement, secured by a lien prior to the lien hereof upon property which is owned by the Company and is subject to the lien hereof; and

(e) The Bonds, First Mortgage Bonds or other obligations made the basis for the authentication and delivery of the Bonds then to be authenticated; *provided, however*, that (i) in lieu of surrendering Bonds to the Trustee for cancellation the Company may deposit with the Trustee, in trust, moneys sufficient to pay at maturity or to redeem such Bonds, including interest thereon, subject, however, in the case of Bonds called for redemption, to the making of arrangements satisfactory to the Trustee for the completion of the call for such redemption; (ii) in lieu of surrendering First Mortgage Bonds to the Trustee, the Company may furnish the Trustee with proof satisfactory to the Trustee that the Company has deposited in trust with the trustee under the First Mortgage moneys sufficient to pay at maturity or to redeem such First Mortgage Bonds, including interest thereon, and in the case of First Mortgage Bonds called for redemption that the Company has made arrangements satisfactory to the Trustee for the completion of the call for such redemption; or the Company may deliver to the Trustee an instrument or instruments evidencing the satisfaction, release and discharge of the First Mortgage, together with an opinion of Counsel that the First Mortgage has been effectively satisfied, released and discharged, and (iii) in lieu of surrendering other obligations where secured by a prior lien on property subject to the lien hereof, the Company may deliver to the Trustee an instrument or instruments evidencing the satisfaction, release or discharge of the mortgage, deed of trust or other instrument under which such obligations were issued, as the case may be, together with an opinion of Counsel that such mortgage, deed of trust or other instrument has been effectively

satisfied, released and discharged, that the property on which the same constituted a lien is owned by the Company and is subject to the lien hereof, and that there is no lien thereon (other than Permitted Encumbrances) which is prior to the lien of this Indenture and was junior to the lien created by such mortgage, deed of trust or other instrument.

All Bonds, First Mortgage Bonds, or other obligations so deposited with the Trustee shall be uncanceled and either in bearer form or accompanied by proper instruments of assignment or transfer, and shall be held by the Trustee uncanceled and without extinguishment or impairment of the lien securing the same (except as effected as a matter of law by the acquisition thereof by the Company) as additional security for the payment of the Bonds issued and to be issued hereunder; *provided, however, that:*

(1) Bonds deposited with the Trustee pursuant to this Section 2.02 shall forthwith be cancelled and, on its written request, delivered to the Company;

(2) First Mortgage Bonds deposited with the Trustee shall be forthwith delivered to the trustee under the First Mortgage for cancellation; and

(3) Other obligations when deposited may be cancelled if paid or redeemed and if the Trustee shall have been presented with an opinion of Counsel that cancellation thereof upon such payment or redemption is required by the mortgage, deed of trust or other instrument pursuant to which such obligations were issued; and the Trustee shall forthwith, to the extent permitted by law, be subrogated to, and vested with, all the rights and liens of the holders of said obligations.

In case upon the payment, redemption or other retirement of any obligations of the Company which are secured by the pledge of Bonds or of First Mortgage Bonds and which are thereafter used as the basis for the authentication and delivery of Bonds under the provisions of this Section 2.02, the Company shall become entitled to the release of any Bonds or First Mortgage Bonds theretofore so pledged, the Company will immediately give written notice to the Trustee of that fact, and shall obtain such Bonds or First Mortgage Bonds, as the case may be, and deliver them to the Trustee. Any Bonds so delivered to the

Trustee shall be forthwith cancelled and thereafter, upon its written request, delivered to the Company; and no Bonds shall be authenticated or delivered in lieu thereof. Any First Mortgage Bonds so delivered to the Trustee shall be forthwith delivered to the trustee under the First Mortgage for cancellation; and no Bonds shall be authenticated or delivered on the basis of the retirement thereof.

SECTION 2.03. Bonds of any series, other than Series A, may, from time to time, in accordance with and subject to the limitations of this Section 2.03 and Sections 2.05 and 2.06 hereof, be executed by the Company and authenticated by the Trustee and delivered to or upon written order of the Company, signed by its President or a Vice President and by its Treasurer or an Assistant Treasurer, in principal amount not exceeding 75% of the cost (determined in accordance with Standard Accounting Rules) to the Company or to the Reorganization Trustees of making, constructing, purchasing or otherwise acquiring, subsequent to December 31, 1938, (i) physical additions, extensions, improvements and betterments to any property of the Company subject to the lien hereof, but excluding equipment, (ii) equipment acquired new by the Company or the Reorganization Trustees, (iii) a line or lines of railroad or additional carrier property which the Board of Directors shall consider necessary or useful in the operation of the lines of railroad comprised in the trust estate and which shall not theretofore have been owned by any corporation not less than 95% of whose stock of each class, except directors' qualifying shares, was theretofore subject to the lien hereof and (iv) not less than 95% of the stock of each class, except directors' qualifying shares, of a corporation or corporations substantially all of whose assets shall consist of a line or lines of railroad or other carrier property which the Board of Directors shall consider necessary or useful in the operation of the lines of railroad comprised in the trust estate (such physical additions, extensions, improvements and betterments, equipment, line or lines of railroad, carrier property and securities, being hereinafter sometimes referred to generally as "Additions"), *provided*:

(1) That no Bonds shall be authenticated under this Section 2.03 on the basis of the cost of Additions unless the expenditures constituting such cost shall have been made, or indebtedness incurred therefor, by the Company or the Reorganization Trustees within three years prior to the date of the application for such authentication; *provided, however*, that for the purposes of this

paragraph (1) all such expenditures made prior to the actual execution and delivery hereof shall be deemed to have been made on the date of such actual execution and delivery;

(2) That the cost of such Additions at the time of their acquisition was properly chargeable to capital account under Standard Accounting Rules, and that the part of the cost of such Additions being made the basis for the authentication of Bonds has not theretofore been used as the basis for the authentication of Bonds, or for the authentication of bonds or the payment of cash under the First Mortgage, or for the payment of moneys deposited with the Trustee as a part of the trust estate, or for the release of property under any of the provisions hereof or of the First Mortgage, or been acquired through the use of insurance proceeds, or been charged against the Capital Fund account provided for in Article Five hereof (except that not exceeding 25% of the cost of Additions in respect of which Bonds are authenticated under this Section 2.03 may be represented by capital investments charged against the Capital Fund account);

(3) That no Bonds shall be authenticated under this Section 2.03 if the sum of the principal amount thereof and (i) the aggregate principal amount of Bonds theretofore authenticated under this Section 2.03, (ii) the aggregate principal amount of bonds theretofore authenticated under the First Mortgage on the basis of Additions, (iii) the aggregate amount of deposited cash theretofore withdrawn under Section 2.04 in lieu of the authentication of Bonds under this Section 2.03, and (iv) the aggregate amount of deposited cash theretofore withdrawn under the First Mortgage in lieu of First Mortgage Bonds on the basis of Additions, would exceed 75% of the amount by which the total charges made by the Company or the Reorganization Trustees, subsequent to December 31, 1938, to any of its or their accounts to which any Additions made since that date have been charged, shall be in excess of the total credits by the Company or the Reorganization Trustees to such accounts during said period; *provided, however*, that the provisions of this paragraph (3) shall not be applicable in the event the Additions upon which the application for authentication of Bonds is based consist of (a) a line or lines of railroad not theretofore subject to the lien of this Indenture or owned by any corporation not less than 95% of whose stock of each class, except

directors' qualifying shares, was theretofore subject to the lien hereof, (b) 95% of the stock of each class, except directors' qualifying shares of a corporation substantially the entire assets of which consist of a line or lines of railroad of the character described in subdivision (a), or (c) equipment acquired new by the Company or the Reorganization Trustees;

(4) That in case any Additions shall be acquired subject to any lien or charge prior to the lien hereof, other than Permitted Encumbrances, (a) the amount of such prior lien or charge shall be considered as a part of the cost of such Additions, whether or not the indebtedness secured by such prior lien or charge be assumed by the Company, and (b) the principal amount of Bonds which may be authenticated under this Section 2.03 in respect of the cost of such Additions shall (except to the extent that such prior lien or charge shall have theretofore been taken into account on some previous application for Bonds or cash or the release of property hereunder, or for bonds or cash or the release of property under the First Mortgage) be determined by deducting the amount of such prior lien or charge from the principal amount of Bonds which might otherwise be so authenticated hereunder;

(5) That no Bonds shall be authenticated under this Section 2.03 and no cash (other than proceeds of insurance on equipment) shall be paid out under any of the provisions of this Indenture, on the basis of the cost of equipment unless at or prior to the time of such authentication or payment of cash the Company shall establish, by supplemental indenture delivered to the Trustee, a sinking fund (in addition to any other sinking fund then in effect for any series of Bonds) payable in equal annual instalments for the number of years shown as the efficient service life of such equipment in the Officers' Certificate furnished pursuant to paragraph (b) of this Section 2.03 or for fifteen years (whichever number of years shall be the smaller), each annual payment to be in an amount equal to the principal amount of the Bonds so authenticated, or the amount of the cash so paid out, as the case may be, divided by the number of years for which said sinking fund shall be payable, and all such sinking fund payments to be applied to the purchase or redemption of Bonds in such manner as may be provided in the supplemental indenture establishing such sinking fund;

(6) That no Bonds shall be authenticated under this Section 2.03 on the basis of (a) the cost of acquisition of equipment subject to any equipment trust agreement, lease, conditional sale agreement, mortgage or other lien, other than the lien of the First Mortgage, or (b) the cost of additions, improvements or betterments to equipment.

(7) That no Bonds shall be authenticated under this Section 2.03 on the basis of the stock of another corporation if the sum of the aggregate principal amount of Bonds or First Mortgage Bonds authenticated, and the aggregate amount of deposited cash withdrawn hereunder or under the First Mortgage, on the basis of the cost of the stock of such corporation plus the aggregate principal amount of indebtedness of such corporation (other than indebtedness of the character referred to in clauses (1) and (2) of Section 6.16 hereof) would exceed 75% of the sum of the cost to the Company of acquiring such stock plus the aggregate principal amount of such indebtedness.

Bonds shall be authenticated and delivered under this Section 2.03 in accordance with the provisions thereof and said orders of the Company upon receipt by the Trustee of the following:

- (a) The documents required by Section 2.05 hereof;
- (b) An Officers' Certificate, dated not more than thirty days prior to the delivery thereof, stating:

- (i) That the Company, or the Reorganization Trustees, subsequent to December 31, 1938, made, constructed, purchased or otherwise acquired certain Additions (describing them with sufficient detail to identify them); that all said Additions are of such a character that under the provisions of this Section 2.03 the cost thereof may be made the basis for the authentication of Bonds; and that all such Additions are subject to the lien hereof, subject only to the prior liens and charges, if any, specified in said Officers' Certificate and to Permitted Encumbrances;

- (ii) The cost (determined in accordance with Standard Accounting Rules) to the Company or to the Reorganization Trustees of each such Addition; that the expenditures constituting such cost were made or indebtedness was incurred therefor within the period hereinbefore in paragraph (1) of this Section 2.03 provided; and that such cost was, at the time

of the acquisition of such additions, properly chargeable to capital account under Standard Accounting Rules, and has been so charged;

(iii) That the part of the cost of such Additions being made the basis for the authentication of Bonds has not theretofore been used as the basis for the authentication of Bonds or for the authentication of bonds or the payment of cash under the First Mortgage, or for the payment of moneys deposited with the Trustee as a part of the trust estate, or for the release of property under any of the provisions hereof or of the First Mortgage, or been acquired through the use of insurance proceeds, or been charged to or the Company reimbursed therefor out of the Capital Fund account provided for in Article Five hereof (except that said Officers' Certificate may state facts showing that not exceeding 25% of the cost of such Additions has been charged to, or the Company reimbursed therefor out of, the Capital Fund account);

(iv) The facts necessary to show compliance with the provisions of paragraphs (3) and (7) of this Section 2.03, or to show that said provisions are not applicable;

(v) Whether any such Additions are subject to any lien or charge prior to the lien hereof, (other than, except in the case of equipment, Permitted Encumbrances), and if so the amount thereof; and the facts necessary to show the extent to which such prior lien or charge shall have been theretofore taken into account on any previous application for Bonds or cash or the release of property hereunder, or for bonds or cash or the release of property under the First Mortgage; and

(vi) If any equipment is included in said Additions, the efficient service life of such equipment; that such equipment was new when acquired and was acquired on a date specified in such certificate, and that such equipment is subject to the lien hereof and is not subject to any equipment trust agreement, lease, conditional sale agreement, mortgage or other lien, other than the lien of the First Mortgage, and that no written notice of the kind provided for in Granting Clause FIFTH of this Indenture has been given in respect of such equipment;

(c) All such deeds, conveyances, assignments or instruments of further assurance (if any), and evidence of such filing or recording thereof, as may be necessary for the purpose of effectually subjecting such Additions to the lien hereof, subject (in the case of equipment) only to the lien of the First Mortgage, or subject (in the case of Additions other than equipment) only to the prior liens and charges, if any, specified in the Officers' Certificate delivered to the Trustee pursuant to paragraph (b) of this Section 2.03 and to Permitted Encumbrances; but all Additions in respect of which Bonds shall be issued hereunder shall, upon the making, construction, purchase or other acquisition thereof, forthwith become and be subject to the lien hereof;

(d) An opinion of Counsel that said Additions are of such character that under the provisions of this Section 2.03 the cost thereof may be made the basis for the authentication of Bonds; that the Company has good title thereto; that the deeds, conveyances, assignments and instruments of further assurance (if any) delivered to the Trustee pursuant to the foregoing paragraph (c) of this Section 2.03 are, or upon such filing or recording as may be specified in said opinion will be, valid and sufficient for the purpose of effectually subjecting such Additions to the lien hereof, or that no such instruments are necessary; that such Additions are subject to the lien hereof as a lien thereon, subject (in the case of equipment) only to the lien of the First Mortgage, or subject (in the case of Additions other than equipment) only to the prior liens and charges, if any, specified in the Officers' Certificate delivered to the Trustee pursuant to paragraph (b) of this Section 2.03 and to Permitted Encumbrances;

(e) In case any Bonds are to be authenticated on the basis of the cost of equipment, an indenture supplemental hereto establishing a sinking fund in compliance with the provisions of paragraph (5) of this Section 2.03; and

(f) The securities, if any, included in such Additions, provided, however, that if the opinion of Counsel delivered to the Trustee pursuant to paragraph (d) of this Section 2.03 shall state that such securities are required to be delivered to the trustee under the First Mortgage, the Trustee may receive, in lieu of such securities, a certificate of the trustee under the First Mortgage that it holds such securities subject to the First Mortgage.

SECTION 2.04. Bonds of any series, other than Series A, may, from time to time, in accordance with and subject to the limitations of this Section 2.04 and Sections 2.05 and 2.06 hereof, be executed by the Company and authenticated by the Trustee and delivered to or upon the written order of the Company, signed by its President or a Vice President and by its Treasurer or an Assistant Treasurer, upon the basis of and equal in principal amount to cash deposited with the Trustee. Bonds shall be authenticated and delivered by the Trustee under this Section 2.04 in accordance with the provisions thereof and said order of the Company upon receipt by the Trustee of the documents required by Section 2.05 hereof. The moneys so deposited (hereinafter called "deposited cash") shall be held by the Trustee as part of the trust estate until paid out from time to time as herein provided.

Whenever the Company would be entitled to the authentication and delivery of Bonds under the provisions of Section 2.02 or Section 2.03 hereof, the Trustee shall, in lieu of such Bonds, pay over in accordance with the written order of the Company, signed by its President or a Vice President and by its Treasurer or an Assistant Treasurer, from deposited cash then held by it, a sum in cash equal to the principal amount of such Bonds, upon delivery to the Trustee of the following:

(a) Certified Resolutions requesting the payment of a specified amount of such cash to the Company;

(b) In case the payment of deposited cash is to be made in lieu of the authentication of Bonds under Section 2.02 hereof, the documents required by paragraphs (b), (c), (d) and (e) of said Section 2.02;

(c) In case the payment of deposited cash is to be made in lieu of the authentication of Bonds under Section 2.03 hereof, the documents required by paragraphs (b), (c), (d), (e) and (f) of said Section 2.03; and

(d) An Officers' Certificate, dated not more than thirty days prior to the delivery thereof, stating that no event of default as defined in Section 8.02 hereof has happened and is continuing.

SECTION 2.05. Whenever requesting the authentication and delivery of any Bonds, other than Series A Bonds and Bonds issued in lieu of or in substitution for other Bonds pursuant to the provisions of Sections 1.03, 1.05, 1.06, 4.02 and 16.09 hereof, the Company, in

addition to complying with the other requirements hereof, shall deliver to the Trustee:

(1) Certified Resolutions requesting the Trustee to authenticate and deliver a specified principal amount of Bonds of a designated series;

(2) If such Bonds are to be of a series not previously authorized:

(a) Certified Resolutions designating the series to be created, and specifying the maximum principal amount, the denominations, maturity or maturities, rate of interest, terms of redemption (if redeemable) and of exchange for Bonds of other denominations (if so exchangeable) and other provisions, not inconsistent with this Indenture, of the Bonds of such series, to all of which the Bonds authenticated shall conform, and authorizing the execution and delivery of the supplemental indenture hereinafter provided for;

(b) An indenture supplemental hereto creating and describing such new series, and setting forth the text of the Bonds thereof and the coupons (if any) to be attached to such Bonds;

(3) Unless the opinion of Counsel hereinafter in paragraph (4) of this Section 2.05 provided for shall state that no such authorization or approval is required, a certified copy or copies of an order or orders of all governmental bodies, if any, whose authorization or approval is required, authorizing or approving the issue of such Bonds;

(4) An opinion of Counsel stating that the execution and delivery of such Bonds has been duly authorized by the Company and, if such Bonds are to be of a series not theretofore created, that the terms and provisions of the Bonds of the proposed series are authorized or permitted by this Indenture; that no authorization or approval by any governmental body or bodies is required by law for the valid issue of such Bonds except such authorizations or approvals as shall be evidenced by the copies of the orders delivered to the Trustee pursuant to paragraph (3) of this Section 2.05; that the documents referred to therein and theretofore or therewith delivered to the Trustee conform to the requirements

hereof, and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Bonds; and that such Bonds when issued will constitute valid and binding obligations of the Company according to their terms, and will be secured by this Indenture;

(5) An Officers' Certificate stating that the Company has contracted forthwith to sell or pledge such Bonds and, if such Officers' Certificate shall state that the Company has contracted to pledge such Bonds, stating that, upon the making of such pledge, the aggregate principal amount of all Bonds under pledge by the Company will not exceed the aggregate principal amount of all indebtedness secured by pledged Bonds by more than 10% of the aggregate principal amount of Bonds then outstanding; and the aggregate principal amount of all Bonds and First Mortgage Bonds under pledge by the Company will not exceed the aggregate principal amount of all indebtedness thereby secured by more than 10% of the aggregate principal amount of all Bonds and First Mortgage Bonds then outstanding;

(6) Certified Resolutions, certified to have been adopted by the affirmative vote of at least two-thirds of the members of the Board of Directors then in office, setting out a determination that, in the opinion of the Board of Directors, taking into account market and all other relevant conditions at the time, it is impracticable to provide the amount of money needed by the Company and expected to be realized by the sale or pledge of such Bonds (a) by the sale of preferred stock of the Company at a price which would provide for the purchaser thereof a current dividend return of 6% or less on the purchase price of such stock, or (b) by the sale of common stock of the Company at a price, not less than \$50 a share, which would provide for the purchaser thereof a current dividend return (based on the regular dividend rate on the Company's common stock then in effect, or if no such rate is then in effect, on the average rate at which dividends shall have been paid on such stock during the preceding twelve calendar months) equal to 6% or less on the purchase price of such stock; and

(7) An Officers' Certificate, dated not more than thirty days prior to the delivery thereof, stating that no event of default as defined in Section 8.02 has happened and is continuing.

SECTION 2.06. No Bonds of any series, other than Series A Bonds and Bonds issued in lieu of or in substitution for other Bonds pursuant to the provisions of Sections 1.03, 1.05, 1.06, 4.02 and 16.09 hereof, shall be authenticated or delivered, and no deposited cash shall be paid to or upon the order of the Company under Section 2.04 hereof, if an event of default as defined in Section 8.02 hereof shall, to the knowledge of the Trustee, have happened and be continuing.

ARTICLE THREE.

CONVERSION OF SERIES A BONDS.

SECTION 3.01. At the election of the respective holders thereof the Series A Bonds may, subject to the provisions of this Article Three, be converted at their principal amount at any time prior to maturity (except as hereinafter provided with respect to Bonds which have been called for redemption) into shares, fully paid and non-assessable, of the common stock of the Company, at the rate of two shares of such common stock for each \$100 principal amount of the Bonds converted; *provided, however*, that only the whole principal amount of any Bond may be converted; and on presentation and surrender to the Company at its office or agency in the Borough of Manhattan, City and State of New York, of Bonds for conversion with a written instrument of transfer in form approved by the Company executed by the registered holder or his duly authorized attorney, together with written notice of the election of such holder to convert the Bonds so surrendered, the Company will deliver in exchange therefor certificates for such stock. The Company will deliver all such surrendered Bonds to the Trustee, and thereupon such Bonds shall be cancelled by the Trustee and delivered to the Company.

Subject to the provisions of Section 4.01 hereof, the right to convert a Bond of Series A shall terminate as to any Bond called for redemption on the close of business on the day next preceding the date designated for redemption of such Bond, unless funds for the redemption thereof shall not have been deposited with the Trustee by the Company on or before the date designated for redemption, in which latter case the Bonds shall continue to be convertible until paid. The conversion right on all Bonds shall terminate at the close

of business on the day next preceding the date of maturity thereof. If any Bonds of Series A be converted after the same shall have been called for redemption for the Sinking Fund, the redemption price shall be added to the next succeeding Sinking Fund payment on the Bonds and applied as provided in Section 5.08 hereof.

SECTION 3.02. If any Bonds are surrendered for conversion on or after January 1 and before May 1 of any year, the interest, if any, which would have been payable on account of said Bonds, if the same had not been surrendered for conversion, shall nevertheless be payable on May 1 of said year, and such interest shall be payable to the last registered holder of the Bonds so surrendered.

If at the date of surrender of any Bonds for conversion a dividend or dividends or other distribution shall have been declared and be unpaid upon the common stock of the Company, the shares of stock so issued upon such conversion shall not be entitled to participate in any such dividend or other distribution; the right of holders of stock issued upon the conversion of Bonds to participate in dividends or other distributions declared upon such stock shall pertain only to dividends or other distributions declared after the date on which the Bond surrendered in exchange therefor shall have been surrendered for conversion.

SECTION 3.03. The Company shall not be required, in order to convert any Bonds, to issue its common stock while the transfer books of the Company are closed for any purpose, but, subject to the provisions of Section 4.01 hereof, the right of conversion shall not be suspended during the period such books shall be closed. Bonds surrendered for conversion during such period shall be deemed to have been converted and the holders thereof to have become stockholders of the Company for all purposes (except the purpose of voting) upon the surrender of such Bonds for conversion. Certificates for such shares shall be delivered forthwith upon the opening of such books.

SECTION 3.04. The issue of stock certificates on conversion of Bonds shall be made free of any stamp tax or other tax or governmental charge in respect of such issue, and issue and delivery of such certificates shall be in the respective names of, or in such name as may be directed by, the holders of Bonds so surrendered for conversion. The Company shall not, however, be required to pay any stamp tax or other

tax or governmental charge which may be payable in respect of any transfer involved in the issue and delivery of stock in a name other than that of the holder of any Bonds so converted, and no such issue or delivery shall be made unless the person requesting such issue has paid to the Company the amount of any such stamp tax or other tax or governmental charge or has established to the satisfaction of the Company that such tax or charge has been paid.

SECTION 3.05. The Company has authorized and reserved for the conversion of Series A Bonds 424,380 shares of its common stock without par value, and covenants that at all times there shall be reserved solely for such purpose a number of shares of its common stock sufficient to convert, in accordance with the provisions of this Article Three, all the Series A Bonds outstanding under this Indenture.

SECTION 3.06. In the event that the Company shall change the shares of its common stock into the same or a different number of shares with or without par value, or into the same or a different number of shares of any other class or classes, any holder of Bonds of Series A, upon conversion thereof, shall be entitled to receive such number of shares into which the common stock shall have been changed as will be equivalent to the number of shares to which he would have been entitled if the Bonds had been converted prior to such change.

In no event shall the Company be required to issue any fractional shares of its common stock for the purpose of converting Bonds. If the number of shares of such stock deliverable upon conversion of Bonds shall include a fraction, the Company shall deliver in respect of such fraction of a share to the holder of the Bonds converting the same scrip certificates in such form as it may approve for the fraction of a share to which such holder shall be entitled, such scrip certificates to be exchanged for certificates of stock when presented in appropriate amounts.

SECTION 3.07. In the event that the Company shall consolidate with, merge with or into, or sell the trust estate as a whole or substantially as a whole, to any other corporation, provision shall be made as a part of such consolidation, merger or sale that, as provided in this Article Three, the holders of the Series A Bonds may thereafter convert the same into such security (including in that term stock) or assets as may be issuable or payable with respect to the shares of

common stock into which such Bonds were convertible at the time of such consolidation, merger or sale. No such consolidation, merger or sale shall be made by the terms of which any holder of Series A Bonds upon conversion thereof shall receive shares of stock of the corporation resulting from such consolidation or merger or to which such sale shall be made, unless such shares shall upon the issue thereof be fully paid and non-assessable.

The Company covenants and agrees that any such successor corporation, whether by consolidation, merger or purchase, shall for the purpose of conversion of Series A Bonds, in accordance with this Section, reserve the securities and assets into which the Series A Bonds may be convertible to an amount sufficient for the conversion of the entire principal amount of said Bonds then outstanding in accordance with the provisions of this Indenture.

SECTION 3.08. In case the Company shall take any action which under the provisions of this Article Three may change the conversion rate or the character of the common stock into which the Series A Bonds may be converted, or which may substitute in whole or in part for such stock other securities or assets, the Company shall within one month after such change or substitution file with the Trustee a statement signed by its President or a Vice President and by its Treasurer, Assistant Treasurer, General Auditor, Assistant General Auditor, or other chief accounting officer, showing in detail the change in character, number, class or par value of shares as the case may be, the new conversion basis or, in case of a consolidation, merger or sale, the securities or assets thereafter deliverable in lieu of shares of the common stock of the Company on conversion of Series A Bonds. A copy of such statement shall be mailed by the Trustee to each registered holder of Series A Bonds at his last address appearing on the Bond registry books, with reasonable promptitude.

SECTION 3.09. The Trustee shall be under no duty to examine into the truth and accuracy or in any way to verify the facts or conclusions set forth in any statement filed with or delivered by the Company to the Trustee pursuant to Section 3.08 hereof, and the Trustee may rely upon each and every such statement and shall be fully protected in any action taken or omitted in good faith and in reliance thereon. In case the holders of ten per cent (10%) in principal amount of the Series A

Bonds then outstanding shall give written notice to the Trustee that they question the correctness of any such statement, or of any fact or conclusions therein set forth, the Trustee shall, upon being indemnified to its satisfaction, cause an investigation thereof to be made, in such manner as in its sole discretion it may deem advisable, and if, as a result of such investigation, the Trustee shall determine that any correction should be made in any such statement, then the Trustee shall notify the Company in writing of any such correction. If the Company shall accept such correction, such statement shall be deemed to have been filed as modified by such correction. If the Company shall refuse to accept such correction, the Trustee shall take such further action, if any, as in its judgment shall seem appropriate under the circumstances to secure a determination of the matters in issue.

SECTION 3.10. At all times until the payment of the Series A Bonds, the Company will keep an office or agency in the Borough of Manhattan, City and State of New York, where Series A Bonds may be presented for conversion as provided in this Article Three and will notify the Trustee in writing from time to time of the location of such office or agency.

ARTICLE FOUR.

REDEMPTION OF BONDS.

SECTION 4.01. At the option of the Company, or through the operation of the Sinking Fund provided for in Section 5.07 hereof, the Series A Bonds may be redeemed, in whole or in part, on the conditions hereinafter stated, on May 1 of any year, at a redemption price equal to the aggregate of (a) the principal amount redeemed, (b) interest thereon at the rate of $4\frac{1}{2}\%$ per annum from January 1 of the preceding calendar year to the redemption date, (c) any interest earned prior to the preceding calendar year and not theretofore paid, and (d) all accumulated and unpaid interest up to an amount not in excess of $13\frac{1}{2}\%$ of the principal thereof.

Notice of redemption of the Series A Bonds or any part thereof shall be given at the expense of the Company by mailing such notice, postage prepaid, to the registered holders of the Series A Bonds called for redemption, at least thirty days prior to the date designated for such redemption, at their last address on the Bond registry books.

Such notice shall state the election on the part of the Company to redeem the Series A Bonds specified therein, or that such Bonds are called for redemption through the operation of the Sinking Fund, as the case may be, shall specify the redemption date and the redemption price, and shall state that interest on the Bonds called for redemption will cease to accrue from and after the date designated for redemption. Said notice shall also require that the Series A Bonds called for redemption be presented for payment at the principal trust office of the Trustee in the Borough of Manhattan, City and State of New York. Said notice shall also state that the right to convert the Series A Bonds called for redemption into common stock of the Company shall terminate on the close of business on the day next preceding the redemption date.

If a part only of the Series A Bonds shall be called for redemption, the particular Bonds to be redeemed shall be determined by lot, by the Trustee in any manner deemed by it, in its unrestricted discretion, to be fair; *provided, however*, that (a) the unit for redemption purposes shall, except as hereinafter provided, be \$1,000 in principal amount and to that end any Bond of a principal amount in excess of \$1,000 shall be represented by a separate number for each \$1,000 of its principal amount and Bonds having a principal amount of less than \$1,000 shall, to the extent possible, be grouped into units aggregating \$1,000 and (b) for reasons of convenience Bonds held by the Scrip Agent under the General Mortgage Bond Scrip Agreement dated as of December 28, 1944, between the Company and City Bank Farmers Trust Company as Scrip Agent, and Bonds which have been reserved for distribution pursuant to the Plan and the Court's order of November 27, 1944 which have not been distributed at the time of the draw, shall be excluded from the call. Unless any such redemption be out of the Sinking Fund, the Company shall give the Trustee at least 15 days' written notice of the aggregate principal amount of Bonds to be redeemed.

During the period of fifteen (15) days next preceding the first mailing of notice of redemption of Bonds to be redeemed (a) the Company shall not be required to and, if the Trustee so requests, shall not make transfers or deliveries of Series A Bonds upon a consolidation of Scrip Certificates therefor, (b) the holders of Series A Bonds shall not be permitted to convert the same, and (c) the Trustee shall not be required to authenticate and deliver Series A

Bonds, and the Company shall not be required to, and if the Trustee shall so request it shall not, make transfers or exchanges of any Bonds called or being called for redemption.

If less than the whole principal amount of any Series A Bond shall be called for redemption, the notice of redemption shall specifically state the portion of the principal amount thereof which is to be redeemed, and that, upon presentation of such Bond for redemption, there will be issued in lieu of the unredeemed portion of the principal amount thereof a new Series A Bond or Bonds of an aggregate principal amount equal to such unredeemed portion.

In case any or all of the Bonds of any series, other than the Series A Bonds then outstanding, are to be redeemed, notice of redemption shall be given in the manner, for the period and in the form determined at the creation of such series. If part only of the Bonds of any series, other than Series A, shall be called for redemption, the particular Bonds to be redeemed shall be determined by lot by the Trustee in any manner deemed by it, in its unrestricted discretion, to be fair and the notice of redemption shall specify the serial numbers of the Bonds to be redeemed and if any of the Bonds to be redeemed be coupon Bonds notice of redemption shall be given at the expense of the Company by publication in a daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, City and State of New York, and in a daily newspaper similarly printed and published and of general circulation in the City and County of San Francisco, California, once in each week for four successive calendar weeks, the first publication to be not less than thirty days nor more than sixty days prior to the date designated for such redemption. If less than the whole principal amount of any Bond of such series shall be called for redemption, the notice shall also specifically state the portion of the principal amount thereof which is to be redeemed and that upon presentation of such Bond for redemption there will be issued in lieu of the unredeemed portion of the principal amount thereof a new Bond or Bonds (either a coupon Bond or Bonds or a registered Bond or Bonds without coupons if the Bonds of such series are issuable in both forms) of the same series of an aggregate principal amount equal to such unredeemed portion.

SECTION 4.02. Notice of redemption having been duly given in the manner provided in Section 4.01, the Bonds so called for redemption shall, on the date designated for redemption in such notice, become due

and payable at the redemption price thereof; and (unless such Bonds are to be redeemed through the operation of the Sinking Fund) if the Company on or before the date designated for redemption shall have deposited in trust with the Trustee an amount in cash sufficient to redeem all the Bonds called for redemption at such redemption price, then from and after the date of redemption so designated, no further interest shall accrue on said Bonds, and upon presentation thereof in accordance with said notice, with, in the case of coupon Bonds, all unmatured coupons thereto appertaining, all coupons thereto appertaining representing interest payable as part of the redemption price, and all other coupons thereto appertaining except coupons for the payment of which moneys shall theretofore have been deposited in trust with the Trustee or with any paying agent, said Bonds shall be paid at such redemption price; *provided, however*, that in case any coupon representing interest payable as part of the redemption price of any coupon Bond shall not be presented with such Bond, such Bond shall be paid at the redemption price less the amount of accrued interest represented by such coupon, and such interest shall be paid to the holder of such coupon upon the presentation thereof for payment. If not so paid and redeemed on such presentation thereof, the Bonds shall continue to bear interest at the rate expressed therein until paid.

If a portion only of any Bond of a denomination larger than \$1,000 shall be called for redemption, the Company, upon the surrender of such Bond, accompanied (if such Bond be registered) by a written instrument of transfer in a form approved by the Company, executed by the registered holder or his duly authorized attorney, shall execute and the Trustee shall authenticate and deliver without charge to the holder thereof a registered Bond or Bonds without coupons (or either coupon Bonds or registered Bonds, if the redemption is of a series issuable in both coupon and registered form) of the same series, in any authorized denomination or denominations, all as requested by such holder, for the unredeemed balance of the principal amount of the Bond so surrendered.

SECTION 4.03. All Bonds redeemed and paid under the provisions of this Article Four, and the coupons, if any, appertaining thereto, shall be forthwith cancelled by the Trustee, and all such Bonds paid by the Company or any paying agent shall be delivered to the Trustee for that purpose. After such cancellation such Bonds shall, upon its written request, be delivered to the Company.

ARTICLE FIVE.

DETERMINATION AND APPLICATION OF AVAILABLE NET INCOME;
CAPITAL FUND AND SINKING FUND.

SECTION 5.01. Subject to the provisions of Section 5.03 hereof, Available Net Income shall be determined for each year beginning with the year 1939, and applied as provided in this Article Five. All computations of Available Net Income shall be made on a calendar year basis. Subject to the provisions of Section 5.03 hereof, Available Net Income during the period from January 1, 1939 to December 31, 1944, shall be computed as if (a) all new securities distributable under the Plan, except the bonds issued under the First Mortgage, had been issued on January 1, 1939 and remained outstanding throughout that period, (b) on and after January 1, 1939, the income available for fixed charges of the Reorganization Trustees had been income available for fixed charges of the Company, and (c) the fixed charges of said Reorganization Trustees (including, without limitation thereto, interest on trustees' certificates or other obligations issued by the Reorganization Trustees) had been fixed charges of the Company.

For the purposes of this Article Five (a) "income available for fixed charges," "fixed charges" and any other accounting terms used herein shall be determined in accordance with Standard Accounting Rules; (b) charges to operating expenses in respect of retirements of non-depreciable property not replaced shall not be taken into account in determining Available Net Income; and (c) the term "wholly owned railway subsidiaries" shall mean corporations organized for the purpose of engaging in transportation by railroad as such terms are defined in Title 49, United States Code, not less than 95% of whose stock of each class, except directors' qualifying shares, was owned by the Company during the entire year in question.

SECTION 5.02. Subject to the provisions of Section 5.03 hereof, Available Net Income for any year shall be computed by deducting the sum of the fixed charges of the Company and of all of its wholly owned railway subsidiaries accrued during such year from the sum of the income available for fixed charges of the Company and of such subsidiaries in such year (eliminating offsetting intercorporate items), *provided, however:*

(1) In determining Available Net Income, no amounts expended from the proceeds of the trustees' certificates issued for rehabilitation purposes by the Reorganization Trustees shall be deducted, whether or not under Standard Accounting Rules such expenditures would be chargeable as operating expenses;

(2) If Available Net Income for any year be a deficit, the amount of such deficit may, in the discretion of the Board of Directors, be carried forward and deducted in determining Available Net Income for the succeeding year or years until such deficit, or any accumulated or remaining deficit, be extinguished by earnings which, in the absence of such deficit or deficits, would be Available Net Income; and

(3) In determining Available Net Income for any year, (a) any adjustment necessary to correct the income account of the Company and its wholly owned railway subsidiaries for any prior year shall be made by appropriate entries, and may either be made in the accounts of the current year (unless such making of such entries would be in violation of Standard Accounting Rules) or, in the discretion of the Board of Directors and subject to any requisite approval of the Commission, may be made in whole or in part in the accounts of any other year or years, and (b) any debits or credits made in the accounts of the current year to adjust entries in the income accounts of prior years, whether cleared through income or profit and loss accounts, shall be treated as income items for the year in which they are entered on the books.

SECTION 5.03. The Court, by its order of September 25, 1944, determined Available Net Income for each of the years 1939 to 1943 inclusive to have been as follows:

| | |
|-------------|-----------------|
| 1939 | \$ 1,017,478.91 |
| 1940 | \$ 2,156,001.35 |
| 1941 | \$ 4,093,588.31 |
| 1942 | \$ 9,484,368.12 |
| 1943 | \$18,703,511.00 |
| <hr/> | |
| Total | \$35,454,947.69 |

The Court, by its said order, determined and directed the application of an amount equivalent to such Available Net Income as follows:

(1) \$1,698,562.25 to be credited by the Company to the Capital Fund account hereinafter mentioned;

(2) \$4,774,275 to be paid to the Depositary and Exchange Agent named in the Court's order of October 23, 1944, for distribution to those entitled to receive Series A Bonds pursuant to the Plan (or scrip certificates therefor), at the rate of \$22.50 in respect of each \$100 principal amount of Series A Bonds distributed;

(3) \$424,360 to be applied to the making of the sinking fund payment in respect of the Series A Bonds provided for in paragraph (1) of Section 5.07 hereof;

(4) \$5,035,516.62 to be paid to said Depositary and Exchange Agent, for distribution to those entitled to receive preferred stock of the Company pursuant to the Plan (or scrip certificates therefor), at the rate of \$15.81 in respect of each share of preferred stock distributed;

(5) \$2,871,294.90 to be paid to said Depositary and Exchange Agent, for distribution to those entitled to receive common stock of the Company pursuant to the Plan (or scrip certificates therefor), at the rate of \$9.00 in respect of each share of common stock distributed; and

(6) \$20,650,938.92, being the remaining balance of said amount, to be applied to any proper corporate purpose of the Company.

The amounts to be paid the Depositary and Exchange Agent as stated in the foregoing paragraphs (2), (4) and (5) are subject to minor adjustments as contemplated in said order.

Within thirty days after the execution and delivery hereof, the Company will credit to the Capital Fund account hereinafter mentioned the sum of \$1,698,562.25 referred to in the foregoing paragraph (1) and will pay to the Trustee, pursuant to Section 5.07 hereof, the sum of \$424,360 referred to in the foregoing paragraph (3).

SECTION 5.04. Available Net Income for each year subsequent to the year 1943 shall be determined by the Board of Directors before May 1 of the next succeeding year and shall be applied on such May 1 for the following purposes and in the following order:

(1) If on the date of such application the aggregate principal amount of bonds outstanding under the First Mortgage shall equal

or exceed \$20,000,000, all of such Available Net Income, or so much thereof as shall be sufficient for the purpose, whichever shall be the less, shall be applied to the making of the sinking fund payment required by paragraph (1) of Section 4.07 of the First Mortgage to be made on that date;

(2) Any Available Net Income then remaining, to the extent of \$500,000 less the aggregate amounts charged to operating expenses in respect of (a) retirements of road property (other than retirements of non-depreciable property not replaced) and (b) reserves for depreciation of road property by the Company or the Reorganization Trustees during the year for which such Available Net Income was determined, shall be credited by the Company to a Capital Fund account to be created and maintained by it; *provided, however*, that only so much of the amount above provided for shall be so credited to said Capital Fund account as shall, together with the credit balance existing therein at the end of the calendar year for which such Available Net Income was determined, equal \$1,000,000;

(3) Any Available Net Income then remaining shall be applied to the payment of the interest accrued during such calendar year on the Bonds then outstanding hereunder; *provided, however*, that if the Available Net Income to be so applied is not sufficient to pay such interest in full and Bonds of more than one series are then outstanding hereunder, the Available Net Income to be applied to the payment of such interest shall be apportioned between the respective series of Bonds in proportion to the unpaid interest for such year upon the Bonds then outstanding of each series, respectively, and *provided, further*, that if the amount to be applied to the payment of such interest is less than $\frac{1}{4}$ of 1% of the principal amount of Bonds then outstanding, such interest need not be paid at the time but may, in the discretion of the Board of Directors, be postponed until such time as, when added to the income available for interest on the Bonds for a subsequent calendar year, the sum thereof will amount to at least $\frac{1}{4}$ of 1% of the principal amount of Bonds then outstanding;

(4) Any Available Net Income then remaining shall be applied to the payment of any interest then unpaid on the Bonds then outstanding hereunder which shall have accumulated prior to such calendar year; *provided, however*, that if the Available Net Income to be so applied is not sufficient to pay such interest in full

and Bonds of more than one series are then outstanding hereunder, the Available Net Income to be applied to the payment of such interest shall be apportioned between the respective series of Bonds in proportion to the unpaid interest at the time accumulated upon the Bonds then outstanding of each such series, respectively, and *provided further*, that if the amount to be applied to the payment of such interest is less than $\frac{1}{4}$ of 1% of the principal amount of Bonds then outstanding, such interest need not be paid at the time but may, in the discretion of the Board of Directors, be postponed until such time as, when added to the income available for interest on the Bonds for a subsequent calendar year, the sum thereof will amount to at least $\frac{1}{4}$ of 1% of the principal amount of Bonds then outstanding;

(5) Any Available Net Income then remaining shall be applied to the making of the sinking fund payment in respect of Series A Bonds issued hereunder required under the provisions of Section 5.07 hereof to be made on that date;

(6) Any Available Net Income then remaining shall (subject to and upon such conditions and limitations as may be stated in any indenture supplemental hereto providing for Bonds of any series other than Series A), be applied to the making of any payments which the Company may be obligated to make to any sinking fund for the retirement of Bonds issued hereunder of any series other than Series A;

(7) If, on any such first day of May, the fixed interest funded debt of the Company then outstanding shall exceed either (a) 35% of its total capitalization or (b) the amount by which 50% of such total capitalization shall exceed the aggregate principal amount of contingent interest funded debt then outstanding, 50% of any Available Net Income then remaining shall be applied to the making of the sinking fund payment required by paragraph (2) of Section 4.07 of the First Mortgage to be made on that date;

(8) Any Available Net Income then remaining may be applied to any proper corporate purpose of the Company (except dividends on its common stock), including, if and to the extent that such dividends shall be declared by the Board of Directors, the payment of dividends upon its preferred stock; and

(9) Any Available Net Income then remaining may be applied to any proper corporate purpose of the Company, including (but only after all accrued and unpaid accumulated dividends on its preferred stock to the end of the year for which such Available Net Income was determined shall have been paid, or declared and funds set apart for the payment thereof) dividends on its common stock.

For the purposes of paragraph (7) of this Section 5.04:

(A) All Bonds authenticated and delivered hereunder, and all bonds authenticated and delivered under the First Mortgage shall be deemed to be "outstanding" until the same shall have been cancelled or the payment or redemption thereof has been provided for by the deposit in trust for that purpose of moneys sufficient for such payment or redemption in accordance with the provisions hereof or of the First Mortgage as the case may be;

(B) The "funded debt" of the Company shall be deemed to be an amount equal to the aggregate of:

(a) The aggregate principal amount of all Bonds then outstanding and all bonds then outstanding under the First Mortgage;

(b) All other outstanding indebtedness as to which the Company is the principal obligor except (i) indebtedness (other than indebtedness secured by any equipment trust agreement, lease, conditional sale agreement, mortgage or other instrument of lien relating to equipment, and bonds secured by a lien on any part of the trust estate) maturing not more than two years after the creation thereof, and (ii) indebtedness maturing more than two years after the creation thereof and secured by the pledge of bonds which are secured by a lien on any part of the trust estate, except to the extent, if any, by which the principal amount of such indebtedness exceeds the principal amount of bonds so pledged;

(c) Indebtedness guaranteed by the Company as to interest or principal or both (other than bonds of any corporation the principal assets of which consist of terminal or bridge properties and bonds the interest on which is included in the fixed rentals referred to in the immediately following subdivi-

sion (d)), except that in the case of any such indebtedness jointly and severally guaranteed by the Company and some other corporation or corporations, such indebtedness shall be included only to the extent of the proportion thereof which the Company would be obligated to pay if the principal obligor should wholly default in the payment thereof and such other corporation or corporations should be solvent;

(d) An amount equal to the capitalized value, at 5% per annum, of all fixed rentals payable by the Company for leased railroad properties, other than terminal and bridge properties; and

(C) The "total capitalization" of the Company shall be deemed to be an amount equal to the aggregate of:

(a) Its funded debt then outstanding;

(b) The aggregate par value of all outstanding shares of its stock having a par value;

(c) In respect of outstanding shares of its stock without par value distributable under the Plan, the sum of \$100 as to each such share;

(d) In respect of outstanding shares of its stock without par value other than those distributable under the said Plan, as to each such share a sum equal to whichever shall be the less of (i) the capital value at which such share is carried on the books of the Company, or (ii) the net amount received by the Company as consideration for the issuance of such share, plus all amounts which shall have theretofore been duly transferred from earned surplus to capital account in respect of such share.

SECTION 5.05. Charges may be made against the Capital Fund account provided for in subdivision (2) of Section 5.04 hereof, as shall be determined from time to time in any year by the Board of Directors, to provide for, or to reimburse the treasury of the Company for expenditures made or indebtedness incurred (i) at any time during the years 1939 to 1943, inclusive, if such charges be made within thirty days after the execution and delivery hereof, or (ii) at any time during the year 1944 or any subsequent year, provided such expenditures are made or such indebtedness is incurred during the calendar year preceding the

year in which such charge is made or during the first three months of the then current calendar year, and consisting of:

(a) The cost of capital investments (other than for equipment) of the Company or the Reorganization Trustees, but only to the extent that the aggregate expenditures of the Company or the Reorganization Trustees for such capital investments during the period in respect of which charges to the Capital Fund account are then permissible shall exceed the aggregate amounts charged to operating expenses by it or them during the same period for retirement of road property (other than retirements of non-depreciable property not replaced) and for any reserves for depreciation of road property;

(b) The cost of equipment acquired new by the Company or the Reorganization Trustees or initial and principal payments under any equipment trust agreement, lease, conditional sale agreement, mortgage or other lien to which any equipment in course of acquisition by the Company shall be subject, or instalments of any sinking fund created by the Company in compliance with the provisions of paragraph (5) of Section 2.03 hereof or paragraph (5) of Section 2.03 of the First Mortgage, but only to the extent that the aggregate expenditures or payments of the Company for such equipment during the period in respect of which charges to the Capital Fund account are then permissible shall exceed the aggregate amount charged to operating expenses by the Company during the same period for any reserves for depreciation of equipment;

provided, as to the cost of any Additions included in any such expenditures, that such cost has not theretofore been used as the basis for the authentication of Bonds, or for the authentication of bonds or the payment of cash under the First Mortgage, or for the payment of moneys deposited with the Trustee as a part of the trust estate, or for the release of property under any of the provisions hereof or of the First Mortgage, or been acquired through the use of insurance proceeds, or been theretofore charged to or the Company reimbursed therefor out of said Capital Fund account (except that the Company may charge to, or be reimbursed out of the Capital Fund account for, not exceeding 25% of the cost of

Additions theretofore used as the basis for the authentication of Bonds or the payment of cash hereunder, or for the authentication of bonds or the payment of cash under the First Mortgage.

For the purpose of this Section 5.05 "capital investments" of the Company shall include:

(a) All items properly chargeable, under the Commission's Uniform System of Accounts for Steam Railroads, to Account 701, Road and Equipment Property, Account 702, Improvements on Leased Property, or Account 705, Miscellaneous Physical Property, or such account or accounts as shall perform substantially the functions now performed by said Accounts 701, 702 and 705, or if there shall no longer be any such accounts then all items which would be properly chargeable to the capital account of the Company under Standard Accounting Rules and which have resulted in physical additions, extensions, improvements or betterments to property owned by the Company and subject to the lien hereof or leased to it under a lease subject to the lien hereof; and

(b) The amount of any advance by the Company to any wholly owned subsidiary corporation, for expenditures which, if made by the Company in respect of property owned or leased by the Company as aforesaid, would be chargeable to the Capital Fund account under the provisions of this Section 5.05.

SECTION 5.06. Before the first day of May in each year the Company shall deliver to the Trustee an Officers' Certificate showing in reasonable detail:

(1) The determination of Available Net Income of the Company for the preceding calendar year;

(2) The determination of the amount, if any, applied on the date of the delivery of such Officers' Certificate to the Sinking Fund payment provided for in paragraph (1) of Section 4.07 of the First Mortgage;

(3) The determination of the amount, if any, credited on the date of the delivery of such Officers' Certificate to the Capital Fund account in compliance with the provisions of paragraph (2) of Section 5.04 hereof;

(4) The amounts charged, since the delivery of the last preceding such Officers' Certificate, against said Capital Fund account pursuant to Section 5.05 hereof, showing separately the amounts so charged in respect of roadway and structures, improvements on leased railway property, miscellaneous physical property, equipment and advances to subsidiaries;

(5) The balance remaining to the credit of the Capital Fund account after making the aforesaid charges;

(6) The determination of the amount, if any, applied on the date of the delivery of such Officers' Certificate to the payment of interest on the Bonds as provided in paragraph (3) of Section 5.04 hereof;

(7) The determination of the amount, if any, applied on the date of the delivery of such Officers' Certificate to the payment of interest on the Bonds as provided in paragraph (4) of Section 5.04 hereof;

(8) The determination of the amount, if any, applied on the date of the delivery of such Officers' Certificate to the Sinking Fund payment provided for in paragraph (5) of Section 5.04 hereof and in Section 5.07 hereof;

(9) The determination of the amounts, if any, applied on the date of the delivery of such Officers' Certificate to any Sinking Fund payments provided for in paragraph (6) of Section 5.04 hereof;

(10) The determination of the amount, if any, applied on the date of the delivery of such Officers' Certificate to the Sinking Fund payment provided for in paragraph (2) of Section 4.07 of the First Mortgage; and

(11) The balance of such Available Net Income of the Company remaining after making the deductions provided for in paragraphs (1) to (7), both inclusive, of Section 5.04 hereof;

and stating that the respective amounts set forth in such Officers' Certificate have been determined in accordance with the provisions of this Article Five; *provided*, that in lieu of such certificates for the years

1939 to 1943, inclusive, there shall be delivered within thirty days from the actual execution and delivery hereof an Officers' Certificate showing such determinations and amounts charged in respect of the period from 1939 to 1943, inclusive.

Such Officers' Certificates shall be open to inspection by the holders of the Bonds at all reasonable times and upon request the Company will furnish a copy thereof to any bondholder. Unless the correctness of any such Officers' Certificate shall have been questioned in any material respect by the holders of not less than 10% in principal amount of the Bonds at the time outstanding (by notice in writing addressed to the Trustee and signed by such holders) within one year after such Officers' Certificate has been filed, the Trustee may for all purposes hereof assume that such Officers' Certificate is in all respects correct.

The Trustee may, and if the holders of not less than 10% in principal amount of the Bonds at the time outstanding shall have questioned the correctness of any such Officers' Certificate as aforesaid and requested the Trustee to take such action the Trustee shall, request that the accounts of the Company for the year in question (and for prior or subsequent years, so far as necessary for such purpose) be audited so far as necessary to check the correctness of such Officers' Certificate, at the expense of the Company, by certified public accountants selected by the Board of Directors and satisfactory to the Trustee, unless an audit in the judgment of the Trustee adequate for such purpose shall have theretofore been made or is then being made pursuant to the First Mortgage or to the voluntary action of the Company, and a copy of such other audit will be furnished to the Trustee. The Company agrees that it will comply with any such request for an audit. Any such audit shall, promptly after its completion, be filed with the Trustee and shall be open to inspection at all reasonable times by the holders of the Bonds.

SECTION 5.07. The Company will pay to the Trustee, in the events and at the times herein set forth, as and for a Sinking Fund for the Series A Bonds the following amounts:

- (1) within thirty (30) days after the actual execution and delivery hereof the sum of Four Hundred Twenty Four Thousand Three Hundred and Sixty Dollars (\$424,360);

(2) on the 1st day of May, 1945, and the first day of May in each year thereafter, an amount which shall equal (a) $\frac{1}{2}$ of 1% of the maximum principal amount of Series A Bonds theretofore at any one time outstanding; plus (b) an amount equal to the interest on all Series A Bonds theretofore purchased or redeemed out of the Sinking Fund (including any Bonds delivered in lieu of cash under Section 5.10 hereof) calculated at the rate of interest paid on said May 1st upon Series A Bonds then outstanding; *provided, however*, that such payment shall only be made if and to the extent that, after deducting from Available Net Income for the preceding calendar year, the sum of the amounts to be applied pursuant to the provisions of paragraphs (1), (2), (3) and (4) of Section 5.04 of this Indenture, there remains out of Available Net Income for said preceding year an amount sufficient for such purpose and that if such amount so remaining is insufficient for such purpose the deficit shall not be cumulative or become payable out of Available Net Income for any subsequent year.

SECTION 5.08. Moneys in the Sinking Fund provided for in Section 5.07 hereof shall be applied by the Trustee, as soon as reasonably practicable, to the purchase of outstanding Series A Bonds. Such purchases may be made in the open market, or by call for tenders, all as the Trustee in its discretion shall determine, at the best price obtainable by the Trustee, but not exceeding the redemption price.

Whenever on any March 15, the moneys then remaining in the Sinking Fund shall be in excess of \$50,000 and Series A Bonds have not been tendered or cannot otherwise be purchased at not more than the redemption price, such moneys shall on the next succeeding May 1, be applied by the Trustee to the redemption of outstanding Series A Bonds. Such redemption shall be at the price, in the manner and on the notice required for the partial redemption of such Bonds under Article Four hereof. In such case the Trustee shall be authorized to give the notice required by Section 4.01 hereof and may sign the same in its own name, as Trustee, or in the name of the Company. Notice having been duly given for the redemption of the Bonds so to be redeemed, such Bonds shall become due and payable in the manner and with the effect therein and in Section 4.02 hereof provided.

Upon request, the Company from its general funds shall pay to the Trustee or reimburse it for all brokerage commissions with respect to Bonds purchased or to be purchased pursuant to this Section 5.08, the advertising and other expenses of redeeming Bonds pursuant to the provisions of this Section 5.08, and the compensation and other expenses of the Trustee for acting as Sinking Fund agent, and no such items shall be paid from or charged against the Sinking Fund. The Trustee, however, shall not be liable for the payment of the principal of or interest on any Bonds called for redemption as herein provided, except to the extent that it shall have funds in its hands or in the Sinking Fund available for such purpose.

Anything in this Section 5.08 to the contrary notwithstanding, if at any time any one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall, to the knowledge of the Trustee, have happened and be continuing, no moneys in the Sinking Fund shall be applied as hereinbefore provided in this Section 5.08, except for the redemption of Bonds publication of the notice of redemption of which had theretofore been commenced, or for the purchase of Bonds the tender of which had theretofore been accepted, but all such moneys shall be held as additional security for the payment of all of the Series A Bonds then outstanding.

SECTION 5.09. Until the first publication of notice of redemption, or the acceptance of any tender of Bonds if purchased as provided in Section 5.08 hereof, all moneys in the Sinking Fund provided for in Section 5.07 hereof shall be held in trust by the Trustee as further security for all the Series A Bonds outstanding, but from and after such first publication or such acceptance of any tender, as the case may be, such moneys, to the extent required for the purpose, shall be set aside out of the Sinking Fund and held in trust for the payment of the Bonds called for redemption or the tender of which has been accepted as aforesaid.

SECTION 5.10. At the option of the Company, in lieu of making any Sinking Fund payment provided for in Section 5.07 hereof, or any instalment of any sinking fund created pursuant to paragraph (5) of Section 2.03 hereof, in cash, in whole or in part, the Company may deliver to the Trustee Series A Bonds previously authenticated and delivered by the Trustee and issued and sold by the Company, the Bonds

so delivered to be received by the Trustee, in lieu of cash in an amount equal to the cost thereof (excluding brokerage commissions and accrued interest) to the Company, or the principal amount thereof, whichever shall be less; *provided, however*, that such Bonds shall be delivered on or before the due date of the Sinking Fund payment on account of which they are to be credited. The Company, simultaneously with or prior to the delivery of any of such Bonds to the Trustee, shall deliver to the Trustee an Officers' Certificate stating that the Bonds so delivered had previously been issued and sold by the Company and subsequently purchased by it at the times and costs (exclusive of brokerage commissions and accrued interest) therein specified.

SECTION 5.11. All Bonds purchased or redeemed by operation of the Sinking Fund as provided in Section 5.08 hereof, or delivered to the Trustee pursuant to Section 5.10, and the coupons appertaining thereto, shall be cancelled by the Trustee and thereafter, upon its written request, delivered to the Company. No Bonds shall be authenticated or delivered in lieu thereof.

ARTICLE SIX.

PARTICULAR COVENANTS OF THE COMPANY.

SECTION 6.01. The Company will duly and punctually pay the principal of, premium, if any, and the interest on the Bonds, at the dates and places and in the amounts specified in the Bonds or in the coupons thereto appertaining, according to the true intent and meaning thereof. When and as paid all Bonds, together with the coupons thereto appertaining, if any, shall be cancelled by the Trustee and thereafter, on its written request, delivered to the Company.

At all times until the payment of the principal of the Bonds, the Company will maintain an office or agency in the Borough of Manhattan, City and State of New York, at which the Bonds and coupons, if any, may be presented for payment, such of the Bonds as are registerable, transferable or exchangeable may be presented for registration, transfer or exchange, and notices and demands in respect of any and all Bonds and coupons may be served. In case any Bonds issued hereunder are made payable, registerable, transferable or exchangeable at any other place, the Company will maintain, so long as any such Bonds are out-

standing hereunder, an office or agency in such other place at which such Bonds and their coupons, if any, may be presented for payment, where such Bonds may be presented for registration, transfer or exchange, and where notices and demands may be served. The Company will give notice to the Trustee of the location of each such office or agency and of any change of location thereof, and in case the Company shall fail to maintain any such office or agency or shall fail to give notice of any change thereof, presentation and demand may be made and notices served at the principal trust office of the Trustee.

SECTION 6.02. All property of every kind which the Company has covenanted by this Indenture to convey or pledge or assign to the Trustee, and any property at any time acquired by the Company and provided by this Indenture to become subject hereto shall, immediately upon the acquisition thereof by the Company and without any further conveyance or assignment, become and be subject to the lien hereof as fully and completely as though now owned by the Company and specifically described in the Granting Clauses hereof; but the Company will make and deliver any and all such further conveyances, assignments or instruments of further assurance as the Trustee may reasonably direct or require for the purpose of expressly and specifically subjecting the same to the lien hereof; and the Company will also do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers and assurances in the law, for the better assuring, conveying, assigning and transferring unto the Trustee all property hereby conveyed, pledged or assigned, or intended so to be, or which the Company may be, or may hereafter become, bound to convey or assign to the Trustee, as the Trustee shall reasonably require.

The Company will deliver to the Trustee on or before the first day of May, 1945, and on or before the first day of May in each year thereafter, an Officers' Certificate setting forth in reasonable detail a description of any substantial items of real and personal property, rights and franchises of the character provided by this Indenture to become subject hereto, acquired during the previous calendar year (not including with respect to the year 1944, property acquired prior to the actual execution and delivery hereof) and an opinion of Counsel stating either (a) that no supplemental indenture is necessary to subject to the lien hereof the items of property set forth in such Officers' Certificate or

(b) that a supplemental indenture is necessary for that purpose and that the supplemental indenture delivered to the Trustee therewith is, or upon such recording or filing as may be specified in said opinion will be, sufficient for that purpose.

SECTION 6.03. The Company from time to time will duly make any and all payments required by the terms of the First Mortgage and of any equipment trust agreement, lease, conditional sale agreement, mortgage or other instrument of lien in respect of equipment, the interest of the Company in which is subject to the lien hereof, and of any mortgage or other instrument of lien constituting a lien prior to the lien of this Indenture upon any other property which is subject to the lien hereof, and will duly pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges, the lien whereof would be prior to the lien hereof, lawfully imposed upon the trust estate, or any part thereof, or upon the income thereof and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect of the trust estate or the income thereof, so that the lien of this Indenture shall be preserved, at the cost of the Company and without expense to the Trustee or the holders of the Bonds; *provided, however*, that the Company shall not be required to pay any such taxes, assessments or governmental charges so long as, in good faith, the validity or the amount thereof shall be duly contested, unless thereby, in the judgment of the Trustee, the security afforded by this Indenture will be materially impaired or endangered.

The Company will not become a party to any modification or amendment of the terms of the First Mortgage Bonds of Series A, or of the provisions of Article Two, Article Four or Article Fifteen of the First Mortgage if in the judgment of the Trustee such terms or provisions as modified or amended would be substantially less favorable or substantially more prejudicial to the holders of the Bonds than such terms or provisions previously were unless the holders of not less than 66⅔% in principal amount of the Bonds then outstanding shall have consented to such modification or amendment in the manner contemplated by Article Sixteen hereof.

SECTION 6.04. The Company owns and is lawfully possessed of the lines of railroad, franchises and other property described in the Granting Clauses hereof to the extent therein stated; and the Company

will warrant and defend the title thereof, and every part thereof, to the Trustee, its successors in the trust and their assigns, for the benefit of the holders for the time being of the Bonds and coupons, against the claims and demands of all persons whomsoever.

The Company will not create, or suffer to be created, any debt, lien or charge, other than the First Mortgage (except to the extent permitted by Granting Clause Fifth hereof or by the last subject clause of the Granting Clauses hereof) which would be prior to the lien of this Indenture upon the trust estate, or any part thereof; and within three months after the same shall accrue, it will pay or cause to be discharged, or will make adequate provision to satisfy and discharge, all lawful claims and demands of mechanics, laborers and others which, if unpaid, might by law be entitled to precedence to this Indenture as a lien or charge upon the trust estate, or some part thereof; *provided, however*, that the Company shall not be required to pay any such debt, lien, charge, claim or demand so long as, in good faith, the validity or the amount thereof shall be duly contested, unless thereby, in the judgment of the Trustee, the security afforded by this Indenture will be materially impaired or endangered; and *provided, further*, that nothing in this Section 6.04 shall require the Company to pay or discharge any debt, lien, charge, claim or demand described in the subject clauses of the Granting Clauses hereof, or subject to which any property may be acquired by the Company, until the maturity thereof.

SECTION 6.05. Subject to the provisions of Articles Eleven and Fourteen hereof, the Company will diligently preserve all the rights and franchises to it granted and upon it conferred, and will, at all times, maintain, preserve and keep the trust estate, and every part and parcel thereof, in good repair and condition, and will, from time to time, make thereto all needful and proper renewals and replacements, additions, betterments and improvements, and will, at all times, keep the lines of railroad, premises and estate subject to the lien hereof supplied with motive power, rolling stock, equipment, machinery, tools and other supplies sufficient to operate the road efficiently and properly, and will keep and maintain the same in good repair and condition.

SECTION 6.06. The Company will keep on its books a list of all equipment subject to the lien hereof. Once in each calendar year on or before August 1, and at such other times as may be requested by the Trustee, the Company will furnish to the Trustee a statement of the

number, description and condition of said equipment, corrected to a date not more than three months prior to the date of its delivery to the Trustee, certified by the General Auditor, Assistant General Auditor or other chief accounting officer of the Company; and will, upon request of the Trustee, give the Trustee such information as the Company may have as to the location and condition of said equipment at that time, and will permit the Trustee through its agents to inspect said property, but the Trustee shall not be obligated so to do unless requested in writing to do so by the holders of 10% in principal amount of the Bonds then outstanding, or unless it shall have reason to believe that such information is incorrect.

SECTION 6.07. The Company will at all times keep insured such of its equipment, tools and machinery, buildings and other structures erected or to be erected on the trust estate and other property used in connection with the lines of railroad and the premises at any time subject to the lien hereof as is, at the time, usually insured by railroad companies, and in the same manner and to the same extent; *provided, however*, that anything herein contained to the contrary notwithstanding, the Company may become a self-insurer against risk of loss to such an amount (in no event to exceed \$5,000 in the case of any single unit of property) as shall be determined by the Board of Directors from time to time in the event that the Company shall establish a plan for self-insurance under which plan insurance reserves are set up and maintained which, from an actuarial viewpoint, are adequate in the light of the risk covered by such self-insurance. Once in each calendar year on or before August 1, and at such other times as may be requested by the Trustee, the Company will furnish to the Trustee a list of the insurance policies then in force and such other data with respect thereto, with respect to losses affecting the trust estate, with respect to the application of proceeds of insurance upon any part of the trust estate, and with respect to any self-insurance and the reserves thereunder, as the Trustee may reasonably request.

The proceeds of any insurance upon any part of the trust estate (not including therein any proceeds of insurance applicable to losses with respect to property of third parties) if in excess of the sum of \$25,000 in the aggregate in respect of any one loss, shall, subject to the conditions of any prior lien on such property, be deposited with and set apart and held in trust by the Trustee as part of the trust estate and applied, at the written request of the Company (but if any of the

events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, only subject to the approval of the Trustee in its discretion) to the repair, restoration or replacement of the property damaged or destroyed, or to the purchase of other property, real or personal, including equipment, or to the making of additions and betterments to, or improvements of, property now or hereafter subject to the lien hereof, or to reimburse the Company for any expenditures made by it after the date of such loss for any of such purposes; *provided, however*, that only proceeds derived from insurance on equipment may be applied to the purchase of equipment. Such repairs, restorations, replacements, purchases, additions, betterments and improvements shall be made by or as directed by the Company and the cost thereof shall be paid by the Trustee out of such proceeds pursuant to the written request of the Company, signed by its President or a Vice President and by its Treasurer, Assistant Treasurer, General Auditor, Assistant General Auditor or other chief accounting officer, which request shall set forth the nature of such repairs, restorations, replacements, purchases, additions, betterments or improvements and the cost thereof, and shall be accompanied by an opinion of Counsel that the same are, or upon the making or acquisition thereof will become, subject to the lien of this Indenture, subject to no prior liens other than Permitted Encumbrances and prior liens to which the property damaged or destroyed was subject. Such request and opinion shall constitute a sufficient warrant and direction to the Trustee for the expenditure of said proceeds in accordance with said request.

If such proceeds be \$25,000 or less they shall be paid to the Company and applied by it to or for the purposes above specified.

Any property acquired by the Company pursuant to this Section 6.07 (subject to the conditions of any prior lien on the property with respect to which such insurance was collected) shall, *ipso facto*, become and be subject to the lien hereof as fully as though specifically mortgaged and assigned hereby; *provided, however*, that if requested by the Trustee the Company will convey and assign the same to the Trustee by appropriate deeds or other instruments of conveyance upon the trusts and for the purposes of this Indenture.

Notwithstanding any prior provisions of this Section 6.07, upon the written request of the Company, signed by its President or a Vice President and by its Treasurer, Assistant Treasurer, General Auditor, Assistant General Auditor or other chief accounting officer, accompanied by Certified Resolutions authorizing such request, the Trustee

shall apply any such proceeds of insurance deposited with it to the purchase or redemption of outstanding Bonds of any one or more series designated in such request in the same manner as provided for the purchase or redemption of Series A Bonds in Section 5.08 hereof, or (in the case of the purchase or redemption of Bonds of any series other than Series A) in the manner provided by any applicable provisions of any indenture supplemental hereto.

SECTION 6.08. In case the Company shall hereafter create any mortgage, deed of trust or other lien upon any property subject to the lien hereof, other than a lien of the character referred to in Granting Clause Fifth hereof or in the last subject clause of the Granting Clauses hereof, such mortgage, deed of trust or other lien shall be, and shall be expressed to be, subject to the prior lien hereof for the security of all the Bonds issued and to be issued hereunder.

SECTION 6.09. Any moneys which at any time shall be deposited by the Company with the Trustee, or with any paying agent, for the purpose of paying any of the Bonds which shall have become due or payable either at their stated maturity or by reason of call for redemption or otherwise, or for the purpose of paying any interest upon any of the Bonds, shall be and are hereby assigned, transferred and set over unto the Trustee, or such paying agent, as the case may be, to be held as a trust fund for the respective holders of the Bonds or coupons or claims for interest, for the purpose of paying which said moneys shall have been deposited, and, in the event of the appointment of a receiver or receivers, or of a trustee or trustees in reorganization, readjustment or bankruptcy, of the Company or its property, neither such receiver or receivers, nor such trustee or trustees, shall have any right, title or interest in said moneys so deposited, or in any part thereof. Any moneys so held by any paying agent may at any time, upon the written request of the Company, be paid to the Trustee and shall thereafter be held in trust by the Trustee for the purposes for which such moneys were held in trust by such paying agent.

SECTION 6.10. Subject to the provisions of Article Fourteen hereof, the Company will at all times, until the payment in full of the Bonds, continue and maintain its corporate existence.

SECTION 6.11. The Company, with all convenient speed, will duly record, file, re-record and re-file this Indenture, and every indenture supplemental hereto which may hereafter be executed, as may be re-

quired by law in order to protect the lien hereof on the property covered hereby or by such supplemental indenture or intended so to be, and will pay any recording or filing tax or fee legally due upon the recording or filing of this Indenture or of any indenture supplemental hereto, and any tax or fee legally due at any time upon or in connection with the issuance of Bonds hereunder, and will make such statements and do such acts as are or shall be required to be made or done by it under any law affecting the recording or filing hereof or of any such supplemental indenture or upon such issuance. At the request of the Trustee, the Company will furnish to the Trustee from time to time an opinion of Counsel as to compliance by the Company with this covenant.

SECTION 6.12. The Company, from time to time, will punctually observe and perform all of its obligations, and will pay and discharge all amounts payable, under and by virtue of any lease or joint facility or trackage contract held by it and subject to the lien hereof, and will not suffer or permit any default for which any such lease or joint facility or trackage contract might be terminated, so that, subject to the provisions of Articles Eleven and Fourteen hereof, the interest of the Company in such leasehold estates or joint facility or trackage contracts may be at all times preserved unimpaired as security for the Bonds and coupons; *provided, however*, that nothing contained in this Section 6.12 shall require the Company to make any such payments or observe any such obligations, so long as, in good faith, it shall duly contest its liability therefor, unless thereby, in the judgment of the Trustee, the security afforded by this Indenture will be materially impaired or endangered.

SECTION 6.13. The Company will not procure the authentication or delivery of, issue, or negotiate any Bonds or procure the payment of moneys deposited hereunder in any manner or in any amount contrary to the provisions of this Indenture.

SECTION 6.14. If the Company shall fail to keep or perform any of the covenants provided in this Article Six to be kept and performed by it (other than the covenants contained in Section 6.01 hereof), the Trustee may make such advances and do such other acts as are required to perform the same on its behalf, but shall be under no obligation so to do unless requested in writing to do so by the holders of at least 20% in principal amount of the Bonds then out-

standing and furnished with funds adequate for the purpose and indemnity satisfactory to it, and, in addition, funds to pay any expenses incurred in connection with such performance; and all sums so advanced shall be at once payable by the Company with interest at the rate of 4% per annum and shall be secured by this Indenture in priority to the indebtedness evidenced by the Bonds and coupons; but no such advance shall be deemed to release the Company from its obligations hereunder.

SECTION 6.15. The Company will not at any time sell or pledge First Mortgage Bonds (other than the Series A Bonds distributable under the Plan) unless (1) the Company shall have contracted forthwith to sell or pledge such bonds; and (2) the Board of Directors, by resolution adopted by the affirmative vote of at least two-thirds of the members thereof then in office, shall have determined that, in the opinion of said Board of Directors, taking into account market and all other relevant conditions at the time, it is impracticable to provide the amount of money needed by the Company and expected to be realized by the sale or pledge of such bonds (a) by the sale of Bonds maturing not less than twenty years after the date of issue thereof, at a price which would provide for the purchaser thereof a yield to maturity of 5% or less on the purchase price of such Bonds, or (b) by the sale of preferred stock of the Company at a price which would provide for the purchaser thereof a current dividend return of 6% or less on the purchase price of such stock, or (c) by the sale of common stock of the Company at a price, not less than \$50 a share, which would provide for the purchaser thereof a current dividend return (based on the regular dividend rate on the Company's common stock then in effect, or if no such rate is then in effect, on the average rate at which dividends shall have been paid on such stock during the preceding twelve calendar months) equal to 6% or less on the purchase price of such stock. The Company will not at any time pledge First Mortgage Bonds if upon the making of such pledge the aggregate principal amount of all First Mortgage Bonds under pledge by the Company would exceed the aggregate principal amount of all indebtedness secured by pledged First Mortgage Bonds by more than 10% of the aggregate principal amount of First Mortgage Bonds then outstanding. The Company will not at any time sell or pledge Bonds (other than the Series A Bonds initially issued hereunder) unless (1) the Company shall have contracted forthwith to sell or pledge such Bonds; and (2) the Board of Directors, by resolution adopted by the affirmative vote of at least

two-thirds of the members thereof then in office, shall have determined that, in the opinion of said Board of Directors, taking into account market and all other relevant conditions at the time, it is impracticable to provide the amount of money needed by the Company and expected to be realized by the sale or pledge of such Bonds (a) by the sale of preferred stock of the Company at a price which would provide for the purchaser thereof a current dividend return of 6% or less on the purchase price of such stock, or (b) by the sale of common stock of the Company at a price, not less than \$50 a share, which would provide for the purchaser thereof a current dividend return (based on the regular dividend rate on the Company's common stock then in effect, or if no such rate is then in effect, on the average rate at which dividends shall have been paid on such stock during the preceding twelve calendar months) equal to 6% or less on the purchase price of such stock.

The Company will not at any time pledge Bonds if, upon the making of such pledge (a) the aggregate principal amount of all Bonds under pledge by the Company would exceed the aggregate principal amount of all indebtedness secured by pledged Bonds by more than 10% of the aggregate principal amount of Bonds then outstanding, or (b) the aggregate principal amount of all Bonds and First Mortgage Bonds under pledge by the Company would exceed the aggregate principal amount of all indebtedness thereby secured by more than 10% of the aggregate principal amount of all Bonds and First Mortgage Bonds then outstanding.

SECTION 6.16. The Company will not permit any subsidiary company to increase the amount or number of shares of its stock of any class unless effective provision is made that all such additional stock, or such part thereof as is proportionate to the part of the stock of such class previously subject to the lien hereof, shall immediately upon the issue or creation thereof be assigned and delivered to the Trustee as a part of the trust estate (subject to the provisions of any indenture constituting a lien prior to the lien hereof on the shares of such stock previously subject to the lien of this Indenture), any such additional stock to be fully paid and non-assessable.

The Company will not permit any wholly owned subsidiary, as that term is defined in Section 17.03 hereof, to issue, create, assume or guarantee any bonds, obligations or other indebtedness, or to create any mortgage or other lien on the property of such wholly owned subsidiary or any part thereof, unless effective provision be made that such bonds,

obligations or other indebtedness and such mortgage or other lien shall immediately upon the issue or creation thereof be assigned and delivered to the Trustee as a part of the trust estate (subject to the provisions of any indenture constituting a lien prior to the lien hereof on securities of such wholly owned subsidiary which at the time are subject to the lien of this Indenture); *provided, however*, that the foregoing provisions of this paragraph shall not apply to (1) current operating accounts for a period not at any date exceeding six months, (2) bonds, obligations, or other indebtedness issued for the purchase price of equipment, secured by an instrument of trust, conditional sale, mortgage or other instrument of lien relating only to such equipment, (3) bonds, obligations, or other indebtedness issued for the purchase price of property acquired after the execution and delivery of this Indenture, secured by a mortgage or deed of trust relating only to such property, if the principal amount of such indebtedness does not exceed 75% of the cost of such property, (4) bonds, obligations or other indebtedness created or issued pursuant to Section 7.09 hereof, (5) bonds, obligations or other indebtedness which, or the proceeds of which, are to be used by such corporation for, or to reimburse itself for, the construction or acquisition of additional lines of railroad or physical additions, betterments, improvements or extensions of or to property owned by it or of or to said additional lines of railroad, if the principal amount of such indebtedness does not exceed 75% of the cost of such additional lines of railroad or additions, betterments, improvements or extensions, (6) mortgages or other liens created to secure any bonds, obligations or other indebtedness of the character specified in the foregoing subdivisions (2), (3), (4) and (5), or (7) instruments of further assurance or security required by a mortgage or deed of trust upon some part of the property of such corporation.

The Company will not without the consent of the Trustee permit any subsidiary company to sell, lease or otherwise dispose of its property as a whole or substantially as a whole, except to the Company or to some other subsidiary company of whose securities, including stock, those subject to the lien hereof represent an equal or greater proportionate interest. The Trustee shall give such consent upon compliance by the Company with the provisions of Section 7.10 hereof and upon being furnished with (1) Certified Resolutions of the Board of Directors requesting such consent and stating that, in the judgment of the Board of Directors, the making by such subsidiary company of such sale, lease or other disposition is desirable from the point

of view of the Company and will not materially impair or prejudice the security for the Bonds or the interests of the bondholders, and (2) an Officers' Certificate setting out the terms of such sale, lease or other disposition, and stating that in the opinion of the signers such terms are fair to such subsidiary company and that the consideration to be received by such subsidiary company constitutes full and proper consideration for such sale, lease or other disposition.

SECTION 6.17. The Company will furnish annually to the Trustee on or before the first day of May an Officers' Certificate stating whether the Company, to the best of the knowledge, information and belief of the officers signing the same, has complied with the covenants contained in this Article Six, and, if the Company shall have failed to comply with any of such covenants, in what particulars it has failed to do so.

ARTICLE SEVEN.

CONTROL OF PLEDGED SECURITIES.

SECTION 7.01. Subject to the provisions of the First Mortgage and any other prior lien indenture, the Company will transfer, assign and deliver to the Trustee forthwith upon their receipt by the Company, all stock certificates, bonds and other obligations which it now owns or which it may hereafter acquire and which are mortgaged and pledged or required to be mortgaged and pledged hereunder; *provided, however*, that stock certificates representing directors' qualifying shares need not be so delivered, unless and until the Trustee shall deem such action expedient for the protection of the trusts hereunder. Instruments evidencing such assignments and transfers shall be in such form as the Trustee may require.

When any indenture constituting a lien prior to the lien of this Indenture on any shares of stock, bonds, or other obligations subject to the lien hereof shall be satisfied, released or discharged the Trustee (subject to the provisions of any other indenture constituting such a prior lien) shall be entitled to the delivery of such securities to it, to be held as part of the trust estate; and the Company will file appropriate instructions with the trustee under such prior lien indenture, execute and deliver to the Trustee all assignments, transfers, powers of attorney and other instruments, and take all such other action as

the Trustee may reasonably require, to the end that all said shares of stock, bonds or other obligations shall be so delivered to the Trustee.

SECTION 7.02. Subject to the provisions of any prior lien indenture, the Trustee is authorized, in its discretion, to cause to be registered as to principal in its name as Trustee, or in the name of its nominee, any and all coupon bonds which the Trustee shall receive as security under any of the provisions hereof, or it may cause the same to be exchanged for registered bonds without coupons of any denomination. The Trustee may cause to be transferred into its name as trustee, or into the name of its nominee, all registered bonds which it shall so receive. At any time the Trustee may transfer into its name as trustee all or any shares of stock, the certificates for which shall have been so received; or, in its discretion, the Trustee may hold such certificates in the name of the registered holder thereof at the time of such delivery, or in the name of a nominee or nominees of the Trustee, provided that the same be endorsed in blank for transfer, or be accompanied by proper instruments of assignment in blank duly executed by such registered holder or nominee; *provided, however*, that until an event of default as defined in Section 8.02 hereof shall happen there shall not be transferred to the name of the Trustee or its nominee, shares of stock of carrier or terminal corporations (including, without limitation thereto, Alameda Belt Line, Central California Traction Company, The Salt Lake City Union Depot and Railroad Company, The Oakland Terminal Railway and Railway Express Agency, Incorporated) in cases where the shares of stock of any such corporation owned by the Company constitute less than a majority of the outstanding stock of such corporation and all the remainder of such outstanding stock is owned by one or more railroad corporations.

The Trustee may do whatever it may deem necessary for the purpose of maintaining, preserving, renewing or extending the corporate existence of any company, shares of stock of which shall be subject to the lien hereof, and for such purposes, from time to time, may assign, transfer and deliver so many shares of the stock of any such company as may be necessary to qualify persons to act as directors of, or in any other official relation to, such company. Whenever the Company, not being in default hereunder, shall in writing so request, stating in such request that the Company has no shares for that purpose under its control other than shares represented by certificates in the possession of the Trustee and held hereunder, the Trustee, at the cost

and expense of the Company, shall assign and transfer, to persons designated by the Company, a sufficient number of the shares which then shall be held hereunder, to qualify such persons to act as directors of, or in any other official relation to, the company which issued such shares; *provided, however*, that under this provision, no transfer shall be made of the stock of any subsidiary company which shall reduce the amount of stock in any subsidiary company held hereunder so as to render it less than a majority of the stock of such subsidiary company entitled to vote for the election of directors, and that in every case the Trustee shall make such arrangements as it shall deem expedient for the protection of the trusts hereunder in respect of the shares so assigned.

All stock dividends upon shares of stock subject to this Indenture, unless required to be delivered to and received by the trustee under a prior lien indenture, shall be received by the Trustee and held as part of the trust estate. The term "prior lien indenture" as used in this Article shall be deemed to include the First Mortgage and any other mortgage or instrument of trust or security constituting a lien on pledged securities, prior to the lien of this Indenture.

SECTION 7.03. Unless and until

(A) The Trustee, under the powers herein granted, or a trustee in bankruptcy or a receiver, shall have entered into possession of the lines of railroad, or some of them, constituting part of the trust estate;

(B) There shall be a default in the payment of any instalment of interest on any of the Bonds at the time outstanding; or

(C) Some one of the events of default specified in paragraphs (b), (c), (d), (e) and (f) of Section 8.02 hereof shall happen;

(a) The Trustee shall not (except with the consent of the Company or as otherwise authorized by this Indenture), whether at, before, or after the maturity thereof, collect or enforce the collection of the principal of or interest on any bonds, obligations, claims or indebtedness subject to the lien hereof, and shall not enforce any provisions of the mortgages, trust deeds or other instruments under which such bonds, obligations, claims or indebtedness were issued, or by which the same are secured;

(b) The Company shall (except as hereinafter in this Section 7.03 provided) be entitled to receive all interest paid in respect of any such bonds, obligations, claims or indebtedness, and all divi-

dends paid in money on all shares of stock subject to the lien hereof, whether or not such shares have been transferred into the name of the Trustee or its nominee;

(c) From time to time, upon written request of the Company, the Trustee shall deliver to the Company any coupons for such interest then in its possession theretofore matured or maturing within fifteen days after such request, and on like request, the Trustee shall deliver to the Company suitable orders in favor of the Company, or its nominee, for the payment of such interest and of such dividends, and the Company may collect or cancel such coupons, interest and dividends; and the Trustee shall upon demand pay over to the Company any such interest and dividends which may be collected or be received by the Trustee or its nominees; *provided, however*, and it is specifically declared and agreed that, except as otherwise expressly provided in this Indenture,

(1) The Company shall not be entitled to receive, and the Trustee shall not pay over to the Company, the principal of any bond, obligation, claim or indebtedness subject to the lien hereof;

(2) The Company shall not be entitled to receive and the Trustee shall not pay over to it, any interest on any bond, obligation, claim or indebtedness at any time subject to the lien hereof which shall have been collected or paid out of the proceeds of any sale, condemnation or expropriation of the property covered by a mortgage securing such bond, obligation, claim or indebtedness;

(3) The Company shall not be entitled to receive and the Trustee shall not pay over to it any dividends on any shares of stock subject to the lien hereof (including the redemption price of any such shares of stock) which shall have been paid in stock or upon or in the course of dissolution, liquidation or winding up of any such company or which in any way shall be chargeable to or payable out of capital, capital surplus or paid-in surplus; it being the intention that the Company shall be entitled to receive only dividends paid out of earned surplus;

(4) The Company shall not sell, assign or transfer any such coupon or right to interest or dividends, delivered or assigned to it, or any such claim or indebtedness;

(5) The Company shall not collect any such coupon or interest, or any such claim or indebtedness, or any such dividends, by legal proceedings or by enforcement of any security therefor, except with the written consent of the Trustee, nor in any manner which the Trustee shall deem prejudicial to the trusts hereunder; and

(6) Until actually paid or cancelled such coupons or right to interest or dividends shall remain subject to the lien hereof. If any such coupons or orders for the payment of interest or dividends delivered to the Company as aforesaid shall not forthwith be paid and cancelled, the Company shall return the same to the Trustee.

The Trustee shall be entitled to assume that any interest received by the Trustee on any bond, obligation, claim or indebtedness is not paid out of the proceeds of any sale, condemnation or expropriation of the property covered by the mortgage securing such bond, obligation, claim or indebtedness, and that any dividend received in money on any shares of stock is not paid upon or in the course of dissolution, liquidation or winding up of any such company and is not chargeable to or paid out of capital, capital surplus or paid-in surplus, until the Trustee shall be notified in writing to the contrary by the holders of not less than 5% in principal amount of the Bonds at the time outstanding, giving the facts with respect thereto and the basis of their information.

SECTION 7.04. Any funds which shall be paid on account of the principal of any bonds, obligations, claims or indebtedness subject to the lien hereof, or on account of interest thereon paid out of the proceeds of sale, condemnation or expropriation of the property covered by a mortgage securing the same, or which shall be paid upon shares of stock subject to the lien hereof as the redemption price thereof, or upon or in the course of dissolution, liquidation or winding up of a company or shall be chargeable to or payable out of capital, capital surplus or paid-in surplus, unless required to be paid to and received by the trustee under some mortgage or other instrument of trust or security constituting a lien thereon prior to the lien hereof, or unless applied on account of the price of property purchased pursuant to Section 7.06 hereof, shall be received and held by the Trustee as part of the trust estate, and from time to time, so long as none of the events

specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, shall, in whole or in part, at the election of the Company, be applied by the Trustee,

(a) to pay, or to reimburse the Company for, all or any part of the cost of Additions which could otherwise be made the basis for the authentication of Bonds under Section 2.03 hereof (excluding, however, any part of such cost theretofore made the basis for the authentication of Bonds, or for the authentication of bonds or the payment of cash under the First Mortgage, or for the payment of moneys deposited with the Trustee as a part of the trust estate, or for the release of property under any of the provisions hereof or of the First Mortgage or acquired through the use of insurance proceeds, or charged to or for which the Company has been reimbursed out of the Capital Fund account provided for in Article Five hereof and not including in cost the amount of any prior lien on such Additions); or

(b) to the purchase or redemption of outstanding Bonds of any one or more series designated by the Company in the same manner as provided for the purchase or redemption of Series A Bonds in Section 5.08 hereof or (in the case of the purchase or redemption of Bonds of any series other than Series A) in the manner provided by any applicable provisions of any indenture supplemental hereto *provided, however*, that if the amount paid on any such purchase or redemption of Bonds shall exceed the principal amount thereof, such excess shall be paid by the Company from other funds.

Such moneys shall be so applied by the Trustee upon delivery to it of the following:

(1) Certified Resolutions of the Board of Directors requesting such application of a specified amount of such moneys;

(2) In case such moneys are to be applied pursuant to paragraph (a) of this Section 7.04, the documents required by paragraphs (b), (c), (d), (e) and (f) of said Section 2.03;

(3) An Officers' Certificate, dated not more than thirty days prior to the delivery thereof, stating that none of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof has happened and is continuing.

SECTION 7.05. Unless some one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, the Company shall have the right to vote upon and give consents in respect of all shares of stock subject to the lien hereof for all purposes not contrary to the provisions hereof. From time to time, upon request of the Company in writing signed by its President or a Vice President and specifying the purpose or purposes for which such powers of attorney, proxies or consents are to be used and certifying that the same are not contrary to the provisions hereof, the Trustee shall execute and deliver, or cause to be executed and delivered to the Company or its nominees, suitable powers of attorney or proxies to vote upon or suitable consents in respect of, any such shares of stock which shall have been transferred to the Trustee or its nominee. Such powers of attorney, proxies and consents shall specify, as the purpose or purposes for which the same may be used, the purpose or purposes expressed in such request. The Trustee shall be fully protected and shall incur no liability in executing and delivering, or causing to be executed and delivered, any such powers of attorney or proxies or consents upon the receipt of an opinion of Counsel that such purpose or purposes is or are not inconsistent with or contrary to any of the provisions of this Indenture.

SECTION 7.06. In case default shall be made in the payment of the principal of or interest on any of the bonds, obligations, claims, or indebtedness subject to the lien hereof, or in the due observance or performance of any covenant contained in any of the same or in any mortgage, deed of trust, or trust agreement by which the same are secured, or in the payment of the principal of, or interest on, or in the due observance or performance of any covenant contained in, any other bonds, obligations, claims or indebtedness then secured by any such mortgage; deed of trust or trust agreement then, and in any such case, the Trustee shall, on the written request of the Company, if none of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing and may, without such request, if any one or more of such events shall have happened and be continuing, exercise and enforce, by legal proceedings or otherwise, any and all rights and remedies under such bonds, obligations, claims or indebtedness and under any such mortgage, deed of trust or trust agreement.

In case

(a) At any time any company, shares of the capital stock of which shall be subject to the lien hereof, shall be dissolved or liquidated; or

(b) All or substantially all of the property of any such company shall be sold at any judicial or other sale; or

(c) Any property covered by a mortgage securing any bonds subject to the lien hereof, or subject to any charge or trust for the payment of obligations subject to the lien hereof, shall be sold upon foreclosure of such mortgage, or in enforcement of such charge or trust;

then, in any such case, if the property of such dissolved or liquidated company, or the property sold, can be acquired by crediting on the bonds, obligations, claims, indebtedness or shares of stock held by the Trustee hereunder, any sums accruing or to be received thereon out of the proceeds of such property, and by paying not more than 10% of the price of such property in cash, the Trustee shall, on the written request of the Company, upon being provided with the amount of cash necessary therefor and indemnified on account of its expenses in connection therewith, if none of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, and may, without such request, if any one or more of such events shall have happened and be continuing, purchase said property or cause the same to be purchased on its behalf, either in its name as Trustee or in the name of the Company or otherwise, as it may determine, and use such bonds, obligations, claims, indebtedness and shares of stock, so far as may be, to make payment therefor. If requested in writing by the Company and by the holders of a majority in principal amount of the Bonds then outstanding, and provided with the amount of cash necessary therefor and indemnified on account of its expenses in connection therewith, the Trustee shall purchase said property or cause the same to be purchased as aforesaid, irrespective of the percentage of the price of such property to be paid in cash; and if any one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, the Trustee may, in its discretion, but shall not be obligated to, take such action without the request of the Company, if requested in writing so

to do by the holders of a majority in principal amount of the Bonds then outstanding.

In case of any such purchase, the Trustee shall take such steps as it may deem proper to cause such property to be vested either in the Company subject to the lien hereof as a first lien thereon subject only to any liens subject to which such property shall have been sold and to Permitted Encumbrances, or in some corporation organized or to be organized with power to acquire and manage such property, provided in the latter event that all the bonds and other indebtedness and capital stock of such corporation shall be received by the Trustee and be held subject to the lien hereof. If such shares of stock of any such company so liquidated or dissolved, or whose property shall be so sold, or the bonds or obligations, the mortgage or other instrument securing which shall be foreclosed or enforced, shall be held by the trustee under some indenture constituting a lien thereon prior to the lien of this Indenture, the Trustee may permit the purchase of such property by or on behalf of the trustee under such prior indenture.

The Company, on demand of the Trustee, forthwith will pay, or satisfactorily provide for, all appropriate expenditures made by the Trustee under any of the provisions of this Section 7.06, including all sums required to obtain and perfect the ownership of and title to any property which the Trustee shall purchase or shall cause or authorize to be purchased pursuant to the provisions of this Section 7.06; and in any case, without impairment of, or prejudice to, any of its rights hereunder by reason of any default of the Company, the Trustee, in its discretion, may but need not make advances for all such expenditures so to be paid or provided by the Company, or may procure such advances to be made by others, and for such advances made by the Trustee, or by others at its request, with interest thereon at the rate of 4% per annum, the Trustee shall have a lien under this Indenture prior to the lien of the Bonds, upon all bonds, obligations, claims, indebtedness and shares of stock in respect of which such advances shall have been made, and the proceeds thereof, and any property acquired by means thereof.

SECTION 7.07. The Trustee, with the written consent of the Company (and without such consent if one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have hap-

pened and be continuing), may join in or permit or authorize the trustee under any indenture constituting a lien thereon prior to the lien of this Indenture to join in, any plan of readjustment, recapitalization or reorganization in respect of any such bonds, obligations, claims, indebtedness or shares of stock, and may accept or permit or authorize the acceptance of any cash, securities or other property issued in payment or exchange therefor under such plan.

SECTION 7.08. In case the Trustee shall not purchase or cause to be purchased the property of any such dissolved or liquidated company, or the property sold, pursuant to Section 7.06 hereof, or shall not join in any such plan of readjustment, recapitalization or reorganization pursuant to Section 7.07 hereof, then the Trustee shall receive any portion of the proceeds of such dissolution or liquidation or of such sale, or any moneys or securities distributable under any such plan applicable to the bonds, obligations, claims, indebtedness or shares of stock subject to the lien hereof, unless such proceeds, moneys or securities are required to be paid to and received by the trustee under some mortgage or other instrument constituting a lien thereon prior to the lien of this Indenture. Any such moneys and securities received by the Trustee shall be held by the Trustee as part of the trust estate, and, in the case of such moneys, shall be applied by the Trustee to any of the purposes specified in Section 7.04 hereof, subject to the provisions of said Section 7.04.

SECTION 7.09. The Trustee at any time in its discretion, with the written consent of the Company, or if one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, without such consent, may consent to the renewal or extension of any of the bonds, obligations, claims or other indebtedness subject to the lien hereof, and of the mortgages, if any, securing the same, at the same or a higher or a lower rate of interest. In case of the renewal or extension of any such bonds, obligations, claims or other indebtedness, the Trustee may surrender the same to the company which issued them or its successor, or present the same for appropriate endorsement, and in lieu thereof may receive renewal or extended bonds, obligations, claims or other indebtedness bearing such interest and maturing at such time as the Trustee may deem reasonable; *provided, however*, that if any of the same were

secured by a lien, such renewal or extended bonds, obligations, claims or other indebtedness shall be secured by a lien upon the same property, or upon the same property and additional property, equal or superior to that securing the bonds, obligations, claims or other indebtedness renewed or extended. The Trustee may accept an opinion of Counsel as conclusive evidence that such extended or renewal bonds, obligations, claims or other indebtedness are so secured. All bonds, obligations, claims or other indebtedness received in exchange for or in renewal of any bonds, obligations, claims or other indebtedness subject to the lien of this Indenture shall be held subject to the lien hereof in the same manner and to the same extent as the bonds, obligations, claims or other indebtedness in exchange for or in renewal of which they shall have been received.

SECTION 7.10. Any corporation, any shares of whose stock are subject to the lien hereof, may consolidate with or merge into, or sell, convey, transfer or lease all or any part of its property to, the Company; *provided, however*, that such consolidation, merger, sale, conveyance, transfer or lease shall be made only upon such terms as shall not in any way impair or prejudice the value of the security under this Indenture, and shall be subject to the provisions of Article Fourteen hereof to the extent that the same shall apply. In the event of the consolidation or merger of any such corporation with, or the sale, conveyance, transfer or lease of its property to, the Company, this Indenture, *ipso facto*, shall become and be a lien upon all the estate, right, title and interest of the Company in any property or leasehold so acquired by the Company with the same force and effect as if the same had been directly owned by the Company at the date of this Indenture and conveyed to the Trustee hereunder; and the Company shall execute and deliver to the Trustee all such instruments as may be required of it by the Trustee further to establish and perfect such lien.

Subject to the provisions of Section 6.16 hereof, any corporation, any shares of whose stock are subject to the lien hereof, may consolidate with or merge into, or sell, convey, transfer or lease all or any part of its property to, any other person or corporation; *provided, however*, that the value of the security under this Indenture shall not be in any way impaired or prejudiced thereby, and *provided, further*, that the whole consideration payable, distributable or deliverable on account of the shares of capital stock subject to the lien hereof (whether

such consideration be in cash or otherwise) shall (unless required to be delivered to the trustee under some mortgage or other instrument constituting a lien thereon prior to the lien of this Indenture) in the event of any such transaction be delivered to the Trustee, and shall be and become subject to the lien hereof. Any cash included in such consideration shall be applied by the Trustee to any of the purposes specified in Section 7.04 hereof, subject to the provisions of said Section 7.04.

The Trustee may accept an opinion of Counsel as conclusive evidence that the value of the security hereof will not be impaired or prejudiced by any consolidation, merger, sale, conveyance, transfer or lease proposed to be made under the provisions of this Section 7.10.

The stock of any corporation, any shares of whose stock are subject to the lien hereof, may for the purpose of carrying out any transaction permitted by the foregoing provisions of this Section 7.10, and as a part of or in contemplation of such transaction, be increased or reduced to the extent necessary therefor, provided that the percentage of the capital stock of such corporation of each class subject to the lien hereof shall not be decreased by such increase or reduction of capital stock.

The Trustee shall do any and all things proper to carry into effect the purposes of this Section 7.10, and in order to facilitate any consolidation, merger, sale, conveyance, transfer or lease contemplated by this Section 7.10 the Trustee, if necessary, shall either vote or transfer into the name of the Company, under such restrictions as it may deem sufficient for the protection of the holders of the Bonds, the stock of any corporation about to be so merged or consolidated; but the certificates for any shares so transferred into the name of the Company shall forthwith be delivered to and held by the Trustee hereunder, and the Company shall execute and deliver to the Trustee such instruments as the Trustee shall deem necessary in order to enable it to transfer such shares back into its own name.

SECTION 7.11. The Trustee shall have and may exercise all the rights of owner in respect of any bonds, obligations, claims or indebtedness subject to the lien hereof, and may take all such action from time to time as in its discretion it shall deem advisable to protect the interests of the Trustee and of the holders of the Bonds in respect of any thereof, except to the extent that rights in respect

thereof are conferred upon the Company by this Indenture and are exercised by it.

SECTION 7.12. So long as any bonds are outstanding under the First Mortgage the Trustee shall, upon the written request of the Company, consent to or join in any action by the trustee under the First Mortgage authorized or permitted by the provisions of the First Mortgage in respect of any bonds, obligations, claims, indebtedness or shares of stock subject thereto and hereto; *provided, however*, that the Trustee shall not be required to consent to or join in such action if any of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing or if the provisions of the First Mortgage relating to such action shall have been modified or amended and the holders of at least 66⅔% in principal amount of the Bonds shall not have consented to such modification or amendment or to a corresponding modification or amendment of this Indenture.

The Trustee may accept an opinion of Counsel as conclusive evidence that such action is authorized or permitted by the provisions of the First Mortgage and as to whether or not the provisions of the First Mortgage relating to such action have been modified or amended.

ARTICLE EIGHT.

REMEDIES OF TRUSTEE AND BONDHOLDERS.

SECTION 8.01. In case any coupon or claim for interest on any of the Bonds shall have been funded or extended by or with the consent of the Company, such coupon or claim for interest so funded or extended shall not be entitled, in case of default hereunder, to the benefit or security of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds and of all coupons and claims for interest thereon that shall not have been so funded or extended; *provided, however*, that the foregoing provisions of this Section 8.01 shall not be applicable to any coupon or claim for interest which shall have been so funded or extended pursuant to a plan proposed by the Company to all holders of any one or more series of Bonds.

If any matured coupons or claims for interest on any of the Bonds at or after maturity shall be owned by the Company, or purchased by it or on its behalf, then such matured coupons or claims for interest shall not be entitled to the benefit or security of this Indenture; and the

Company covenants that all such coupons and claims for interest so owned or purchased by it, or on its behalf, at or after their maturity, shall be cancelled promptly.

SECTION 8.02. If one or more of the following events, herein sometimes called "events of default", shall happen, that is to say:

(a) Default shall be made in the payment of any instalment of interest on any of the Bonds when and as the same shall become due and payable, as therein expressed, and such default shall have continued for sixty days; or

(b) Default shall be made in the payment of the principal of any of the Bonds when and as the same shall become due and payable, either upon stated maturity or upon call for redemption or otherwise as herein provided; or

(c) Default shall be made in the payment of any instalment of any sinking fund provided for herein, or in any indenture supplemental hereto, in respect of the Bonds or any series thereof, when and as such instalment shall become due and payable in accordance with the terms of this Indenture or of any such supplemental indenture, and such default shall have continued for sixty days (or in the case of a sinking fund provided for under a supplemental indenture for such other period, if any, as may be specified therein); or

(d) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of the Company, its successors or assigns, contained in the Bonds or in this Indenture or in any indenture supplemental hereto, and such default shall continue for sixty days (or in case of a default under a supplemental indenture for such other period, if any, as may be specified therein) after written notice specifying such default and requiring the same to be remedied shall have been given to the Company by the Trustee, which notice may be given by the Trustee in its discretion, and shall be given on the written request of the holders of 10% in principal amount of the Bonds at the time outstanding; or

(e) An order shall be made by a court of competent jurisdiction for the appointment, without the consent of the Company, of a receiver or trustee of the Company or of all or any part of the trust estate and such receiver or trustee shall not have been

discharged within sixty days; or pursuant to any bankruptcy, reorganization, readjustment or debtor relief proceeding, brought by creditors of the Company, any such court shall have taken jurisdiction of the property of the Company and such proceeding shall not have been dismissed within thirty days; or

(f) The Company shall consent to the appointment of a receiver or trustee of all or any part of the trust estate, or shall file a petition in bankruptcy or seeking reorganization or readjustment or similar relief under any Federal or state statute, or shall admit in writing the material allegations of any such petition, or shall file a petition to take advantage of any debtor relief act;

then, and in any such case, the Trustee personally, or by its agents or attorneys, may, but shall not be obligated to, enter into and upon all or any part of the railroads, rolling stock and other equipment, property and premises, lands, rights, interests and franchises hereby conveyed, or intended so to be, and each and every part thereof, and may exclude the Company, its agents and servants wholly therefrom; and having and holding the same, may use, operate, manage and control said railroads and other property, regulate the tolls for the transportation of passengers and freight thereon, and conduct the business thereof, either personally or by its superintendents, managers, agents, servants or attorneys; and upon every such entry the Trustee, at the expense of the trust estate, either by purchase, repair or construction, may from time to time maintain and restore the rolling stock and other equipment, tools and machinery, buildings, bridges and structures and other property erected upon or provided for use in connection with said railroads and other property, and may insure or keep insured such of the same as are usually insured by railroad companies and in the same manner and to the same extent; and likewise, from time to time, at the expense of the trust estate, may make all necessary or proper repairs, renewals and replacements, and useful alterations, additions, betterments and improvements thereto and thereon, as to it may seem judicious; and may manage the mortgaged railroads and property and carry on the business and exercise all rights and powers of the Company, either in the name of the Company or otherwise, as the Trustee shall deem best. And the Trustee shall be entitled to collect and receive all revenues, rents, issues, profits, tolls and other income of the same and every part thereof, and also the income from

all bonds, obligations, claims, indebtedness or shares of stock subject to the lien hereof. And after deducting the expenses of operating said railroads and other property, and of conducting the business thereof and of all repairs, maintenance, renewals, replacements, alterations, additions, betterments and improvements and all payments which may be made for taxes, assessments, insurance and prior or other proper charges upon the trust estate, or any part thereof, as well as just and reasonable compensation for its own services and for all attorneys, agents, clerks, servants and other employees by it properly engaged and employed, the Trustee shall apply the moneys arising as aforesaid, as follows:

(i) To the payment of the interest in default on the Bonds in the order of the maturity of the instalments of such interest, with interest thereon (to the extent permitted by law) at the rate or rates borne by the Bonds, such payments to be made ratably, to the persons entitled thereto, without discrimination or preference;

(ii) In case the principal of any of the Bonds shall have become due, by declaration or otherwise, to the payment of the principal of all the Bonds, whether or not then due, with interest thereon at the rate or rates borne by the Bonds, such payments to be made ratably, to the persons entitled thereto, without discrimination or preference; and

(iii) In case the principal of none of the Bonds shall have become due, by declaration or otherwise, to remedy any other defaults of the Company hereunder in such manner as, in the judgment of the Trustee, shall best serve the interests of the holders of the Bonds.

These provisions, however, shall not be deemed in anywise to modify the provisions of Section 8.01 hereof, and are subject thereto.

SECTION 8.03. If any one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, the Trustee shall be entitled to vote on all shares of stock then subject to the lien hereof, and to collect and receive all dividends on all such shares of stock and all sums payable for principal, interest or otherwise upon any indebtedness that shall then be subject to the lien hereof, and to apply the net moneys so received as hereinbefore in Section 8.02 hereof provided; and, as holder of any such shares

of stock and of any such indebtedness, to perform any and all acts, or to make or execute any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section 8.03; but, in the event that a receiver or trustee of the Company or any of the railroads embraced in the trust estate shall have been appointed and shall be in possession thereof, the Trustee from time to time in its discretion may, and if so requested in writing by the holders of a majority in principal amount of the Bonds then outstanding shall, turn over any part or all of such moneys to such receiver or trustee.

SECTION 8.04. In case any one or more of the events of default shall have happened and be continuing, the Trustee by notice in writing delivered to the Company may, and upon the written request of the holders of either 20% in principal amount of the Bonds then outstanding or 30% in principal amount of any series of the Bonds then outstanding, shall, declare the principal of all Bonds then outstanding to be forthwith due and payable, and upon any such declaration the same shall become and be forthwith due and payable, anything herein or in the Bonds contained to the contrary notwithstanding. This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable and before any sale of the trust estate or any part thereof shall have been made, all arrears of interest upon all the Bonds, with interest on overdue installments of interest (to the extent permitted by law) at the same rate or rates borne by the Bonds, and the principal of any of the Bonds which shall have become due by their terms, together with the reasonable charges and expenses of the Trustee, its agents and attorneys, shall either be paid by the Company or be collected out of the income of the trust estate and all other defaults under the Bonds or under this Indenture shall be made good to the satisfaction of the Trustee, then and in such case the holders of a majority in principal amount of the Bonds then outstanding, by written notice to the Company and the Trustee, may waive such default and its consequences; but no such waiver shall extend to or affect any subsequent default or impair any rights consequent thereon.

SECTION 8.05. If one or more of the events of default shall have happened and be continuing, the Trustee may, in its discretion, with or without entry, personally or by attorney

(a) sell, subject to any then existing prior liens thereon, to the highest and best bidder, all and singular the trust estate, includ-

ing shares of stock, bonds, rights, franchises, interests and appurtenances and all real and personal property of every kind, and all right, title and interest therein, and right of redemption thereof; and such sale or sales shall be made at public auction, and at such time and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, and as may be required by law; or

(b) proceed to protect and to enforce its rights and the rights of bondholders hereunder by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein, or in aid of the execution of any power herein granted, or for the foreclosure hereof, or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce any of its rights or duties hereunder or the rights of the bondholders.

SECTION 8.06. Upon the written request of the holders of either 20% in principal amount of the Bonds then outstanding or 30% in principal amount of any series of the Bonds then outstanding, in case one or more of the events of default shall have happened and be continuing, it shall be the duty of the Trustee, upon being indemnified as herein-after provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the Bonds, and to exercise the power of entry or of sale herein conferred, or both, or to take appropriate judicial proceedings by action, suit or otherwise as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the Bonds.

SECTION 8.07. Anything herein contained to the contrary notwithstanding, the holders of a majority in principal amount of the Bonds then outstanding shall have the right to direct the method and place of conducting any and all proceedings for any sale of the trust estate or any part thereof; *provided, however*, that the Trustee shall not be bound to follow such directions if, in its judgment, such action would be prejudicial to any other holder of Bonds.

SECTION 8.08. In the event of any sale, whether made under the power of sale herein granted or pursuant to judicial proceedings, the

whole of the trust estate may be offered for sale in one parcel and as an entirety, including all the railroads, equipment, franchises, leases, leasehold interests, contracts, shares of stock, bonds and other real and personal property of every name and nature, unless such sale as an entirety is impracticable in the opinion of the Trustee, or unless the holders of a majority in principal amount of the Bonds then outstanding shall in writing request the Trustee to cause the trust estate to be sold in parcels, in which case the sale may be made in such parcels and in such order as may be specified in such request. The Company, for itself and all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien hereof, hereby expressly waives and releases all right to have the properties comprised in the trust estate marshalled upon any foreclosure or other enforcement hereof, and the Trustee or any court in which the foreclosure of this Indenture or the administration of the trusts hereby created is sought, shall have the right as aforesaid to sell the entire property of every description comprised in the trust estate as a whole in a single lot or parcel.

SECTION 8.09. Notice of any sale pursuant to the provisions hereof shall state the time and place when and where the same is to be made, and shall contain a brief general description of the property to be sold, and shall be sufficiently given if published once in each week, on any day of the week, for four successive calendar weeks prior to such sale in a daily newspaper printed in the English language and published and of general circulation in the City and County of San Francisco, California, and in a daily newspaper similarly printed, and published and of general circulation in the Borough of Manhattan, City and State of New York, and as may otherwise be required by law.

SECTION 8.10. The Trustee may adjourn from time to time any sale to be made by it under the provisions hereof, by announcement at the time and place appointed for such sale, or for such adjourned sale or sales; and without further notice or publication, it may make such sale at the time and place to which the same shall be so adjourned.

SECTION 8.11. Upon the completion of any sale or sales hereunder, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed, or good and sufficient deeds, and other instruments conveying, assigning and transferring the properties

sold. The Trustee and its successors are hereby appointed the true and lawful attorneys, irrevocably, of the Company in its name and stead to make all conveyances, assignments and transfers of the premises and property thus sold, which the Trustee shall deem advisable; and, for that purpose, the Trustee may execute all requisite deeds and instruments of assignment and transfer and may substitute one or more persons with like power; the Company hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Company, if so requested by the Trustee, shall ratify and confirm any sale or sales by executing and delivering to the Trustee, or to such purchaser or purchasers, all such instruments as may, in the judgment of the Trustee, be advisable for the purpose.

Any such sale or sales made hereunder, whether made under the power of sale herein granted or pursuant to judicial proceedings, shall operate to divest all right, title and interest whatsoever, either at law or in equity, of the Company, of, in and to the property so sold, and shall be a perpetual bar, both at law and in equity, against the Company, its successors and assigns, and against any and all persons claiming the property sold, or any part thereof, from, through or under the Company, its successors or assigns.

SECTION 8.12. The receipt of the Trustee for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property, or any part thereof, sold as aforesaid; and no such purchaser or his representatives, grantees or assigns, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money or any part thereof upon or for any trust or purpose of this Indenture, or in any manner whatsoever be answerable for any loss, misapplication or non-application of any such purchase money, or any part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

SECTION 8.13. In case of a sale of the trust estate substantially as a whole under any of the foregoing provisions of this Article Eight, whether made under the power of sale herein granted or pursuant to judicial proceedings, the principal of all of the Bonds then outstanding, if not previously due, shall immediately thereupon become due and payable, anything herein or in the Bonds to the contrary notwithstanding.

SECTION 8.14. The proceeds of any such sale, whether made under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which may then be held by or for the Trustee under any of the provisions hereof as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all expenses, liabilities and advances made or incurred by the Trustee, and to the payment of all taxes, assessments or other liens prior to the lien hereof, except prior liens, if any, subject to which the property shall have been sold.

Second. To the payment of the whole amount then due and unpaid upon the Bonds for principal and interest, with interest on the overdue principal and (to the extent permitted by law) on the overdue instalments of interest at the same rate or rates borne by the Bonds; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid, then to the payment of such unpaid principal and interest, ratably according to the aggregate thereof, without preference or priority of principal over interest, or of interest over principal, or of any instalment of interest over any other instalment of interest, subject, however, to the provisions of Section 8.01 hereof.

Third. To the payment of the surplus, if any, to the Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

SECTION 8.15. Upon any such sale under any of the foregoing provisions of this Article Eight, whether made under the power of sale herein granted or pursuant to judicial proceedings, any purchaser, for the purpose of making payment of the purchase price of the property purchased, shall be entitled to use and apply any Bonds and any matured and unpaid coupons appurtenant thereto by presenting such Bonds and coupons in order that there may be credited thereon the sums applicable to the payment out of the net proceeds of such sale to the holder of such Bonds and coupons as his ratable share of such net proceeds, after the deduction of costs, expenses, reasonable compensation and other charges, for which expenses provision shall be made in cash; and thereupon such purchaser shall be credited, on account of such pur-

chase price payable by him, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the Bonds and coupons so presented. At any such sale, any holder of Bonds may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability.

SECTION 8.16. The Company covenants that

(1) if default shall be made in the payment of any instalment of interest on any of the Bonds when and as the same shall become payable, as therein and herein expressed, and such default shall have continued for sixty days; or

(2) if default shall be made in the payment of the principal of any of the Bonds when the same shall become due and payable, whether upon stated maturity, or upon call for redemption, or upon declaration as provided in Section 8.04 hereof, or upon a sale as provided in Section 8.13 hereof, or otherwise as herein provided;

then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Bonds and coupons then outstanding, the whole amount then owing or accrued and unpaid upon the Bonds for principal and interest, with interest on the overdue principal and (to the extent permitted by law) on the overdue instalments of interest at the same rate or rates borne by the Bonds; and, in case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid, either before or after or during the pendency of any proceedings for the enforcement of the lien hereof; and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions hereof or the foreclosure of the lien hereof. In case of a sale of the trust estate as a whole, or any parcel thereof as provided in Section 8.08 hereof, and of the application

of the proceeds of sale to the payment of the debt hereby secured, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid upon, any and all of the Bonds and coupons then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution on any such judgment upon the trust estate or any part thereof or on any other property, shall, in any manner or to any extent, affect the lien of this Indenture on the trust estate or any part thereof, or any rights, powers, or remedies of the Trustee hereunder, or any rights, powers, or remedies of the holders of the Bonds and coupons, but such lien, rights, powers and remedies shall continue unimpaired as before.

Any moneys collected by the Trustee under this Section 8.16 shall be applied by the Trustee,

First, to the payment of the expenses, disbursements and reasonable compensation of the Trustee, its agents and attorneys, in the collection of such moneys or otherwise.

Second, to the payment of the amounts due and unpaid upon the Bonds and coupons in respect of which such moneys shall have been collected, for principal and interest, with interest on the overdue principal and (to the extent permitted by law) on the overdue instalments of interest at the same rate or rates borne by the Bonds, ratably to the aggregate of such principal and unpaid interest, without preference or priority of any kind, but subject to the provisions of Section 8.01 hereof, at the date fixed by the Trustee for distribution of such moneys, on presentation of the several Bonds and coupons and their surrender, if fully paid, or for proper stamping if only partly paid.

SECTION 8.17. The Company will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any stay or extension under any law wherever enacted, which may affect the covenants or terms of, or lien of, or enforcement of, this Indenture, nor will it claim, take or insist upon any benefit or advantage from any law, now or hereafter in force, wherever enacted, providing for the valuation or appraisal of the trust estate or any part

thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to the decree, judgment or order of any court of competent jurisdiction; nor after any such sale or sales will it claim or exercise any right under any statute heretofore or hereafter enacted by the United States or by any State, or otherwise, to redeem the property so sold or any part thereof. The Company hereby expressly waives all benefit and advantage of any such law or laws, and covenants that it will not hinder, delay or impede the execution of any power herein granted or delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

SECTION 8.18. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the bondholders hereunder, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the trust estate, and of the rents, issues, profits, tolls, revenues and income thereof, with such powers as the court making such appointment shall confer.

SECTION 8.19. In case default shall be made in the payment of any instalment of interest on any of the Bonds, when and as the same shall become payable as therein and herein expressed, or default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Company contained in the Bonds or in this Indenture, and (a) at any time during the continuance of such default there shall be any existing judgment against the Company unsatisfied and unsecured by bond on appeal, or (b) in any judicial proceeding a receiver or trustee shall be appointed of the Company or of the trust estate or any part thereof, or a judgment or order shall be entered for the sequestration of its property or any part thereof, or (c) the Company shall, by Certified Resolutions delivered to the Trustee, admit to the Trustee the inability of the Company to make good such default within the period of grace in Section 8.02 hereof provided, the Trustee, in any such case, shall thereupon be entitled in its discretion forthwith to exercise the right of entry conferred by this Article Eight, and also any and all other rights and powers conferred by this Article Eight upon and provided to be exercised by the Trustee upon the happening and continuance of an event of default; and as a matter of right the Trustee shall thereupon be

entitled, in its discretion, to the appointment of a receiver of the trust estate and of the rents, issues, profits, tolls, revenues and income thereof, with such powers as the court making such appointment shall confer.

SECTION 8.20. Whenever the Company shall deem expedient for the better protection or security of the Bonds (although then none of the events of default entitling the Trustee to enter into possession shall have happened) the Company, with the consent of the Trustee, may surrender and deliver to the Trustee full possession of the whole or of any part of the trust estate, and may authorize the Trustee to collect the interest and dividends on any or all bonds, obligations, claims, indebtedness and shares of stock subject to the lien hereof, and to vote upon any or all such shares of stock, for any period fixed or indefinite. In such event, the Trustee shall enter into and on the premises and property so surrendered and delivered, and shall take and receive possession thereof for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period. From the time of its entry upon such premises and property, the Trustee shall work, maintain, use, manage, control and employ the same in accordance with the provisions hereof, and shall receive and apply the income and revenues thereof as provided in Section 8.02 hereof.

Upon application of the Trustee and with the consent of the Company, even though none of the events of default shall have happened, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the trust estate, and the Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated.

SECTION 8.21. In every case when a receiver or trustee of the trust estate, or any part thereof, shall be appointed, whether under Sections 8.18, 8.19 or 8.20 hereof, or otherwise, the net income and proceeds of the trust estate or such part thereof shall be paid over to and shall be received by the Trustee for the benefit of the holders of the Bonds and coupons and shall be applied as provided in Section 8.02 hereof. Notwithstanding the appointment of any such receiver or trustee, the Trus-

tee shall be entitled, as pledgee, to continue to retain possession and control of any shares of stock, cash, bonds and other obligations held by it as security hereunder, and all payments and distributions made in respect thereof.

SECTION 8.22. No holder of any of the Bonds or coupons shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure hereof, or for the execution of any trust hereunder, or for the appointment of a receiver, or for any other remedy hereunder, unless such holder previously shall have delivered to the Trustee written notice that some specified event of default has happened and is continuing, nor unless also the holders of either 20% in principal amount of the Bonds then outstanding or 30% in principal amount of any series of the Bonds then outstanding, shall have requested the Trustee in writing to take action in respect of such event of default, and shall have afforded to the Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; nor unless they shall have also offered to the Trustee reasonably adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts hereof and to any action or cause of action for foreclosure or for the appointment of a receiver or for any other remedy hereunder; it being intended that no one or more holders of the Bonds or coupons shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the lien hereof, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of the outstanding Bonds and coupons.

Nothing in this Section 8.22 or elsewhere herein or in the Bonds or coupons contained shall affect or impair the obligation of the Company, which is unconditional and absolute, to pay the principal of and interest on the Bonds (subject as to such interest to the provisions of Article Sixteen hereof) to the respective holders of the Bonds and coupons, at the times and places in such Bonds or coupons stated, nor affect or impair the right of action, which is also absolute and unconditional, of such holders to collect such payment.

SECTION 8.23. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or the holders of the Bonds, is intended to be exclusive of any other remedy or remedies. Each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 8.24. No delay or omission of the Trustee, or of any holder of the Bonds, to exercise any right or power accruing upon any default, shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article Eight to the Trustee and to the bondholders, respectively, may be exercised, from time to time and as often as may be deemed expedient, by the Trustee or by the bondholders, respectively.

SECTION 8.25. In case the Trustee shall have proceeded to enforce any right hereunder by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of waiver or for any other reason, or shall have been determined adversely to the Trustee, then, and in every such case, the Company and the Trustee shall severally and respectively be restored to their former position and rights hereunder in respect of the trust estate, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

SECTION 8.26. The Trustee shall have power to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or governmental enactment, rule or order which it may believe to be unconstitutional, or otherwise invalid, if the enforcement of, or compliance with, or observance of, such enactment, rule or order, would, in the judgment of the Trustee, impair the security hereunder or be prejudicial to the Trustee or to the holders of the Bonds.

ARTICLE NINE.

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS.

SECTION 9.01. No recourse under or upon any obligation, covenant or agreement contained herein, or in any of the Bonds or coupons, or because of the creation of any indebtedness secured hereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company, or of any predecessor or successor company, either directly or through the Company or any such predecessor or successor company, whether by virtue of any statute, constitutional provision or rule of law, by the enforcement of any assessment or by any legal or equitable proceeding, or otherwise. It is expressly agreed and understood that this Indenture and the obligations hereby secured are solely corporate obligations, and that no personal liability whatever shall attach to or be incurred by the incorporators, stockholders, officers or directors, as such, of the Company, or of any predecessor or successor company, or any of them, because of the incurring of the indebtedness hereby secured, or under or by reason of any of the obligations, covenants or agreements contained herein, or in any of the Bonds or coupons, or implied therefrom; and that any and all such personal liability of every name and nature of every such incorporator, stockholder, officer or director, as such, whether arising at common law or in equity, or created by statute or constitution, is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution hereof and the issue of the Bonds and coupons.

ARTICLE TEN.

BONDHOLDERS' ACTS, HOLDINGS AND APPARENT AUTHORITY.

SECTION 10.01. Any demand, request or other instrument provided by this Indenture to be signed and executed by the holders of Bonds may be in any number of concurrent writings of similar tenor, and may be signed or executed by any such holder in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of a writing appointing any such agent, and of the holding by any person of Bonds or coupons, shall be sufficient for

any purpose hereof, and may be received by the Trustee as conclusive, if made in the following manner:

(1) The fact and date of the execution by any person of any such demand, request or other instrument or writing, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the State in which such document was acknowledged that the person signing such document acknowledged to him the execution thereof, or by an affidavit of a witness to such execution sworn to before any such notary or other such officer;

(2) The fact of the holding by any person of Bonds or coupons transferable by delivery, and the principal amount and distinctive numbers and series of such Bonds or coupons, and the date of his holding the same (which holding the Trustee may deem to continue until it shall have received notice in writing to the contrary), may be proved (a) by the production of such Bonds or coupons, or (b) by a certificate executed by any trust company, bank, banker or other depositary, wherever situated, satisfactory to the Trustee, showing that on the date therein mentioned, such person had on deposit with such depositary or exhibited to it the Bonds or coupons described in such certificate; or such facts may be proved by the certificate or affidavit of the person holding such Bonds or coupons, if such proof shall be satisfactory to the Trustee;

(3) The fact of the holding by any person of registered Bonds without coupons and of coupon Bonds registered as to principal shall be proved by the registry books of such Bonds, or by a certificate of the Bond registrar.

Any request or consent of the holder of any Bond shall bind all future holders of the same Bond and all Bonds issued in exchange therefor or in lieu thereof, in respect of anything done, permitted or omitted by the Trustee in pursuance of such request or consent.

ARTICLE ELEVEN.

RELEASES OF MORTGAGED AND PLEDGED PROPERTY.

SECTION 11.01. From time to time, subject to and upon compliance with the conditions and limitations prescribed in this Article Eleven, the Company may sell, exchange for other property, or otherwise dispose of any property of whatever character then subject to the lien hereof, and the Trustee, upon compliance by the Company with the provisions of Section 11.03 and Section 11.04 hereof, shall release such property from the lien hereof, *provided*:

(1) In the judgment of the Board of Directors, determined by resolution thereof, it shall no longer be necessary or expedient to retain the same for use in the business of the Company;

(2) Either (a) in the judgment of the Board of Directors, similarly determined, the Company will not thereby be prevented from maintaining and operating, after the disposition of the property to be released, lines of railroad directly or indirectly subject to the lien hereof substantially as continuous and as direct and available for transportation purposes as were the lines of railroad directly or indirectly subject to the lien hereof prior to such disposition, between the principal points served by it prior to such disposition, or (b) in the judgment of the Board of Directors, similarly determined, and in the judgment of an independent engineer or other independent person deemed by the Trustee to be qualified for the purpose (in each case satisfactory to the Trustee), the release so requested will not materially impair or prejudice the security for the Bonds or the interests of the bondholders; and

(3) The Company shall not sell or dispose of any stock (except for the purpose of qualifying directors), or bonds, of any one subsidiary company which are subject to the lien hereof unless all of such stock or bonds of such subsidiary company shall be so sold or disposed of.

For the purposes of this Article ELEVEN, the terms "lines of railroad directly or indirectly subject to the lien hereof" shall be deemed to include lines of railroad owned by the Company and subject to the lien hereof, or owned by a wholly-owned subsidiary, or leased to or used by the Company under a lease or trackage or other agreement subject to

the lien hereof; *provided, however*, that if under the provisions of paragraph (2) of this Section 11.01 or under the provisions of Section 11.02 hereof, the Company would not be entitled to a requested release of property, or would not be entitled to take any action under Section 11.08 hereof, but for the acquisition of a lease or trackage or other agreement by it, in connection with or as a part of the transaction involving such release, any lease or trackage or other agreement so acquired shall (i) be on terms substantially as favorable to the Company as any lease or trackage or other agreement for which it shall have been substituted or in lieu of which it shall have been received, (ii) expire not earlier than the date of expiration of any lease or trackage or other agreement for which it shall have been substituted or in lieu of which it shall have been received or the latest date of maturity of any Bonds then outstanding, whichever date shall be the earlier, and (iii) be subject to the lien hereof.

SECTION 11.02. The Company may at any time, provided that, in the judgment of the Board of Directors, determined by resolution thereof, the Company will not thereby be prevented from maintaining and operating, after such change in location, lines of railroad directly or indirectly subject to the lien hereof substantially as continuous and as direct and available for transportation purposes as were the lines of railroad directly or indirectly subject to the lien hereof prior to such change in location, make any change in location of its lines, tracks, station houses, buildings or other structures situated on any part of the trust estate to other premises, whether or not such premises be subject to the lien hereof. Upon any such change in location, the Trustee, upon compliance by the Company with the provisions of Sections 11.03 and 11.04 hereof, shall release from the lien hereof the premises upon which the lines, tracks, station houses, buildings or other structures were originally situated and any part of such lines, tracks, station houses, buildings or other structures unremoved and remaining thereon after such change in such location, and shall execute and deliver any and all instruments necessary and proper to effect such purpose.

SECTION 11.03. Whenever requesting the release of any property pursuant to Section 11.01 or Section 11.02 hereof, the Company shall deliver to the Trustee:

- (1) Certified Resolutions of the Board of Directors requesting the release of the property described in the Officers' Certificate

provided for in paragraph (2) of this Section 11.03, and setting out the determinations required by Section 11.01 or Section 11.02 hereof, as the case may be;

(2) An Officers' Certificate, dated not more than thirty days prior to its delivery, which shall:

(a) set forth a description of the property to be released;

(b) state that the retention of such property for use in the business of the Company is not necessary or expedient;

(c) state that the release requested is required for the purpose of carrying out a sale of the property to be released, or an exchange thereof for other property;

(d) if the release be requested pursuant to Section 11.02 hereof, state that the Company has made a change in the location of its lines, tracks, station houses, buildings or other structures (which shall be briefly described) situated on a part of the trust estate to other premises and set forth a description of such other premises;

(e) set forth the selling price of such property, if it is to be sold, or a description of the property to be received in exchange therefor, if any;

(f) state that the fair value to the Company of such property is not greater than the price at which it is to be sold, or the fair value of the property (including any cash) to be received in exchange therefor as the case may be;

(g) state whether the Company would be entitled to the release requested but for the acquisition of a lease or trackage or other agreement by it, in connection with or as a part of the transaction involving such release, and, if not, briefly describe the lease or trackage or other agreement so acquired and any lease or trackage or other agreement for which the lease or trackage or other agreement so acquired shall have been substituted or in lieu of which it shall have been received, and state that the lease or trackage or other agreement so acquired is on terms substantially as favorable to the Company as any lease or trackage or other agreement for which it shall have been substituted or in lieu of which it shall have been received and expires not earlier than the date of expiration of any

lease or trackage or other agreement for which it shall have been substituted or in lieu of which it shall have been received or the latest date of maturity of any Bonds then outstanding, whichever date shall be the earlier; and

(h) state whether any one or more of the events specified in subdivisions (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing;

(3) If the fair value to the Company of the property to be released, as stated in subdivision (f) of paragraph (2) of this Section 11.03, exceeds \$100,000, a further certificate complying with the requirements of said subdivision (f) by an independent engineer (in the case of any property other than bonds, obligations, claims, indebtedness or shares of stock) or by an independent appraiser (in the case of any such bonds, obligations, claims, indebtedness or shares of stock) satisfactory to the Trustee;

(4) If the Certified Resolutions provided for in paragraph (1) of this Section 11.03 set out a determination of the character provided for in subdivision (b) of paragraph (2) of Section 11.01, a further certificate by an independent engineer or other independent person deemed by the Trustee to be qualified for the purpose (in each case satisfactory to the Trustee) stating that the release requested will not materially impair or prejudice the security for the Bonds or the interests of the bondholders;

(5) An opinion of Counsel stating that the action so requested is authorized by the provisions of this Article Eleven, and that the resolutions and certificates furnished to the Trustee in connection therewith are in compliance with the provisions of this Section 11.03.

(6) An assignment or other instrument of transfer subjecting to the lien hereof any lease or trackage or other agreement acquired by the Company as set forth in the Officers' Certificate pursuant to subdivision (g) of paragraph (2) of this Section 11.03, together with an opinion of Counsel that such assignment or other instrument of transfer is, or when recorded as specified in such opinion will be, effective for such purpose, or an opinion of Counsel that no such assignment or other instrument of transfer is necessary for such purpose.

Whenever requesting the release of any property pursuant to Section 11.02 hereof, the Company shall in addition deliver to the Trustee:

(1) A conveyance to the Trustee subjecting to the lien hereof the relocated lines, tracks, station houses, buildings or other structures and the property on which the same are situated, together with an opinion of Counsel that such conveyance is, or when recorded as specified in such opinion will be, effective for such purpose; or

(2) An opinion of Counsel that no such conveyance is necessary for such purpose.

SECTION 11.04. In case of any release of property pursuant to the provisions of Section 11.01 or Section 11.02 hereof, the consideration received therefor must consist of:

(1) Cash;

(2) Obligations secured by purchase money mortgages on the property to be released; *provided, however*, that the aggregate principal amount of any obligations secured by purchase money mortgages to be received in exchange for such property plus the aggregate principal amount of all other obligations secured by purchase money mortgages theretofore delivered to the Trustee under this Section 11.04 and then held as part of the trust estate shall not exceed 10% of the aggregate principal amount of Bonds at the time outstanding;

(3) Additions of a character which could otherwise be made the basis for the authentication of Bonds under Section 2.03 hereof excluding, however, any part of the cost of such Additions theretofore made the basis for the authentication of Bonds or for the authentication of bonds or the payment of cash under the First Mortgage, or for the payment of moneys deposited with the Trustee as a part of the trust estate, or for the release of property under any of the provisions of this Indenture or of the First Mortgage or acquired through the use of insurance proceeds, or charged to or for which the Company has been reimbursed out of the Capital Fund account provided for in Article Five hereof; *provided, how-*

ever, that equipment may be received in exchange only for equipment; or

(4) In case of the release of property pursuant to the provisions of Section 11.02 hereof, the premises to which the lines, tracks, station houses, buildings or other structures were removed in any change of location permitted thereby, if such premises were not previously subject to the lien hereof, notwithstanding that such property could not be made the basis for the authentication of Bonds under the provisions of Section 2.03 hereof.

Subject to the provisions of the First Mortgage and any indenture constituting a prior lien on any property so released, all cash received for property so released shall be paid over to the Trustee except that, in lieu of all or any part of such cash, the Company may deliver to the Trustee the documents required by paragraphs (c) and (d) of Section 2.04 hereof, which would otherwise be sufficient to entitle the Company to receive under said Section 2.04 hereof cash in an amount equal to 75% of such cash consideration so withheld by the Company, *provided, however*, that any Additions to the cost of which said documents relate may not be for equipment except to the extent that the cash consideration received by the Company for such released property shall represent the proceeds of equipment. All cash proceeds so paid over to the Trustee shall be held by it as part of the trust estate, and may be paid out and disposed of in like manner as provided in Section 7.04 hereof and subject to the provisions of said Section 7.04.

In case any part of the consideration shall consist of obligations secured by a purchase money mortgage on the property to be released, the Company shall deliver to the Trustee (i) an Officers' Certificate stating that the aggregate principal amount of such obligations plus the aggregate principal amount of all other obligations secured by purchase money mortgages theretofore delivered to the Trustee under this Section 11.04 and then held as part of the trust estate does not exceed 10% of the aggregate principal amount of Bonds at the time outstanding, (ii) an opinion of Counsel stating that such obligations are valid obligations, that the purchase money mortgage securing the same constitutes a valid lien upon the property to be released, subject to no prior lien except the First Mortgage and any prior lien subject to

which said property is to be sold, (iii) an assignment or other instrument of transfer of such mortgage to the Trustee, and (iv) a further opinion of Counsel stating that such assignment or other instrument of transfer is, or when recorded as specified in such opinion will be, effective for the purpose of subjecting such mortgage to the lien of this Indenture, subject to no prior lien except the First Mortgage and any lien which constituted a prior lien on such property prior to such release.

In case any part of the consideration shall consist of property of the character specified in paragraph (3) of this Section 11.04, the Company shall deliver to the Trustee the documents required by paragraphs (b), (c), (d), (e) and (f) of Section 2.03 hereof.

SECTION 11.05. The Company may from time to time abandon the operation of any line of railroad or terminal, or any portion thereof, and may surrender any franchises or portion thereof, if such abandonment or surrender shall be made either (1) pursuant to the authority of any governmental body at the time having jurisdiction in the premises, (2) by virtue of an agreement with or action by the Federal Government or any State, municipality or other political subdivision of a State or any governmental agency or (3) pursuant to some legal requirement.

Prior to any such abandonment or surrender the Company shall deliver to the Trustee (a) an opinion of Counsel that such abandonment or surrender is permitted under the provisions of this Section 11.05, and that any requisite approval of any such governmental body has been obtained and (b) a certified copy of any order or agreement pursuant to which such abandonment or surrender will be made. Upon receipt of said documents the Trustee, at the request of the Company, shall execute and deliver such confirmatory releases as may be appropriate to evidence of record the release from the lien of this Indenture of any franchise or portion thereof surrendered pursuant to this Section 11.05.

If the Company shall dismantle and remove any tracks or other structures or facilities or property appertaining to any such line of railroad or terminal or portion thereof, it may sell any such dismantled property free from the lien hereof for cash; and the provisions of Section 11.04 hereof shall apply to the net cash proceeds received for

any such dismantled property. Except in the case of the sale for cash of any such dismantled property, and, except as provided in the next succeeding paragraph of this Section 11.05 the provisions of Sections 11.01, 11.03, 11.04 and 11.06 of this Article Eleven shall govern the release from the lien hereof of any property which the Company may sell, exchange for other property or otherwise dispose of as the result of the abandonment of any operation or the surrender of any franchise under this Section 11.05.

For the purpose of confirming of record any reversion to former owners, their successors or assigns (whether by operation of law or pursuant to provisions in conveyances) of title to real property constituting right of way of an abandoned line of railroad which is no longer used or useful for railroad purposes, the Company, from time to time and without receiving any consideration therefor, may execute and deliver appropriate releases, quitclaims or other instruments of conveyance of its right, title and interest in such real property and the Trustee, at the request of the Company, and upon receiving an Officers' Certificate specifying the property so to be released, quitclaimed or conveyed and stating that it constituted right of way of an abandoned line of railroad and is no longer used or useful for railroad purposes of the Company, together with an opinion of Counsel stating that such releases, quitclaims or other instruments of conveyance are required for the purpose of confirming of record a reversion to former owners, their successors or assigns, of title to such real property and that such reversion has been effected by operation of law or pursuant to provisions in conveyances by which the Company, or its predecessors in title, acquired title to such real property, shall execute and deliver confirmatory releases with respect thereto.

SECTION 11.06. If none of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, the Company may from time to time sell, exchange or otherwise dispose of free from the lien hereof and without release by the Trustee, any of the property (other than cash, bonds, obligations, claims, indebtedness or shares of stock) at any time subject to the lien hereof and not used or useful for railroad purposes, not exceeding in any one calendar year in the aggregate a total of \$100,000 in value at the date of disposition. The Company agrees that in each case within a reasonable time it will expend the proceeds of any such sale or other disposal, or an amount equal to the fair value of any property not sold

for cash, to replace the property so sold or otherwise so disposed of by other property, not necessarily of the same character, and that all such substituted property and all property received in exchange for property which was subject to the lien hereof (which shall be of at least equal value to the property which was subject to the lien hereof at the time of its sale, exchange or other disposal) shall forthwith become subject to the lien hereof; *provided, however*, that only proceeds derived from the disposition of equipment may be applied to the acquisition of equipment, and that equipment may be received in exchange only for equipment.

In order to clear the title of record to any property sold, exchanged or otherwise disposed of in accordance with this Section 11.06, the Trustee, from time to time, at the request of the Company and upon receiving an Officers' Certificate specifying the property to be released and the value thereof, stating that it is not used or useful for railroad purposes and stating the value of all property theretofore sold, exchanged or otherwise disposed of by the Company pursuant to this Section 11.06 within the calendar year in which such property was sold, exchanged or otherwise disposed of, shall execute and deliver confirmatory releases that such property is free from the lien hereof.

The Company shall deliver to the Trustee, on or before the last day of January in each year commencing with the year 1945, an Officers' Certificate setting forth in reasonable detail all property and the value thereof sold, exchanged or otherwise disposed of under this Section 11.06 within the preceding calendar year, and all replacements thereof and the value of such replacements, together with all such deeds, conveyances or instruments of further assurance (if any) and evidence of such filing or recording thereof, as may be necessary for the purpose of effectually subjecting such replacements to the lien hereof and an opinion of Counsel that such deeds, conveyances and instruments of further assurance are valid and sufficient for such purpose, or an opinion of Counsel that no such instruments are necessary.

SECTION 11.07. The Company shall have full power, in its discretion, and without notice to or action by the Trustee, from time to time:

- (1) To alter, remove, demolish or retire from service, any building or structure or any main, branch, spur, industrial, switch, connecting, storage, yard or terminal tracks or other property on the trust estate which may have become unfit for use or which it

may deem necessary or advantageous to alter, remove, demolish or retire in connection with the maintenance or operation of or in the improvement of the trust estate, and to dispose of any scrap or other material accumulated from any such alteration, removal, demolition or retirement or otherwise in the operation and maintenance of the trust estate; and

(2) To sell as units, to dismantle and sell as scrap, or otherwise to dispose of, free from the lien hereof, any portion of the fixtures, equipment, machinery, tools, implements, furniture, materials, supplies and other chattels at any time subject to the lien hereof which may have become obsolete or otherwise unfit for use or which it may not be necessary or advantageous longer to retain for use upon the trust estate.

In any such case the Company shall within a reasonable time either (a) replace the same, or substitute therefor other property, not necessarily of the same character, but having a value at least equal to the value of the old property at the time of its disposition, or, if the old property be sold, to the consideration received therefor by the Company, or (b) turn over to the Trustee the cash or securities, and subject to the lien hereof any other consideration, received from the disposition of such property. Any property of whatever character which may be acquired by the Company from time to time in replacement of, or in substitution for, any property sold, exchanged or otherwise disposed of under the provisions of this Section 11.07 shall forthwith become subject to the lien hereof. Any cash received by the Trustee pursuant to this Section shall be held by it as part of the trust estate and may be paid out and disposed of in the manner provided in Section 7.04 hereof.

SECTION 11.08. The Company shall have full power, in its discretion, and without notice to the Trustee, from time to time:

(1) To lease (except as a whole or substantially as a whole, in which case the provisions of Article Fourteen hereof shall be applicable), or grant joint facility, terminal or trackage rights, or easements upon, or enter into any agreement or contract with respect to, the trust estate or any part thereof, but in each case subject to the lien hereof upon the trust estate; and

(2) To make changes or alterations in, or substitutions for, any leases or joint facility, terminal or trackage rights, easements,

agreements or contracts constituting a part of the trust estate, which changed, amended or supplemental lease or joint facility, terminal or trackage right; easement, agreement or contract shall forthwith become subject to the lien hereof;

provided, that the security hereunder be not thereby impaired, and that the Company be not thereby prevented, after such transaction, from maintaining and operating lines of railroad directly or indirectly subject to the lien hereof (as defined in Section 11.01 hereof) substantially as continuous and as direct and available for transportation purposes as were the lines of railroad directly or indirectly subject to the lien hereof prior to such transaction, between the principal points served by it prior to such transaction.

SECTION 11.09. If by final decree or order of any court or governmental body or agency having jurisdiction in the premises the Company shall be required in eminent domain proceedings, or otherwise, to part with the ownership, possession or operation of any portion or portions of the trust estate, or should any governmental body or agency exercise any right to purchase any portion of the trust estate, the portion or portions with which the Company may be so required to part, or the portion so purchased, shall, notwithstanding the foregoing provisions of this Article Eleven, be released by the Trustee from the lien hereof:

(1) If the Trustee is a party to the action or proceeding in which such decree or order shall have been entered, then upon such terms and conditions as may be prescribed in such decree or order, or

(2) If the Trustee shall not be a party to such action or proceeding, or if any portion of the trust estate has been so purchased by any governmental body or agency, then on such terms and conditions as may be satisfactory to the Trustee in its judgment, or on such terms and conditions as may be prescribed by law or by the decree or order of any court of competent jurisdiction in a separate action or proceeding brought by the Trustee or to which it is a party,

and in each case upon receipt by the Trustee of any consideration received by the Company for the portion or portions of the trust estate so to be released, or upon the making of arrangements satisfactory to

the Trustee for the subsequent receipt by it of such consideration. Any cash received by the Trustee pursuant to this Section shall be held by it as part of the trust estate and may be paid out and disposed of in the manner provided in Section 7.04 hereof.

SECTION 11.10. Any property or rights received by the Company in exchange or substitution for any property or rights released from the lien hereof or which are made the basis for the withdrawal of deposited cash as aforesaid, shall be and become subject to the lien hereof as fully as if specifically mortgaged hereby, but, if requested by the Trustee, the Company shall convey the same to the Trustee upon the trusts and for the purposes of this Indenture and shall furnish to the Trustee an opinion of Counsel that the instruments of conveyance are sufficient for that purpose, or, in lieu of such instruments, the Company shall furnish an opinion of Counsel that no such instruments of conveyance are necessary for such purpose.

SECTION 11.11. The purchaser of any property released under the provisions of this Article Eleven shall not be required to see to the application of the purchase money.

SECTION 11.12. In case there shall be subjected to the lien hereof all or substantially all of the property, both real and personal, of any company, the Trustee, upon the request of the Company, evidenced by Certified Resolutions, shall release from the lien hereof any stock of such company which may be held by it, and shall deliver to the Company the certificates for such stock properly assigned for transfer. In order to facilitate any such acquisition, upon the request of the Company prior to any such acquisition the Trustee shall give to the Company all proxies, powers and releases which may be necessary or desirable to enable such stock to be voted, sold, applied or otherwise disposed of in effecting such acquisition by consolidation, merger, purchase or otherwise.

In case there shall be subjected to the lien hereof the title in fee to any property on which mortgage debt shall be outstanding, the whole of which mortgage debt shall also be subject to the lien hereof, the Trustee, at the request of the Company, evidenced by Certified Resolutions, may cancel and discharge all such mortgage debt so as to release such property from the lien thereof; *provided, however*, (1) that thereupon such property shall become subject to the lien

hereof, and that there is no lien on such property, other than the First Mortgage, which is prior to the lien hereof and junior to the lien of the mortgage, deed of trust or other instrument securing such mortgage debt, (2) that the Company shall deliver to the Trustee an opinion of Counsel to that effect and (3) that in the judgment of the Trustee the release will not materially and adversely affect the security for the Bonds or the interests of the holders thereof.

SECTION 11.13. In case the trust estate shall be in the possession of a receiver or trustee the powers conferred by this Article Eleven upon the Company may be exercised by such receiver or trustee with the approval of the Trustee; and in such event such receiver or trustee shall deliver to the Trustee, in lieu of any resolutions, certificates and opinions required by any provision of this Article Eleven to be delivered to the Trustee by the Company, appropriate orders of court, certificates of such receiver or trustee and opinions of counsel for such receiver or trustee. If the Trustee shall be in possession of the trust estate under any of the provisions hereof, all of the powers conferred by this Article Eleven upon the Company may be exercised by the Trustee in its discretion.

SECTION 11.14. Anything in this Article Eleven to the contrary notwithstanding, the Trustee may release property under any provision of this Article Eleven even though at the time some one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing; but if any such event shall have happened and be continuing the Trustee may, in its discretion, decline to release property under any provisions of this Article Eleven.

SECTION 11.15. Anything herein contained to the contrary notwithstanding, as long as any bonds are outstanding under the First Mortgage, the Trustee shall release from the lien of this Indenture any property subject to the First Mortgage upon receipt of (a) a Certified Resolution, requesting such a release, (b) a certificate of the trustee under the First Mortgage setting forth that such property has been duly released therefrom and the purposes of such release, (c) a copy of the release of such property from the lien of the First Mortgage, and (d) an opinion of Counsel setting forth that such property is, or was prior to its release, subject to the said First Mortgage, and that it has been duly released therefrom. In any such case, the Company shall not be required to comply with any

provision of this Article Eleven except this Section 11.15; *provided, however*, that the Trustee shall not be required to release any property pursuant to this Section 11.15 if any of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing or if the provisions of Article Ten of the First Mortgage relating to such release shall have been modified or amended and the holders of at least 66 $\frac{2}{3}$ % in principal amount of the Bonds shall not have consented to such modification or amendment or to a corresponding modification or amendment of this Indenture.

The Trustee may accept an opinion of Counsel as conclusive evidence as to whether or not the provisions of Article Ten of the First Mortgage relating to such release have been modified or amended.

ARTICLE TWELVE.

CONCERNING THE TRUSTEE.

SECTION 12.01. The Trustee accepts the trusts hereby created upon the following terms and conditions, to all of which the Company and the holders of the Bonds and coupons at any time outstanding, by their acceptance thereof, agree:

(a) The recitals herein and in the Bonds contained (except in the certificate of authentication of the Trustee) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representation as to the value or condition of the mortgaged property or any part thereof or as to the security afforded thereby and hereby, or as to the lien of this Indenture or the validity thereof or as to the validity of the Bonds issued hereunder, and the Trustee shall incur no responsibility in respect of any such matters; *provided, however*, that nothing herein contained shall relieve the Trustee of its duty to authenticate Bonds only as authorized by this Indenture;

(b) The Trustee shall be under no duty to file, register or record or cause to be filed, registered or recorded this Indenture, or any supplement thereto, as a mortgage, conveyance or transfer of real or personal property or otherwise, or to re-file, re-register or re-record the same. The Trustee shall be under no responsibility or duty with respect to the disposition of the Bonds authen-

ticated and delivered under any of the provisions hereof, or the application of the proceeds thereof or of any moneys paid to the Company under any of the provisions hereof;

Should any taxes or other governmental charges be imposed upon the Trustee, in its capacity as Trustee hereunder, under any present or future law of the United States of America or of any authority therein having jurisdiction, the Trustee shall be reimbursed and indemnified therefor by the Company, and any liability incurred or amounts paid by the Trustee in respect of any such taxes or other governmental charges, until paid, shall constitute a lien upon the trust estate and the proceeds thereof prior to any claim of the holders of the Bonds;

(c) The Trustee may execute any of the trusts hereunder, exercise any of the powers hereby vested in it, or perform any duty hereunder either itself or by or through its attorneys, agents or employes; and the Trustee shall not be answerable or accountable for any act, default, negligence or misconduct of any such attorney, agent or employe, provided reasonable care has been exercised in the selection and in the continued employment of such attorney, agent or employe; nor shall the Trustee be otherwise answerable or accountable under any circumstances whatsoever, except for its negligence or bad faith;

(d) The Trustee shall not be under any obligation or duty to institute any suit in respect hereof, or to take any action in respect of any default or otherwise or toward the execution or enforcement of any of the trusts hereby created unless one or more of the holders of the Bonds shall, as often as required by the Trustee, furnish it with reasonable security and indemnity against the cost and expenses of such action; but this provision shall not affect any discretionary power herein given to the Trustee to determine whether or not it shall take action in respect of such default or otherwise;

(e) Except as herein otherwise provided, any notice or demand which by any provision hereof is required or permitted to be given or served by the Trustee or any other person on the Company, shall be deemed to have been sufficiently given and served for all purposes, if deposited, postage prepaid, in a United States Post Office letterbox or mail chute, addressed (until another address is filed by the Company with the Trustee and there-

after if addressed to such other address) as follows: The Western Pacific Railroad Company, 526 Mission Street, San Francisco, California. Any notice, request or demand by any bondholder or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made at the principal trust office of the Trustee;

(f) The Trustee shall not be bound to recognize any person as the holder of a Bond outstanding hereunder unless and until such Bond is submitted to the Trustee for inspection if requested, and the title established to the satisfaction of the Trustee;

(g) The Trustee shall be justified in relying upon any notice, resolution, request, waiver, consent, order, certificate, statement, affidavit, indemnity bond, report, appraisal, opinion, telegram, cablegram, radiogram, letter, bond or other paper, document or instrument believed by it in the exercise of due care to be genuine and to have been signed, sent or presented by the proper party or parties;

(h) The Trustee may consult with counsel (who may be counsel for the Company) and the opinion of such counsel and any opinion of Counsel delivered to the Trustee in accordance with this Indenture shall be full and complete authority and protection in respect of any action taken, permitted or omitted by the Trustee hereunder in good faith and in accordance with such opinion;

(i) Any notice, resolution, request, certificate, or other document or instrument which in accordance with any provision of this Indenture is required or permitted to be delivered to the Trustee may be accepted by the Trustee without further inquiry, and the Trustee shall not be liable for any action taken, permitted or omitted by it hereunder in good faith and in reliance thereon. Before granting any application for the authentication or delivery of Bonds or for the payment of any moneys held by the Trustee under any provision of this Indenture or for the execution of any release or upon any other application to it hereunder, the Trustee shall not be under any duty to make any further investigation into the matters appearing to it to be covered by any such document or instrument; *provided, however*, that if, prior to action had thereon, the holders of not less than 10% in prin-

cipal amount of the outstanding Bonds shall in writing request it so to do and shall furnish it with security and indemnity satisfactory to it against the costs and expenses of the investigation the Trustee shall make such further investigation as to it may seem proper, and *provided, further*, that the Trustee may in its discretion make any such independent inquiry or investigation as it may see fit. If the Trustee shall make said further investigation, it shall be entitled to examine the books, records and premises of the Company, itself or by agent or attorney; and unless the Trustee shall be satisfied, with or without said examination, of the truth and accuracy of the matters stated in said document or instrument, it shall not be under any obligation to grant the application. The reasonable expense of every such investigation shall be paid by the Company, or if paid by the Trustee, shall be repaid by the Company upon demand, with interest at the rate of 4% per annum, and until such repayment shall be secured by a lien on the trust estate and the proceeds thereof prior to the lien of the Bonds;

(j) The Company covenants and agrees to pay to the Trustee from time to time on demand of the Trustee, reasonable compensation (which shall not be limited by any provisions of law with respect to the compensation of fiduciaries or of the trustee of an express trust) for all services rendered by it hereunder and also its reasonable expenses and counsel fees and other disbursements, and those of its attorneys, agents and employes, incurred in and by the administration and execution of the trusts hereby created and the exercise of its powers and the performance of its duties hereunder;

The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on the part of the Trustee, arising out of or in connection with the acceptance or administration of the trusts hereunder, including the costs and expenses of defending against any claim of liability in the premises. The Company further covenants and agrees to pay interest at the rate of 4% per annum to the Trustee upon all amounts paid, advanced or disbursed by the Trustee for which it is entitled to reimbursement or indemnity as herein provided;

The Trustee shall have a lien on the trust estate and the proceeds thereof, prior to the lien of the Bonds, for all amounts

agreed to be paid by, and for all obligations of, the Company under this clause (j);

(k) Whenever in the administration of the trusts created hereby the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking, permitting or omitting any action hereunder, said matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be proved and established by an Officers' Certificate delivered to the Trustee, but in its discretion the Trustee may require such further or additional evidence as to it may seem reasonable;

Except when otherwise in this Indenture expressly provided, any order, application, notice, request, consent, approval, selection, designation, appointment, election, direction, receipt, option or other instrument or writing to be furnished by the Company to the Trustee shall be sufficiently executed if executed in the name or on behalf of the Company by its President or a Vice President and by either its Treasurer or an Assistant Treasurer or its Secretary or an Assistant Secretary, or if in the form of Certified Resolutions;

(l) The Trustee, any company in or with which it may be interested or affiliated, and any officer, director, trustee or stockholder of the Trustee or of any such company, may acquire and hold Bonds, and the Trustee may act as depositary, transfer agent, registrar, custodian, escrow agent or fiscal agent for the Company or for any committee or other body, firm or corporation in respect of any bonds, notes, or other securities, whether or not issued pursuant hereto;

(m) All rights of action hereunder may be enforced by the Trustee without the possession of any of the Bonds or the production thereof on the trial or other proceedings relative thereto.

SECTION 12.02. Any moneys which at any time shall be deposited under this Indenture with the Trustee or any paying agent by or for the account of the Company shall be held in trust by the Trustee or such paying agent, as the case may be, for the holders of the Bonds and coupons issued hereunder until disposed of conformably with the provisions hereof, but need not be segregated and may be held as part of the general funds of the Trustee or such paying agent. Any moneys

so held by any paying agent may at any time, upon the written request of the Company, be paid to the Trustee and shall thereafter be held in trust by the Trustee for the purposes for which such moneys were held in trust by such paying agent. Neither the Trustee nor any such paying agent shall be under any duty to invest any such moneys, or be under any liability for interest thereon, except such interest as the Trustee or such paying agent may agree with the Company to pay thereon.

SECTION 12.03. Any company into which the Trustee or any successor to it in the trusts hereby created may be merged or converted, or with which it or any such successor may be consolidated, or any company resulting from any merger, conversion, or consolidation to which the Trustee or any such successor shall be a party, provided such company shall be a trust company or a banking corporation in good standing organized under the laws of the United States of America or the State of New York and shall have an office in the Borough of Manhattan, City and State of New York, and shall have a capital and surplus aggregating at least \$5,000,000, shall be the successor trustee under this Indenture without the execution or filing of any paper or the performance of any further act on the part of the parties hereto, anything herein to the contrary notwithstanding. In case any of the Bonds shall have been authenticated but not delivered, any such successor may adopt the certificate of authentication of The Chase National Bank of the City of New York, or of any successor to it, as Trustee hereunder, and deliver the same so authenticated; and in case any of the Bonds shall not have been authenticated, any successor trustee may authenticate such Bonds in the name of such successor trustee, and in all such cases such certificate shall have the full force which it is anywhere in the Bonds or this Indenture provided that the certificate of the Trustee shall have.

SECTION 12.04. The Trustee or any successor trustee may at any time resign and be discharged from the trusts hereby created by giving to the Company written notice of such resignation specifying a date when it desires such resignation to take effect, and such resignation shall take effect on the date specified in such notice or on the date of the appointment of a successor trustee, whichever shall be earlier. Notice of such resignation shall be published once in each week for two successive calendar weeks, on days not more than ninety days

nor less than sixty days prior to the date so specified, in one daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, City and State of New York, and one daily newspaper similarly printed, and published and of general circulation in the City and County of San Francisco, California.

The Trustee or any successor trustee may be removed at any time by the holders of a majority in principal amount of the Bonds then outstanding by an instrument or concurrent instruments signed by such holders or their attorneys-in-fact duly authorized. Any Trustee so removed shall be entitled to its reasonable compensation then accrued and unpaid, and the reimbursement of proper expenses theretofore incurred and not previously reimbursed.

SECTION 12.05. In case at any time the Trustee or any successor trustee shall resign or shall be removed or shall become incapable of acting or shall be adjudged bankrupt or insolvent, or if a receiver of the Trustee or of any successor, or of its property, shall be appointed, or if any public officer in the exercise of his official powers shall take charge or control of the Trustee or any successor, or its property or affairs, or if a vacancy shall arise in the trusteeship under this Indenture from any other cause, the Company, by an instrument duly executed and acknowledged by its proper officers, by authority of its Board of Directors, may appoint a successor trustee to fill the vacancy until the appointment of a new trustee by the holders of Bonds as hereinafter provided. The Company shall publish notice of any such appointment made by it once in each week for two successive calendar weeks in one daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, City and State of New York and one daily newspaper similarly printed, and published and of general circulation in the City and County of San Francisco, California.

In any instance in which the Company may be authorized to appoint a trustee to fill a vacancy, a successor trustee may be appointed by the holders of a majority in principal amount of the Bonds outstanding by an instrument or concurrent instruments in writing signed by such holders or their attorneys-in-fact duly authorized, and delivered to such successor trustee hereunder, notification being given to the Company and the predecessor trustee, *provided, however*, that no such appointment may be made (1) more than one year after the first pub-

lication of a notice of the appointment by the Company of a successor trustee to fill such vacancy; or (2) after the appointment of a successor trustee by a court as hereinafter provided. Upon such appointment of a successor trustee by the holders of Bonds, any successor trustee theretofore appointed by the Company to fill a vacancy shall, immediately and without further act, be superseded by the successor trustee so appointed.

If no appointment of a successor trustee shall be made by the Company or by the holders of Bonds pursuant to the foregoing provisions of this Section 12.05 within three months after the happening of any of the events set forth in the first paragraph of this Section 12.05, the holder of any Bond or any retiring trustee hereunder may apply to any court of competent jurisdiction to appoint a successor trustee. Said court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

Every successor trustee appointed under any of the provisions of this Article Twelve shall be a trust company or a banking corporation in good standing organized under the laws of the United States of America, or the State of New York or the State of California, having an office in the Borough of Manhattan, City and State of New York or in the City and County of San Francisco, California, and a capital and surplus aggregating at least \$5,000,000, if there be such a trust company or banking corporation able and willing to act.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the predecessor trustee hereunder and to the Company an instrument in writing accepting such appointment hereunder, and thereupon said successor trustee, without any further act, deed or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor in trust hereunder, with like effect as if originally named as trustee herein; but the retiring trustee, nevertheless, on the written request of the Company or of the successor trustee, and upon payment of its unpaid compensation and expenses, if any, shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in said successor trustee all the right, title and interest of the retiring trustee in and to the trust estate and said rights, powers, trusts, duties and obligations; and the re-

tiring trustee shall also, upon like request and upon payment of its unpaid compensation and expenses as aforesaid, pay over, assign and deliver to the successor trustee any money and other property subject to the lien hereof then held by it, and deliver any and all records in respect of the trusts hereunder which it may have, or copies of such records; and upon request of any such successor trustee the Company shall execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustee said estates, properties, rights, powers, duties and obligations.

SECTION 12.06. If at any time or times, in order to conform to any legal requirement, the Trustee shall so request, the Company and the Trustee shall unite in the execution and performance of all instruments and agreements necessary or proper to appoint another bank or trust company or one or more persons approved by the Trustee, either to act as co-trustee or co-trustees of all or any part of the trust estate, jointly with the Trustee, or to act as separate trustee or trustees of any such property, with such power and authority as may be necessary to the effectual operation of the trusts herein set forth and specified in the instrument of appointment.

Any such co-trustee or separate trustee may resign by an instrument in writing delivered to the Company and to the Trustee, specifying a date, not less than thirty days after the date of such resignation, on which the same shall take effect; and any such co-trustee or separate trustee may be removed by an instrument in writing signed by the Company and the Trustee and delivered to him or it. Upon any such resignation or removal, or the occurrence of a vacancy in such office from any other cause, a successor co-trustee or separate trustee may be appointed by instrument in writing signed by the Company and the Trustee. If one or more of the events specified in paragraphs (A), (B) and (C) of Section 7.03 hereof shall have happened and be continuing, the Trustee may take any action referred to in this Section 12.06 without the consent or joinder of the Company.

SECTION 12.07. The Trustee is hereby appointed (and the successive holders of the Bonds, by taking and holding the same, shall conclusively be deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Bonds, with authority

to make or file, irrespective of whether the Bonds or any of them are in default as to payment of principal or interest, in the respective names of the holders of the Bonds and coupons or on behalf of all holders of the Bonds and coupons as a class, any proof of debt, petition or other document, and to execute any and all other papers and documents and do and perform any and all other acts and things for and on behalf of the respective holders of the Bonds and coupons, or on behalf of all holders of the Bonds and coupons as a class, as may be necessary or advisable in the judgment of the Trustee in order to have the claims of the holders of the Bonds and coupons against the Company, or any successor, or any other person or corporation, allowed and paid in any equity receivership, insolvency, liquidation, bankruptcy, reorganization or other proceedings which shall involve the trust estate or any part thereof, and to receive payment of or on account of any such claim or claims. Nothing herein contained shall give the Trustee authority to assent to or reject on behalf of any holder of Bonds and coupons any plan of reorganization proposed or approved in any such proceeding.

ARTICLE THIRTEEN.

POSSESSION UNTIL DEFAULT; DEFEASANCE.

SECTION 13.01. Unless and until (1), the Trustee, under the powers granted in this Indenture, or a receiver or trustee, shall have entered into possession of the trust estate or a part thereof or (2) some one or more of the events of default defined in Section 8.02 hereof shall have happened and be continuing, the Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the trust estate (other than any bonds, obligations, claims, indebtedness or shares of stock subject to the lien hereof, and any cash deposited with the Trustee under any provision hereof) and to manage, operate and use the same and every part thereof with the rights and franchises appertaining thereto and to collect, receive, take, use and enjoy the revenues, rents, earnings, income, issues and profits thereof (as well as, except as otherwise provided in Articles Seven and Eight hereof, of such bonds, obligations, claims, indebtedness or shares of stock).

SECTION 13.02. If (a) when all of the Bonds shall become due and payable at maturity, upon call for redemption, by declaration, or other-

wise, the Company shall have paid or caused to be paid the whole amount of the principal and premium, if any, and interest due on all of the Bonds then outstanding, or shall have provided for the payment of such Bonds by depositing with the Trustee as trust funds the entire amount then due thereon for principal and premium, if any, and interest, or (b) prior to all of the Bonds having become due and payable, the Company shall deposit with the Trustee as trust funds an amount sufficient to pay or redeem all Bonds at the time issued and outstanding, together with the interest thereon to maturity or the date of redemption, and, in case the Bonds are to be redeemed, furnish proof satisfactory to the Trustee that notice of redemption of all outstanding Bonds has been given as provided in Article Four hereof, or make arrangements satisfactory to the Trustee that such notice will be so given, or (c) the Company shall deliver to the Trustee for cancellation all Bonds and coupons issued hereunder and not theretofore cancelled,—and if, in any such event, the Company shall pay or cause to be paid all other sums payable hereunder by the Company and shall well and truly keep and perform, according to the true intent and meaning of this Indenture, all covenants herein required to be kept and performed by it,—then, and in any such case, all property, rights and interests hereby conveyed, assigned or pledged shall revert to the Company, its successors or assigns, and the estate, right, title and interest of the Trustee shall thereupon cease and determine and become void; and the Trustee in any such case, on written demand of the Company, its successors or assigns, shall enter satisfaction of this Indenture upon the records, and shall assign and transfer or cause to be assigned and transferred, and shall deliver or cause to be delivered to the Company, its successors or assigns, all moneys (other than moneys deposited with it for the payment of principal, premium, coupons or claims for interest on the Bonds), and all personal or other property then held hereunder by the Trustee; otherwise, this Indenture shall remain in full force and effect.

Any moneys deposited with the Trustee under this Section 13.02 shall be held by it as a trust fund and applied to the payment of the Bonds, the premium, if any, and the interest thereon and coupons appertaining thereto in respect of which such moneys shall have been deposited.

ARTICLE FOURTEEN.

CONSOLIDATION, MERGER, CONVEYANCE AND LEASE.

SECTION 14.01. Nothing herein or in any Bond contained shall prevent the consolidation or merger of the Company with or into any other corporation lawfully entitled to acquire and operate the trust estate or any conveyance or lease by the Company of the trust estate as a whole, or substantially as a whole, to any other such corporation, or shall prevent successive similar consolidations, mergers, conveyances or leases to which the Company or any successor or lessee corporation, as hereinafter defined, shall be a party, *provided, however,* that:

(1) Every such consolidation, merger, conveyance or lease shall be on such terms as shall fully preserve the lien and security of this Indenture and the rights and powers of the Trustee and of the holders of the Bonds hereunder; and

(2) Immediately upon any such consolidation, merger, conveyance or lease and as a part of such transaction, the corporation resulting from such consolidation or merger, or the corporation to which such conveyance or lease is made, as the case may be, shall expressly assume the due and punctual payment of the principal of and interest on all of the Bonds according to their tenor and purport, and the due and punctual performance of all the terms and conditions of this Indenture and of any indenture supplemental hereto, to be performed by the Company. Any such assumption shall be by a supplemental indenture in the case of a consolidation, merger or conveyance and by a supplemental indenture or other instrument in the case of a lease.

For the purposes of this Article Fourteen the term "successor corporation" shall mean any corporation resulting from any such consolidation or merger or any corporation to which any such conveyance shall be made, and the term "lessee corporation" shall mean any corporation to which any such lease shall be made.

The conditions contained in this Section 14.01 shall not be construed as requiring that, in the event of any such consolidation, merger, conveyance or lease, a separate income account shall be thereafter

maintained in respect of the operation of the properties subject to the lien hereof, but provisions which shall be equitable in the judgment of the Trustee shall be made with respect to the portion or portions of the revenues and expenses of any such successor or lessee corporation which shall be used as a basis for the determination and application of Available Net Income under Article Five hereof or which shall be used for any similar purpose under the provisions of any indenture supplemental hereto; provided that any such provisions shall be consented to or approved by the holders of 66⅔% in principal amount of the Bonds then outstanding in the manner provided in Article Sixteen hereof.

SECTION 14.02. In case any corporation with which the Company shall be consolidated or into which it shall be merged or to which it shall convey the trust estate as a whole or substantially as a whole shall be a Class I carrier as defined by the rules of the Commission at the time in force, then, in the absence of an express grant by such successor corporation, this Indenture shall not by reason of any such consolidation, merger or conveyance or by reason of the after-acquired property clauses contained herein, constitute and become a lien upon, and the term "trust estate" as herein used shall not include or comprise:

(1) Any property or franchise which, prior to such consolidation, merger or conveyance, was owned by the corporation with which the Company may be consolidated or into which it may be merged, or to which it may make any such conveyance, or any property or franchise which may have been theretofore acquired by the Company and which prior to such consolidation, merger or conveyance was not subject to the lien hereof; or

(2) Any property or franchise which may be purchased, constructed or otherwise acquired by any successor corporation after the date of any such consolidation, merger or conveyance, excepting only the betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions, alterations, property, rights and franchises referred to in clauses (a) and (b) of this Section 14.02, which, as and when purchased, constructed, or otherwise acquired by such successor corporation, shall be and become subject to the lien hereof.

If any supplemental indenture provided for in Section 14.01 hereof does not contain an express grant by the successor corporation, as further security for all Bonds issued and to be issued hereunder, of all of its property and franchises then owned and which it may thereafter acquire, it shall contain:

(a) A grant by such successor corporation confirming the prior lien of this Indenture upon the trust estate and subjecting to the lien and operation hereof as a first lien subject, without change of priority, to liens affecting the property and franchises of the Company immediately before such consolidation, merger or conveyance (1) all property theretofore or thereafter acquired, in whole or in part, either with cash at any time held hereunder by the Trustee or in exchange for property released from the lien hereof or the acquisition or construction of which has been or shall be made the basis in whole or in part hereunder or under the First Mortgage of the withdrawal of cash or the issuance of bonds or acquired with proceeds of insurance on property subject to the lien hereof; (2) all betterments, extensions, improvements and additions of, to, upon and for the property, rights and franchises subject to the lien hereof; (3) all repairs, renewals, replacements, substitutions and alterations of, to, upon and for such property, rights and franchises; (4) all property, rights and franchises acquired pursuant to any covenant herein contained which may be purchased, constructed, or otherwise acquired by such successor corporation from and after the date of such consolidation, merger or conveyance as the case may be; and (5) all other property of every kind and description, real, personal or mixed, thereafter purchased, constructed or otherwise acquired by such successor corporation which shall be in any way appurtenant or incident to properties subject to the lien of this Indenture;

(b) A covenant on the part of such successor corporation that all property, rights and franchises thereafter acquired by it and necessary to the full and complete performance of any covenant of the Company herein contained relating to the maintenance and upkeep of the trust estate, to the making of all needful and proper repairs, renewals, replacements, additions, betterments, improvements, substitutions and alterations and to the preservation and keeping in full effect of all rights, franchises and privileges subject

to the lien hereof, or of any other covenant herein, shall be conclusively deemed and taken to be acquired by it in performance of such covenant and to have become subject to the lien hereof;

(c) A covenant by such successor corporation to keep the trust estate, so far as practicable, readily identifiable; and

(d) A stipulation that the Trustee shall not be taken impliedly to waive, by accepting or joining in such supplemental indenture, any rights it would otherwise have.

SECTION 14.03. In case the Company shall be consolidated with or merged into or shall make a conveyance to any other corporation as permitted and upon the terms provided in Section 14.01 hereof, the successor corporation formed by or resulting from such consolidation or merger or to which such conveyance shall have been made as aforesaid—upon executing and delivering to the Trustee, and causing to be recorded, the supplemental indenture provided for in Section 14.01 hereof—shall succeed to and be substituted for the Company with the same force and effect as if it had been named in and had executed this Indenture as the party of the first part hereto, and shall have and may exercise, subject to the terms and conditions of this Indenture and of any indenture supplemental hereto, each and every power, authority and right herein reserved to or conferred upon the Company; and such successor corporation may cause to be signed and may issue, either in its own name or in the name of the party of the first part hereto, and under its corporate seal or that of said party of the first part, any and all Bonds which shall not theretofore have been signed by the party of the first part hereto and delivered to the Trustee; and the Trustee, upon the request of such successor corporation, and subject to all the terms, conditions and limitations prescribed in this Indenture and in any and all indentures supplemental hereto, shall authenticate any and all Bonds which previously shall have been signed by the party of the first part hereto and delivered to the Trustee for authentication, and any Bonds which such successor corporation shall thereafter cause to be signed and delivered to the Trustee for such purpose, and deliver the same to such successor corporation or upon its order.

SECTION 14.04. All Bonds issued by any successor corporation shall in all respects have the same legal rank and security as the Bonds

theretofore issued in accordance with the terms hereof by the Company. In case of any such consolidation, merger or conveyance such changes in phraseology and form (but not in substance) may be made in the Bonds and coupons thereafter issued as may be appropriate to reflect any such consolidation, merger or conveyance.

SECTION 14.05. For every purpose of this Indenture, including the execution, issue and use of any and all Bonds issued or issuable hereunder, the term "Company" includes and means not only the party of the first part hereto, but also any successor corporation upon compliance with the provisions of this Article Fourteen. Any act or proceeding by any provision hereof authorized, required or permitted to be done or performed by any board or officer of the Company, shall and may be done and performed, and with like force and effect, by the like board or officer of any successor corporation, subject, however, to the provisions of Section 14.03 hereof.

SECTION 14.06. Every supplemental indenture provided for in this Article Fourteen and every other instrument provided for in paragraph (2) of Section 14.01 hereof shall be recorded as provided in Section 6.11 hereof and shall be in form approved in and by an opinion of Counsel; and the Trustee may accept the opinion of such Counsel that the provisions and conditions of this Article Fourteen have been complied with as conclusive evidence of such compliance.

SECTION 14.07. The Company covenants and agrees that no consolidation or merger and no conveyance or lease of the trust estate as a whole or substantially as a whole, to which the Company or any successor corporation shall be a party, shall be made or effected unless the terms, covenants and conditions contained in this Article Fourteen shall have been complied with and observed.

SECTION 14.08. In case of the consolidation of the Company with or the merger into it of, or the conveyance to it of all of the property of, a corporation a majority of the capital stock of which shall be subject to the lien hereof, the lien of this Indenture upon such capital stock shall terminate upon such consolidation, merger or conveyance becoming effective, and such capital stock, if then in the possession of the Trustee, shall be surrendered to the successor corporation or to the

Company, as the case may be, if the railroads and other property theretofore owned by the corporation whose capital stock was so subject shall have been subjected to the lien of this Indenture by a supplemental indenture executed as provided in Article Fifteen hereof, but such supplemental indenture may provide that the lien of this Indenture on such railroads and other property shall be subordinate to any existing prior liens thereon and to the lien of the First Mortgage.

Upon the consolidation of the Company with, or the merger into it of, or the conveyance to it of all of the property of, a corporation any of the bonds or other obligations of which shall be subject to the lien hereof, the lien of this Indenture upon such bonds or other obligations shall terminate, and such bonds or other obligations, if then in the possession of the Trustee, shall be surrendered to the successor corporation or to the Company, as the case may be, if the railroads and other property theretofore owned by the corporation whose bonds or other obligations were so subject shall, by a supplemental indenture executed as provided in Article Fifteen hereof, have been subjected to the lien of this Indenture, subject only to Permitted Encumbrances and to liens which immediately before such consolidation, merger or conveyance were prior to the lien of such bonds or other obligations.

SECTION 14.09. In case the Company shall at any time acquire all, or substantially all, of the properties of any corporation (other than Sacramento Northern Railway and Tidewater Southern Railway Company or any successor of either of them) constituting a Class I carrier as defined by the rules of the Commission at the time in force, the properties so acquired shall not become subject to the lien hereof by reason of such acquisition unless such properties, or the securities of such corporation, shall have been made the basis in whole or in part for the authentication and delivery of Bonds hereunder or the authentication and delivery of bonds under the First Mortgage, or the payment of cash or the release of property hereunder or under the First Mortgage, or the cost thereof shall have been charged in whole or in part to the Capital Fund account provided for in Article Five hereof.

ARTICLE FIFTEEN.

SUPPLEMENTAL INDENTURES.

SECTION 15.01. The Company, when such action is authorized by Certified Resolutions delivered to the Trustee, and the Trustee, from time to time and at any time, may enter into an indenture or indentures, supplemental hereto and which thereafter shall form a part hereof, for any one or more of the following purposes:

(a) To correct the description of any property hereby conveyed, transferred and assigned, or intended so to be, or to convey, transfer and assign to the Trustee and to subject to the lien hereof, additional property, with the same force and effect as though included in the Granting Clauses hereof;

(b) To pledge with or assign to the Trustee and to subject to the lien hereof shares of stock, bonds, indebtedness and other obligations of other corporations;

(c) To evidence the succession of another corporation to the Company, or successive successions, and the assumption by a successor corporation of the covenants and obligations of the Company hereunder;

(d) To add to the covenants of the Company such further covenants as the Board of Directors and the Trustee shall consider to be for the protection of the trust estate and of the holders of Bonds issued or issuable hereunder, and to make the occurrence and continuance, for the period therein specified, of a default under any of such additional covenants an event of default permitting the enforcement of all or any of the several remedies provided herein;

(e) To establish the terms, provisions and conditions of a particular series of Bonds then about to be issued, and to prescribe the form of such Bonds and the coupons appertaining thereto, all in accordance with Article One hereof;

(f) To limit the amount of Bonds which may be issued hereunder;

(g) To make any modifications herein or in the form of any Bonds or their interest coupons which may be expedient to facil-

itate the listing of such Bonds on the New York Stock Exchange or any other securities exchange; *provided*, that in the judgment of the Trustee any such modification will not be prejudicial to the interests of the holders of the Bonds;

(h) To make any modifications herein or in the form of any Bonds or their interest coupons which may be required by law;

(i) To provide additional or other restrictions and limitations upon the issue of Bonds, or additional covenants and undertakings of the Company with respect thereto;

(j) For any other purpose not inconsistent with the terms hereof, or for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective or inconsistent provision contained herein or in any indenture supplemental hereto.

SECTION 15.02. The Trustee is authorized to join with the Company in the execution of any such supplemental indenture, to make any further agreements and stipulations which may be therein contained, not inconsistent with the provisions of this Indenture, and to accept the conveyance, transfer and assignment of any property thereunder.

SECTION 15.03. The Company agrees to furnish to the Trustee upon the execution and delivery of each supplemental indenture, whether pursuant to the provisions of this Article Fifteen or any other provision hereof, an opinion of Counsel that the execution of any such supplemental indenture is authorized by, and is in compliance with, the provisions hereof.

ARTICLE SIXTEEN.

BONDHOLDERS' MEETINGS.

SECTION 16.01. The Trustee may at any time call a meeting of the holders of the Bonds and shall from time to time call such a meeting on the written request of the Company, made pursuant to Certified Resolutions or on a written request signed by the holders of at least 10% of the aggregate principal amount of the Bonds then outstanding, provided that the Trustee shall be furnished at the time of any such request with an amount sufficient to defray the cost of publishing and mailing notice of such meeting in accordance with the provisions of

Section 16.02 hereof. Every such written request shall set forth the purposes of such meeting in reasonable detail. Every such meeting of holders of Bonds shall be held in the Borough of Manhattan, City and State of New York, or in the City and County of San Francisco, California.

SECTION 16.02. Notice of every such meeting, setting forth in reasonable detail the purposes thereof, shall be given by publishing the same once in each week for four consecutive calendar weeks in one daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, City and State of New York, and in one daily newspaper similarly printed, and published and of general circulation in the City and County of San Francisco, California, the first publication to be not less than thirty nor more than sixty days prior to the date fixed for the meeting. A copy of such notice shall also be sent by mail, not less than thirty days prior to the date so fixed, to the holders of registered Bonds without coupons and to the holders of coupon Bonds registered as to principal, at their last addresses appearing upon the Bond register, but failure to mail such notice or any defect therein or in the mailing thereof shall not affect the validity of any such meeting. The place, date and hour of holding each such meeting and the dates of publishing such notice shall be determined by the Trustee in its discretion.

SECTION 16.03. The Trustee, or upon its refusal so to do, the Company, may (for the purpose of enabling the holders of Bonds to be present and vote at any meeting without producing their Bonds and of enabling them to be present and vote at any such meeting by proxy) make, and may from time to time vary, such regulations as it shall think fit for the deposit of unregistered Bonds with or the exhibition thereof to any bank, banker or trust company or corporation, firm or person approved by the Trustee and for the issue to the persons so depositing or exhibiting the same, of certificates by such bank, banker, trust company or corporation, firm or person, entitling the persons depositing or exhibiting such Bonds to be present and vote or to appoint proxies to represent them and vote for them at any such meeting and at any adjournment thereof, in the same way as if the person so present and voting, either personally or by proxy, exhibited such Bonds at said meeting, notwithstanding any transfer of such Bonds subsequent to the issuance of such certificates. Any reg-

ulations so made shall be binding and effective, and the votes given in accordance therewith shall be valid and shall be counted. Each such certificate shall state the date on which the Bond or Bonds in respect of which such certificate shall have been issued were deposited with or exhibited to such person or institution, and the series and serial numbers and the principal amounts of such Bonds. In the event that two or more such certificates shall be issued in respect of the same Bond or Bonds, the certificate bearing the latest date shall be recognized and be deemed to supersede all certificates previously issued with respect to such Bond or Bonds. Neither the person named in any such certificate nor his proxy shall be entitled to vote at any such meeting if (1) another certificate bearing a later date issued in respect of the same Bond shall be produced, (2) the Bond specified in such certificate shall itself be produced at the meeting (or in case such Bond shall have been surrendered in exchange for another coupon Bond pursuant to this Indenture or any supplemental indenture, such other Bond shall be produced) or (3) the Bond specified in such certificate shall then be registered as to principal or shall have been exchanged for a registered Bond without coupons pursuant to this Indenture or any supplemental indenture.

Holders of registered Bonds without coupons and coupon Bonds registered as to principal may, by proxy duly executed in writing, appoint any person to represent them and vote for them at any such meeting or any adjournment thereof. Each such writing shall state the aggregate principal amount of Bonds in respect of which the person authorized thereby is entitled to vote.

SECTION 16.04. To be entitled to vote at any such meeting a person shall be (a) the holder of a coupon Bond transferable by delivery, (b) the registered holder of a coupon Bond registered as to principal or of a registered Bond without coupons, or a proxy for such registered holder, or (c) subject to clauses (1), (2) and (3) of Section 16.03 hereof, the person named in a certificate issued pursuant to Section 16.03 hereof or his proxy. The only persons who shall be entitled to be present or to speak at any such meeting shall be the persons entitled to vote thereat and the counsel of any such person and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Bonds known by the Trustee to be owned or held by or for the account of the Company or any subsidiary company, or any corpora-

tion or corporations or person owning, directly or indirectly, a majority of the voting stock of the Company, shall not be deemed to be outstanding for any purpose of this Article Sixteen, except that any Bond pledged by the Company, or by any subsidiary company, or by any such corporation or person, as security for loans or other obligations, otherwise than to another subsidiary company or to another such corporation or person, shall be deemed to be outstanding for all purposes of this Article Sixteen, if the pledgee is entitled pursuant to the terms of the pledge agreement to vote such Bonds and is free to exercise such right in its or his discretion, uncontrolled by the Company, any subsidiary, or any such corporation or person.

SECTION 16.05. The representation of a majority in aggregate principal amount of the Bonds, or such larger percentage as shall be necessary to take any particular action proposed, by the persons holding such Bonds or, subject to clauses (1), (2) and (3) of Section 16.03 hereof, by the persons named in certificates issued pursuant to Section 16.03 hereof or by proxy, shall be necessary to constitute a quorum at any such meeting, but less than a quorum may adjourn the meeting from time to time and from place to place and the meeting may be held as adjourned without further notice, whether such adjournment shall have been had by a quorum or by the less than a quorum. The Trustee shall by an instrument in writing appoint a temporary chairman of the meeting and the meeting shall be organized by the election of a permanent chairman and a secretary. At any meeting the votes of the persons entitled to vote at such meeting on any election, motion, resolution, or other action shall be counted on the basis of the principal amount of the Bonds represented by such persons.

SECTION 16.06. At any such meeting at which there shall be a quorum the persons entitled to vote at such meeting shall have the power by resolution adopted as hereinafter provided

(a) to authorize the Trustee to join with the Company in making any amendment or repeal of or addition to any provision hereof or of any indenture supplemental hereto, and any modification of or addition to the rights and obligations of the Company or the rights of the holders of the Bonds of all or any series, and appurtenant coupons, hereunder or under any indenture supplemental hereto, *provided, however*, that no such amendment,

modification, repeal or addition shall be effective until approved by Certified Resolutions filed with the Trustee;

(b) to sanction any compromise of the rights of the holders of the Bonds against the Company or against its property, whether such rights shall arise under the provisions of this Indenture or otherwise;

(c) to require the Trustee on having entered into or taken possession of the trust estate, or any part thereof, to restore the same to the Company upon such conditions as may be approved at said meeting;

(d) to terminate, notwithstanding the provisions of Article Eleven hereof, either before or after an event of default, the lien hereof or of any indenture supplemental hereto as to any part of the property at any time subject to the lien hereof, and cause the same to revert to the Company free and clear of the lien hereof upon such conditions as may be approved at said meeting;

(e) to sanction any plan for the reorganization, readjustment or liquidation of the Company, or to designate a reorganization manager or managers;

(f) to authorize the Trustee to accept in satisfaction or part satisfaction for the sale or transfer of all or any part of the trust estate any securities of any corporation formed or to be formed;

(g) to waive any default on the part of the Company, other than the non-payment of the principal of any Bonds at maturity or any interest thereon when due, upon such terms as may be approved at such meeting; and

(h) to exercise any and every power given the holders of Bonds, or any specified percentage thereof, under any provision hereof;

provided, however, that, except with the consent of the holder of each Bond which would be affected thereby, to be evidenced by an appropriate legend stamped thereon, no action taken at any such meeting may change the maturity or the principal amount of any Bond or the redemption price thereof, or otherwise modify the terms of payment of the principal of or accumulated unpaid interest on any Bond or effect a reduction of the percentage required for any action author-

ized to be taken by the holders of Bonds; and *provided, further* that, notwithstanding any other provision of this Article Sixteen, no amendment, modification or repeal of or addition to the provisions of this Indenture or any indenture supplemental hereto, or other action hereinabove provided for, which, in the opinion of the Trustee, shall affect its rights, duties or immunities under this Indenture or any indenture supplemental hereto may be effected without the written consent of the Trustee.

The affirmative vote of 66⅔% in principal amount of the Bonds at the time outstanding shall be necessary to the adoption of any resolution under paragraphs (a), (b), (c), (d), (e) or (f) of this Section 16.06. The affirmative vote of a majority in principal amount of the Bonds at the time outstanding shall be necessary for the adoption of any resolution under paragraph (g) of this Section 16.06. If the adoption of any such resolution would affect the rights of the holders of the Bonds of any series not in common with the rights of the holders of the Bonds of all other series, the affirmative vote of 66⅔% in principal amount of the Bonds of such series then outstanding shall also be necessary for the adoption of such resolution. In the case of any resolution adopted pursuant to paragraph (h) of this Section 16.06, such resolution may be adopted by the affirmative vote of such percentage of the outstanding Bonds, or of the Bonds of any particular series, as is elsewhere in this Indenture specified as to the action set forth in such resolution.

The Trustee shall be entitled to rely upon an opinion of Counsel with respect to the extent, if any, to which any action taken at such meeting affects the rights of the holders of Bonds of one or more, but less than all, of the series of Bonds outstanding.

SECTION 16.07. The votes upon any resolution shall be by ballot, and the chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of every such meeting shall be prepared by the secretary of the meeting, and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat, and affidavits of one or more persons having knowledge of the facts setting forth a copy of the notice of the meet-

ing and showing that said notice was published as provided in Section 16.02 hereof. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting, and one of the duplicates shall be delivered to the Company and the other to the Trustee. Any record so signed and verified shall be conclusive evidence that such meeting was duly convened and held, and any resolution or proceeding stated in such record to have been adopted or taken shall be deemed conclusively to have been duly adopted or taken at the meeting.

SECTION 16.08. Any such resolution so adopted in accordance with the provisions of Section 16.06 hereof at a meeting duly convened and held shall be binding upon all holders of Bonds, whether or not present or voting, in person or by proxy, at such meeting, and all Bonds are to be owned and held on the condition, as part of the consideration for the issuance thereof, that any resolution so adopted shall be final and conclusive upon all holders of Bonds and upon their successors and assigns. The Trustee shall be bound to give effect to any such resolution.

SECTION 16.09. Bonds authenticated and delivered after the date of any such meeting, or after the delivery to the Trustee of any instrument pursuant to Section 16.10 hereof, may bear a notation in form approved by the Trustee as to any action taken or power exercised at any such meeting theretofore held or by any such instrument, and upon the demand of the holder of any Bond outstanding at the date of any such meeting or of the delivery of any such instrument and presentation of his Bond for that purpose, the Company shall cause suitable notation to be made on the Bond, by endorsement or otherwise, as to any action so taken or power so exercised. If the Company or the Trustee shall so determine new Bonds, so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any resolution adopted as provided in this Article Sixteen, or any instrument delivered pursuant to Section 16.10 hereof, shall be prepared by the Company, authenticated by the Trustee and delivered, without cost, to the holders of Bonds of the same series then outstanding hereunder upon surrender of such Bonds with all unmatured coupons and all matured coupons not fully paid, in equal aggregate principal amounts. The Company or the Trustee may require the Bonds outstanding to be presented for notation or exchange as aforesaid, if either of them shall see fit to do so.

Indentures supplemental hereto, embodying any modification or repeal of or addition to the provisions hereof, and any amendment or modification of or addition to the rights and obligations of the Company or the rights of the holders of the Bonds and coupons made as provided in this Article Sixteen, may be executed by the Trustee and the Company, and, upon demand of the Trustee, or if so specified in any resolution adopted at any meeting provided for in this Article Sixteen, shall be so executed.

SECTION 16.10. Any action which may be taken or any power which may be exercised at a meeting convened pursuant to this Article Sixteen may also be taken or exercised by an instrument or instruments signed by the holders of such proportion of the principal amount of outstanding Bonds as would be authorized to exercise such power at any such meeting, and delivered to the Trustee together with proof satisfactory to the Trustee of the fact and date of the execution thereof, and the authority of the signers thereof to execute such power.

ARTICLE SEVENTEEN.

MISCELLANEOUS PROVISIONS.

SECTION 17.01. Upon the request of the Company, any moneys held by any paying agent or by the Trustee which shall have been deposited for the payment of the principal of, premium, if any, or the interest on the Bonds and which shall remain unclaimed by the holders of the Bonds or coupons respectively entitled thereto for six years after the date when such moneys were payable shall be repaid by such paying agent or the Trustee, as the case may be, to the Company and any liability of such paying agent or the Trustee with respect to such moneys shall cease upon such repayment and the holders of said Bonds and coupons shall thereafter be entitled to look only to the Company as the holders of general claims for the payment thereof, subject to any applicable statute of limitations; *provided, however*, that any such paying agent or the Trustee, before being required to make any such repayment, may, at the expense of the Company, cause notice that such moneys have not been claimed and that after a date specified therein any unclaimed balance of such moneys then remaining will be repaid

to the Company, to be published once in each week for two successive calendar weeks in one daily newspaper printed in the English language and published and of general circulation in the Borough of Manhattan, City and State of New York and in one daily newspaper similarly printed, published and of general circulation in the City and County of San Francisco, California.

In no event shall the holders of any such Bonds or coupons be entitled to interest upon moneys so deposited, whether remaining with a paying agent or the Trustee or so repaid to the Company.

SECTION 17.02. For the purpose of any action to be taken by bondholders hereunder, whether at a meeting or otherwise, in determining the principal amount of Bonds outstanding and in determining whether the holders of the required percentage of the principal amount of outstanding Bonds, or of any series thereof, have concurred in any action, Bonds, which, by reason of the provisions of Section 16.04 hereof, would not be entitled to vote at a meeting of bondholders convened pursuant to Article Sixteen hereof at the time of such determination, shall be disregarded.

SECTION 17.03. As used in this Indenture, except where the context otherwise requires:

The term "Board of Directors" shall mean the board of directors of the Company;

The words "Bonds", "coupons", "bondholders" and "holders" of Bonds and coupons shall include both the singular and the plural number;

The terms "Bonds outstanding", "outstanding Bonds", or any variation thereof as used herein with respect to Bonds of any one or more series, shall mean all Bonds of such series theretofore authenticated and delivered hereunder, except (a) Bonds held in the treasury of the Company which for any reason have never been sold, pledged or otherwise disposed of, (b) Bonds which have been re-acquired by the Company and are held in its treasury, (c) Bonds which have been redeemed or purchased and cancelled under any provision hereof, (d) Bonds called for redemption and in respect of the redemption of which the Company shall have complied with the provisions of Section 4.02 hereof, and (e) Bonds authenticated and delivered hereunder upon a

transfer of which, or upon the surrender of which, other Bonds have been authenticated and delivered hereunder.

The term "Bond registrar" or other equivalent term shall mean any corporation or other person maintaining an office or agency designated by the Company as provided in Section 6.01 hereof at which Bonds may be registered;

The term "Bond registry books" or other equivalent term shall mean the books for the registration and transfer of Bonds kept by a Bond registrar;

The term "Certified Resolutions" shall mean a copy of resolutions adopted by the Board of Directors, having appended thereto a certificate signed by the Secretary or an Assistant Secretary of the Company under its corporate seal setting forth that such resolutions were duly adopted on a specified date and remain in full force and effect;

The term "Commission" shall mean the Interstate Commerce Commission and any successor or substitute administrative body created under the laws of the United States and exercising similar jurisdiction over interstate carriers by rail;

The term "Counsel" shall mean legal counsel satisfactory to the Trustee, who may be counsel for the Company;

The term "daily newspaper" shall mean a newspaper customarily published at least on each business day other than holidays;

The term "Indenture" or "this Indenture" shall mean this Indenture either as originally executed or as the same may from time to time be supplemented, modified or amended by any supplemental indenture entered into pursuant to any of the provisions hereof;

The term "independent engineer", "independent appraiser", or "independent person" shall mean an engineer, appraiser or person, as the case may be, who is not in the regular employ of the Company or of any railroad company affiliated with it; he may, however, be an engineer, appraiser or person regularly employed by other railroad companies not affiliated with the Company;

The term "Officers' Certificate" shall mean a certificate signed by the President or a Vice President, and by the Treasurer, As-

sistant Treasurer, General Auditor, Assistant General Auditor or other chief accounting officer of the Company;

The term "paying agent" shall mean any corporation or other person appointed by the Company to act as its agent in the payment of the principal of, premium, if any, or interest on any Bonds or coupons;

The term "Permitted Encumbrances" shall, as of any particular time, mean (a) liens for taxes and assessments not then delinquent; (b) undetermined liens or encumbrances incidental to construction during the preceding six months (but only to the extent that they are entitled to priority by operation of law), provided that, in the opinion of Counsel, such items do not constitute, and are not capable of ripening into, liens prior to the lien of this Indenture sufficiently substantial in the aggregate to impair the security under this Indenture; (c) easements, rights of way, reservations, restrictions, covenants of record (other than for the payment of money), party wall agreements, and liens or encumbrances subject to which such easements or rights of way may be possessed, provided, that none of such items materially impairs, in the opinion of Counsel, the use of the affected property by the Company; (d) any lien for the payment or other discharge of which provision satisfactory to the Trustee has been made, provided that if such provision shall have been made by the authentication and delivery of Bonds or of bonds issued under the First Mortgage or the withdrawal of cash or the release of property hereunder or under the First Mortgage such prior lien shall not be deemed a Permitted Encumbrance under paragraph (4) of Section 2.03 hereof or under subparagraph (v) of said Section 2.03; and (e) the lien of the First Mortgage;

The term "purchase money mortgage" shall include any mortgage, deed of trust or other instrument, however designated, given to secure the payment of all or a part of the purchase price of property;

The term "Reorganization Trustees" shall mean the trustees of the property of the Company appointed and acting as such in the reorganization proceedings hereinbefore referred to;

The term "Standard Accounting Rules" shall mean the rules and regulations of the Commission for a uniform system of ac-

counts for steam railroads, and all applicable special or general rules, regulations and orders of the Commission relating to accounting, from time to time in force; and whenever no such rule, regulation or order shall be applicable, the rules applied in sound accounting practice;

The term "subsidiary", "subsidiary company" or other equivalent term shall mean a corporation a majority of whose stock, ordinarily entitled to vote for the election of directors, is owned by the Company and subject to the lien hereof;

The term "Trustee" shall mean the Trustee for the time being under this Indenture, whether original or successor;

The term "wholly owned subsidiary" shall mean any corporation, not less than 95% of whose stock of each class, except directors' qualifying shares, is owned by the Company and subject to the lien hereof.

SECTION 17.04. Nothing in this Indenture expressed or implied is intended or shall be construed to give any person, firm or corporation other than the parties hereto and the holders of the Bonds and coupons, any legal or equitable right, remedy or claim under or in respect of this Indenture, or any covenant, condition or provision herein contained. All the covenants, conditions and provisions hereof are and are intended to be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and of the holders of the Bonds and coupons.

SECTION 17.05. This Indenture is dated, for convenience, as of January 1, 1939, although actually executed and delivered on the date of the acknowledgment hereof by the Trustee.

SECTION 17.06. This Indenture may be simultaneously executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument, which shall for all purposes be sufficiently proved by any such counterpart.

IN WITNESS WHEREOF, The Western Pacific Railroad Company, the party hereto of the first part, has caused this Indenture to be signed and acknowledged by its President or one of its Vice Presidents, and

its corporate seal to be hereunto affixed and the same to be attested by its Secretary or one of its Assistant Secretaries, and The Chase National Bank of the City of New York, the party hereto of the second part, has caused this Indenture to be signed and acknowledged by one of its Vice Presidents and its corporate seal to be hereunto affixed and the same to be attested by one of its Assistant Cashiers, all as of the day and year first above written.

THE WESTERN PACIFIC RAILROAD COMPANY

By *Wm. L. G. ...* President

Attest:

L. B. ...
Secretary

Signed, sealed and delivered as to
The Western Pacific Railroad
Company in the presence of:

Wm. L. G. ...
John ...

THE CHASE NATIONAL BANK OF THE CITY OF
NEW YORK

By *Wm. L. G. ...* Vice President

Attest:

Wm. L. G. ...
Assistant Cashier

Signed, sealed and delivered as to
The Chase National Bank of the
City of New York in the pres-
ence of:

Wm. L. G. ...
John ...

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO. } ss.:

On this 12th day of December, 1944, before me
MARY N. WICKERSHAM, a Notary Public in and for the City and
County of San Francisco, State of California, residing therein, duly
commissioned and sworn, personally appeared CHARLES ELSEY, known
to me to be the President of THE WESTERN PACIFIC RAILROAD COMPANY,
one of the corporations that executed the foregoing instrument, and
known to me to be the person who executed the foregoing instrument
on behalf of said corporation, and he acknowledged to me that such
corporation executed the same; and being by me duly sworn, he did
say: that he is the officer of said corporation as above designated; that
said instrument was signed on behalf of said corporation by resolution
of its Board of Directors; that he is acquainted with the seal of said
corporation and that the seal affixed to said instrument is the corporate
seal of said corporation; that the signatures to said instrument on
behalf of said corporation were made by officers of said corporation
as indicated after said signatures; and that the said corporation exe-
cuted the said instrument freely and voluntarily and for the uses and
purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal, the day and year in this certificate first above written.

Mary N. Wickersham

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

On this 15th day of December, 1944, before me *Mortimore*
J. Hill, a Notary Public in and for the County of New
York, State of New York, residing therein, duly commissioned and
sworn, personally appeared *C. E. BOOKER*,
known to me to be a Vice President of THE CHASE NATIONAL BANK OF
THE CITY OF NEW YORK, one of the corporations that executed the
foregoing instrument and known to me to be the person who executed
the foregoing instrument on behalf of said corporation, and he acknowl-
edged to me that such corporation executed the same; and being by
me duly sworn he did say: that he is the officer of said corporation
as above designated; that said instrument was signed in behalf of said
corporation by resolution of its Board of Directors; that he is ac-
quainted with the seal of said corporation and that the seal affixed
to said instrument is the corporate seal of said corporation; that the
signatures to said instrument on behalf of said corporation were made
by officers of said corporation as indicated after said signatures; and
that the said corporation executed the said instrument freely and volun-
tarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal the day and year in this certificate first above written.

Mortimore J Hill

ROBERTSON P. HILL
NOTARY PUBLIC, NEW YORK COUNTY
JERREYS NO. 123. RECORDED NO. 422-H-8
CERTIFICATE FILED IN WESTCHESTER COUNTY
COMMISSION EXPIRES MARCH 30, 1945

STATE OF CALIFORNIA, }
CITY AND COUNTY OF SAN FRANCISCO. } ss.:

CHARLES ELSEY, being first duly sworn, deposes and says:

That he is the President of THE WESTERN PACIFIC RAILROAD COMPANY, the mortgagor in the foregoing mortgage and deed of trust; that the foregoing mortgage is made in good faith to secure the payment of the sums now actually owing and hereafter to become due from the mortgagor thereunder, to wit: the principal of, premium, if any, and interest on the General Mortgage Income Bonds of said The Western Pacific Railroad Company now or hereafter to be issued; that said mortgage is made without any design by the mortgagor to hinder or delay creditors of the mortgagor or any creditors whatsoever; and that this affidavit is made in behalf of said The Western Pacific Railroad Company.

Subscribed and sworn to before me,
this 12th day of December, 1944.

Charles Elsey

Mary R. Wickersham

Notary Public for the City and County of San Francisco,
My Comm. Expires Dec. 31, 1945

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } ss.:

G. E. BUCKLEY, being first duly sworn, deposes and says:

That he is a Vice-President of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, the mortgagee in the foregoing mortgage and deed of trust; that the foregoing mortgage is made in good faith to secure the payment of the sums now actually owing and hereafter to become due from the mortgagor thereunder, to wit: the principal of, premium, if any, and interest on the General Mortgage Income Bonds of said The Western Pacific Railroad Company now or hereafter to be issued; that said mortgage is made without any design by the mortgagee to hinder or delay the creditors of the mortgagor or any creditors whatsoever; and that this affidavit is made in behalf of said The Chase National Bank of the City of New York.

Subscribed and sworn to before me,
this day of December, 1944.

Mortimore J. Hill

WILLIAM F. HILL
NOTARY PUBLIC, NEW YORK COUNTY
BOOK 1 NO. 125, REGISTER'S NO. 422-H-8
QUALIFIED UNDER WESTCHESTER COUNTY
COMMISSION EXPIRES MARCH 30, 1946