

63157

This FINANCING STATEMENT is presented for filing pursuant to the Nevada Uniform Commercial Code

1. DEBTOR (LAST NAME FIRST) <b>The Western Pacific Railroad Company</b>		2A. SOCIAL SECURITY OR FEDERAL TAX NO. <b>94-6001510</b>	
1B. MAILING ADDRESS <b>526 Mission Street</b>		1C. CITY, STATE <b>San Francisco, California</b>	
1E. RESIDENCE ADDRESS (IF AN INDIVIDUAL AND DIFFERENT THAN 1B)		1F. CITY, STATE	
1D. ZIP CODE <b>94105</b>		1G. ZIP CODE	
2. ADDITIONAL DEBTOR (IF ANY) (LAST NAME FIRST)		2A. SOCIAL SECURITY OR FEDERAL TAX NO.	
2B. MAILING ADDRESS		2C. CITY, STATE	
2E. RESIDENCE ADDRESS (IF AN INDIVIDUAL AND DIFFERENT THAN 2B)		2F. CITY, STATE	
2D. ZIP CODE		2G. ZIP CODE	
3. DEBTOR(S) TRADE NAME OR STYLE (IF ANY)		3A. FEDERAL TAX NO.	
4. ADDRESS OF DEBTOR(S) CHIEF PLACE OF BUSINESS (IF ANY)		4A. CITY, STATE	
4B. ZIP CODE			
5. SECURED PARTY NAME <b>Crocker National Bank</b> MAILING ADDRESS <b>One Montgomery Street</b> CITY <b>San Francisco</b> STATE <b>California</b> ZIP CODE <b>94104</b>		5A. SOCIAL SECURITY NO., FEDERAL TAX NO. OR BANK TRANSIT AND A.B.A. NO. <b>1210000860</b>	
6. ASSIGNEE OF SECURED PARTY (IF ANY) NAME MAILING ADDRESS CITY STATE ZIP CODE		6A. SOCIAL SECURITY NO., FEDERAL TAX NO. OR BANK TRANSIT AND A.B.A. NO.	
7. This FINANCING STATEMENT covers the following types or items of property (if crops or timber, include description of real property on which growing or to be grown and name of record owner of such real estate; if fixtures, include description of real property to which affixed or to be affixed and name of record owner of such real estate; if oil, gas or minerals, include description of real property from which to be extracted.  Description of the types of property covered is contained in the attached copies of the First and Refunding Mortgage of The Western Pacific Railroad Company dated as of January 1, 1951 and the First Supplemental Indenture dated as of June 15, 1977 which also have been or are to be recorded in the real estate records and which contain a description of the real estate.  Debtor is a "transmitting utility" in accordance with UCC §9105(1)(n)			
7A. Maximum amount of indebtedness to be secured at any one time (OPTIONAL) \$			
8. Check <input checked="" type="checkbox"/> if Applicable A <input checked="" type="checkbox"/> Proceeds of collateral are also covered B <input type="checkbox"/> Products of collateral are also covered C <input type="checkbox"/> Proceeds of above described original collateral in which a security interest was perfected D <input type="checkbox"/> Collateral was brought into this State subject to security interest in another jurisdiction			

THIS SPACE FOR USE OF FILING OFFICER

9. (Date) <u>June 15, 1977</u>		10. This Space for Use of Filing Officer (Date, Time, File Number and Filing Officer) <b>UCC FILE NO. 587</b> <b>FILED THIS 21st DAY OF JUNE, 1977, AT 10:30 A.M., RECORDS OF EUREKA COUNTY, NEVADA.</b> <i>Allen A. McFarland</i> <b>Eureka County Recorder</b> <b>ALSO RECORDED IN BOOK 59 OF OFFICIAL RECORDS, PAGES 381 THRU 625 ON JUNE 21, 1977, AT 10:30 A.M., RECORDS OF EUREKA COUNTY, NEVADA.</b> <i>Allen A. McFarland</i> <b>Eureka County Recorder</b> <b>FILE #63158 Fee \$245.00</b> <b>BOOK 59 PAGE 381</b>	
The Western Pacific Railroad Company By: <i>Robert H. Williams</i> SIGNATURE(S) OF DEBTOR(S) Vice President-Law (TITLE) Crocker National Bank By: <i>W. K. K...</i> SIGNATURE(S) OF SECURED PARTY(IES) Trust Officer (TITLE)			
11. Return Copy to NAME <b>The Western Pacific Railroad Company</b> ADDRESS <b>526 Mission Street</b> CITY, STATE AND ZIP <b>San Francisco, California 94105</b> <b>Attention of Law Department</b>			

(1) FILING OFFICER COPY - NUMERICAL

UNIFORM COMMERCIAL CODE—FORM UCC-1 (REV. 2-68)

Approved by the Secretary of State

STANDARD FORM-FILING FEE \$2.00

THE WESTERN PACIFIC RAILROAD COMPANY

---

THE WESTERN PACIFIC RAILROAD COMPANY

TO

CROCKER NATIONAL BANK,  
Trustee

---

**First Supplemental Indenture**

*Dated as of June 15, 1977*

TO

THE WESTERN PACIFIC RAILROAD COMPANY  
FIRST AND REFUNDING MORTGAGE  
DATED AS OF JANUARY 1, 1951

---

FIRST MORTGAGE 9½% BONDS,  
SERIES B, DUE 2002

---

BOOK 59 PAGE 382

THE WESTERN PACIFIC RAILROAD COMPANY

**TIE-SHEET\***

of provisions of Trust Indenture Act of 1939 with First and Refunding Mortgage dated as of January 1, 1951 by and between The Western Pacific Railroad Company and Crocker National Bank (formerly Crocker First National Bank of San Francisco), Trustee, as supplemented by the within First Supplemental Indenture dated as of June 15, 1977.

<u>Act</u>	<u>Indenture</u>
Section 310(a)(1) .....	Section 17.02
Section 310(a)(2) .....	Section 17.02
Section 310(a)(3) .....	Section 12.06
Section 310(a)(4) .....	Not Applicable
Section 310(b) .....	Sections 17.01, 17.03 and 17.07
Section 310(c) .....	Not Applicable
Section 311(a) .....	Sections 17.04 and 17.07
Section 311(b) .....	Sections 17.04 and 17.07
Section 311(c) .....	Not Applicable
Section 312(a) .....	Sections 18.01 and 18.02(a)
Section 312(b) .....	Section 18.02(b)
Section 312(c) .....	Section 18.02(c)
Section 313(a) .....	Section 18.04(a)
Section 313(b) .....	Section 18.04(b)
Section 313(c) .....	Section 18.04(c)
Section 313(d) .....	Section 18.04(d)
Section 314(a) .....	Section 18.03
Section 314(b) .....	Section 19.04
Section 314(c) .....	Sections 19.01 and 19.03
Section 314(d) .....	Section 19.02
Section 314(e) .....	Section 19.05
Section 314(f) .....	Section 7.18
Section 315(a) .....	Sections 17.06 and 17.07
Section 315(b) .....	Section 17.05
Section 315(c) .....	Section 17.06
Section 315(d) .....	Sections 17.06 and 17.07
Section 315(e) .....	Section 9.26
Section 316(a)(1) .....	Section 9.06
Section 316(a)(2) .....	Omitted
Section 316(a) (2nd Sentence) .....	Section 16.02
Section 316(b) .....	Section 9.21
Section 317(a) .....	Sections 9.15, 12.07
Section 317(b) .....	Section 20.01(b)
Section 318(a) .....	Section 20.02

\* This tie-sheet is not a part of the Indenture, or of the First Supplemental Indenture, as executed.



TABLE OF CONTENTS\*

FIRST SUPPLEMENTAL INDENTURE

Dated as of June 15, 1977

	PAGE
PARTIES .....	1
RECITALS .....	1
Form of face of Series B Bond .....	2
Form of Trustee's certificate of authentication .....	3
Form of reverse of Series B Bond .....	4
PART ONE—CREATION OF SERIES B BONDS .....	8
§ 1.01. Creation, Designation, Amount and Issue of Series B Bonds ...	8
§ 1.02. Form of Series B Bonds .....	9
§ 1.03. Date and Denomination of Series B Bonds .....	9
§ 1.04. Authenticating Agent .....	10
§ 1.05. Deposit of Proceeds .....	11
PART TWO—REDEMPTION OF SERIES B BONDS—MANDATORY AND OPTIONAL SINKING FUND .....	12
§ 2.01. Redemption prices—Voluntary and for sinking fund .....	12
§ 2.02. Notice of redemption, selection of Series B Bonds .....	12
§ 2.03. Payment of Series B Bonds called for redemption .....	13
§ 2.04. Mandatory and optional sinking fund .....	14
PART THREE—AMENDMENTS .....	17
§ 3.01. Amendments .....	17
ARTICLE SEVENTEEN—ADDITIONAL PROVISIONS CONCERNING THE TRUSTEE .....	17
Section 17.01. Conflicting interest of Trustee .....	17
Section 17.02. Eligibility of Trustee .....	23
Section 17.03. Removal of Trustee .....	24
Section 17.04. Limitation on right of Trustee as creditor .....	26
Section 17.05. Notice of defaults .....	30
Section 17.06. Duties and responsibilities of Trustee .....	31
Section 17.07. Additional Trustees .....	32

\* This Table of Contents shall not for any purpose be deemed to be a part of the Indenture or of the First Supplemental Indenture.



	<u>PAGE</u>
ARTICLE EIGHTEEN—BONDHOLDERS LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE.....	32
Section 18.01. Bondholders lists.....	32
Section 18.02. Preservation and disclosure of lists.....	33
Section 18.03. Reports by the Company.....	34
Section 18.04. Reports by Trustee.....	36
Section 18.05. Reports by additional trustees.....	39
ARTICLE NINETEEN—ADDITIONAL PROVISIONS AS TO CERTIFICATES AND OPINIONS.....	39
Section 19.01. Evidence of compliance with conditions precedent.....	39
Section 19.02. Certificates of engineers, appraisers or other ex- perts.....	40
Section 19.03. Requirements as to independence.....	42
Section 19.04. Opinions as to recording.....	43
Section 19.05. Recitals as to basis of certificates and opinions.....	44
Section 19.06. Certain definitions.....	44
ARTICLE TWENTY—PROVISIONS AS TO PAYING AGENTS AND MIS- CELLANEOUS ADDITIONAL PROVISIONS.....	44
Section 20.01. Moneys to be held in trust; provision as to paying agents.....	44
Section 20.02. References to Trust Indenture Act of 1939; com- pliance of supplemental indentures with Trust Indenture Act of 1939; required provisions to control.....	45
§ 3.02. Additional Amendments.....	46
(a) First Granting Clause.....	44
(b) Fifth Granting Clause.....	47
(c) Granting Clauses Proviso.....	47
(d) Section 1.02.....	48
(e) Section 1.02.....	49
(f) Section 2.02.....	49
(g) Section 2.05.....	50
(h) Section 2.05.....	50
(i) Section 3.02.....	50

	<u>PAGE</u>
(j) Section 3.03.....	50
(k) Section 3.03.....	50
(l) Section 3.10.....	51
(m) Section 4.02.....	51
(n) Section 5.01.....	52
(o) Section 7.01.....	52
(p) Section 7.12.....	52
(q) Sections 7.17 and 7.18.....	52
(r) Section 9.02.....	53
(s) Section 9.06.....	53
(t) Section 9.27.....	54
(u) Section 11.04.....	54
(v) Section 11.07.....	54
(w) Section 11.10.....	54
(x) Section 11.17.....	55
(y) Sections 12.02 and 13.02.....	56
(z) Sections 12.03 and 12.05.....	56
(aa) Sections 12.03 and 12.05.....	56
(bb) Sections 12.04 and 12.05.....	56
(cc) Section 12.06.....	56
(dd) Section 14.02.....	57
<b>PART FOUR—MISCELLANEOUS.....</b>	<b>57</b>
§ 4.01. Inapplicability of Part Three.....	57
§ 4.02. Execution and status of supplemental indenture.....	57
§ 4.03. Table of contents and headings.....	58
§ 4.04. Execution in counterparts.....	58
§ 4.05. Governing law and consent to suit.....	58
<b>TESTIMONIUM.....</b>	<b>58</b>
<b>SIGNATURES.....</b>	<b>58</b>
<b>ACKNOWLEDGMENTS.....</b>	<b>60</b>

### FIRST SUPPLEMENTAL INDENTURE

THIS SUPPLEMENTAL INDENTURE dated as of June 15, 1977, by and between THE WESTERN PACIFIC RAILROAD COMPANY, a corporation organized and existing under the laws of the State of California (hereinafter called the "Company"), party of the first part, and CROCKER NATIONAL BANK, a national banking association (formerly Crocker First National Bank of San Francisco), and having its principal office and place of business in the City and County of San Francisco, California, as Trustee (hereinafter called the "Trustee"), party of the second part, as Trustee under the First and Refunding Mortgage dated as of January 1, 1951, between the Company and the Trustee (hereinafter called the "Original Indenture");

WHEREAS, Bonds of a series designated as the First and Refunding Mortgage  $3\frac{1}{4}\%$  Bonds, Series A of the Company (hereinafter called the "Series A Bonds"), maturing January 1, 1981, have heretofore been issued and are the only Bonds now outstanding under the Original Indenture; and

WHEREAS, the Original Indenture provides for the issuance thereunder from time to time, after issuance of the Series A Bonds, of First Mortgage Bonds, in series, for the purposes and subject to the limitations therein specified; and

WHEREAS, the Company desires, by this Supplemental Indenture, to create a series of First Mortgage Bonds to be issued under the Original Indenture, as supplemented and modified by this Supplemental Indenture, such Bonds to be designated as the "First Mortgage  $9\frac{1}{4}\%$  Bonds, Series B, Due 2002 of The Western Pacific Railroad Company" (hereinafter called the "Series B Bonds") limited to the aggregate principal amount of twenty million dollars (\$20,000,000), the further terms and provisions of which are as hereinafter and in the Original Indenture set forth; and

WHEREAS, the texts of the Series B Bonds and the certificates of authentication to be borne by the Series B Bonds are to be substantially in the following forms, respectively:



[FORM OF FACE OF SERIES B BOND]

THE WESTERN PACIFIC RAILROAD COMPANY  
FIRST MORTGAGE 9½% BOND,  
SERIES B, DUE 2002

The Western Pacific Railroad Company, a corporation duly organized and existing under the laws of the State of California (herein referred to as the "Company"), for value received, hereby promises to pay to or registered assigns, the principal amount of \_\_\_\_\_ Dollars, at the office or agency of the Company in the Borough of Manhattan, The City of New York, on June 15, 2002, and at such other offices or agencies as may be designated by the Company, 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, and to pay interest on said principal sum at the rate per annum set forth in the title of this Bond, at said office or agency, in like coin or currency, semi-annually on June 15 and December 15 of each year, from the December 15 or June 15, as the case may be, next preceding the date of this Bond to which interest has been paid, unless the date hereof is a date to which interest has been paid, in which case from the date of this Bond, or unless no interest has been paid on the Bonds, in which case from June 15, 1977, until payment of said principal sum has been made or duly provided for; *provided, however*, that payment of interest may be made at the option of the Company by check mailed to the address of the person entitled thereto as such address shall appear on the Bond register. Notwithstanding the foregoing, if the date hereof is after June 1 or December 1, as the case may be, and before the following June 15 or December 15, this Bond shall bear interest from such June 15 or December 15; *provided, however*, that if the Company shall default in the payment of interest due on such June 15 or December 15, then this Bond shall bear interest from the next preceding December 15 or June 15 to which interest has been paid or, if no interest has been paid on the Bonds, from June 15, 1977. The interest so payable on any June 15 or December 15 will, subject to certain exceptions provided in the Indenture referred to on the reverse hereof, be paid to the person in whose name this Bond is registered at the close of business on the June 1 or December 1, as the case may be.

THE WESTERN PACIFIC RAILROAD COMPANY

3

next preceding such June 15 or December 15, whether or not such day shall be a business day.

Reference is made to the further provisions of this Bond set forth on the reverse hereof. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Trustee under the Indenture referred to on the reverse hereof.

IN WITNESS WHEREOF, the Company has caused this Bond to be signed by facsimile by its duly authorized officers, and has caused a facsimile of its corporate seal to be affixed hereunto or imprinted hereon.

Dated:

THE WESTERN PACIFIC RAILROAD  
COMPANY

By \_\_\_\_\_  
President

Attest:

By \_\_\_\_\_  
Secretary

BOOK 59 PAGE 389



## [FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]

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

CROCKER NATIONAL BANK,  
as Trustee

CROCKER NATIONAL BANK,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

or By \_\_\_\_\_  
Authenticating Agent

By \_\_\_\_\_  
Authorized Officer

## [FORM OF REVERSE OF SERIES B BOND]

THE WESTERN PACIFIC RAILROAD COMPANY  
FIRST MORTGAGE 9½% BOND,  
SERIES B, DUE 2002

This Bond is one of a duly authorized issue of First and Refunding Mortgage Bonds and First Mortgage Bonds (herein referred to as the "Bonds"), limited to an aggregate principal amount of Seventy-Five Million Dollars (\$75,000,000) at any time outstanding, issuable in series, issued and to be issued under and equally and ratably secured by an Indenture dated as of January 1, 1951, between the Company and Crocker National Bank (formerly Crocker First National Bank of San Francisco) (herein referred to as the "Trustee"), and is one of a series of such Bonds designated as First Mortgage 9½% Bonds, Series B, Due 2002 of the Company (herein referred to as the "Series B Bonds"), limited to the aggregate principal amount of \$20,000,000, created by the First Supplemental Indenture dated as of June 15, 1977 executed and delivered by the Company to the Trustee. The term "Indenture" as used herein refers to the said Indenture dated as of January 1, 1951, as supplemented by said First Supplemental Indenture and as it may be further supplemented by any further supplemental indenture. The several series of Bonds issuable under the Indenture may be for varying aggregate principal amounts, and the Bonds of any one series may differ from the Bonds of any other series as to maturity, interest rate, redemption,

BOOK 59 PAGE 390



conversion and sinking fund provisions, if any, and otherwise as in the Indenture provided. Reference is hereby made to the Indenture for a description of the franchises and properties mortgaged and pledged as part of the trust estate thereunder, the nature and extent of the security afforded thereby and the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Bonds and coupons.

In case an event of default, as defined in the Indenture, shall have happened and be continuing, the principal hereof may be declared, and upon such declaration shall become, due and payable in the manner, with the effect and subject to the conditions 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 amended and the rights of the Bondholders under the Indenture may be modified or compromised, by the action of the holders of 66⅔% in principal amount of the Bonds then outstanding to be affected by any such action, and certain other powers set out in the Indenture may be exercised by the action of the holders 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 amendment, modification or compromise, nor any exercise of any such powers, shall change the maturity, or the principal amount, or redemption price, or rate of interest, of any of the Bonds or otherwise alter or impair the obligation of the Company in respect of the payment of the principal thereof or the interest thereon, without the consent of the holder of each Bond affected thereby, or reduce the percentage required by the Indenture for any action authorized to be taken by the holders of Bonds.

No reference herein to the Indenture and no provision of this Bond or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and premium, if any, and interest on this Bond at the places, at the respective times, at the rate and in the coin or currency herein prescribed.

The Series B Bonds are issuable in registered form without coupons in denominations of \$1,000 and any multiple of \$1,000. In the manner and subject to the limitations provided in the Indenture, but without charge except for any tax or other governmental charge that may be imposed in connection therewith, Series B Bonds may be exchanged for an equal aggregate principal amount of Series B Bonds of other authorized denomi-

nations at the office or agency of the Company for such exchange in the Borough of Manhattan, The City of New York, and at such other offices or agencies as may be designated by the Company.

The Series B Bonds may be redeemed at the option of the Company, as a whole or from time to time in part, on any date prior to maturity, upon mailing a notice of such redemption not less than 30 nor more than 60 days prior to the date fixed for redemption to the holders of Series B Bonds at their last registered addresses, all as provided in the Indenture, at the following optional redemption prices (expressed in percentages of the principal amount to be redeemed) together in each case with accrued interest to the date fixed for redemption:

If redeemed during the twelve month period beginning June 15,

Year	Percentage	Year	Percentage
1977 .....	108.63	1990 .....	103.95
1978 .....	108.27	1991 .....	103.59
1979 .....	107.91	1992 .....	103.23
1980 .....	107.55	1993 .....	102.88
1981 .....	107.19	1994 .....	102.52
1982 .....	106.83	1995 .....	102.16
1983 .....	106.47	1996 .....	101.80
1984 .....	106.11	1997 .....	101.44
1985 .....	105.75	1998 .....	101.08
1986 .....	105.39	1999 .....	100.72
1987 .....	105.03	2000 .....	100.36
1988 .....	104.67	2001 .....	100.00
1989 .....	104.31		

provided, however, that no such redemption may be effected prior to June 15, 1987 directly or indirectly from or in anticipation of moneys borrowed by or for the account of the Company at an interest cost (calculated in accordance with generally accepted financial practice) of less than 9.176% per annum.

The Series B Bonds are also subject to redemption in part, through the operation of the sinking fund provided for in the Indenture, in the aggregate principal amount of \$1,000,000 on each June 15 commencing on June 15, 1983 and continuing to and including June 15, 2001, on notice as set forth above and at 100% of the principal amount thereof (the sinking fund redemption price), together with accrued interest to the date fixed for redemption. In addition, the Company has the non-cumulative right to



increase sinking fund retirements in any year by an amount not in excess of the mandatory sinking fund for such year. In lieu of making all or part of any mandatory or optional sinking fund payment in cash, the Company may at its option receive credit in an amount equal to the principal amount of Series B Bonds acquired in the open market or otherwise and surrendered to the Trustee for cancellation or previously optionally redeemed otherwise than through the optional sinking fund.

Upon due presentment for registration of transfer of this Series B Bond at the office or agency of the Company for such registration in the Borough of Manhattan, The City of New York, and at such other offices or agencies as may be designated by the Company, a new Series B Bond or Bonds of authorized denominations for an equal aggregate principal amount will be issued to the transferee in exchange herefor, subject to the limitations provided in the Indenture, without charge except for any tax or other governmental charge imposed in connection therewith.

Prior to due presentment for registration of transfer of this Series B Bond, the Company, the Trustee, any paying agent, any authenticating agent and any Bond registrar may deem and treat the registered holder hereof as the absolute owner of this Bond (whether or not this Bond shall be overdue and notwithstanding any notation of ownership or other writing hereon), for the purpose of receiving payment hereof, or on account hereof, and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor any authenticating agent nor any Bond registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, effectively satisfy and discharge liability for moneys payable on this Bond.

No recourse under or upon any obligation, covenant or agreement contained in the Indenture, or in any Bond or coupon, or because of any indebtedness evidenced thereby, shall be had against any incorporator, or against any past, present or future stockholder, officer or director, as such, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, under any rule of law, statute or constitutional provision or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise, all such liability being expressly waived and released by the acceptance of this Bond and as part of the consideration for its issuance.

Amounts sufficient to pay at maturity the Series A Bonds outstanding under the Indenture and interest thereon to maturity simultaneously with the authentication hereof are being deposited with the Trustee pursuant to



Section 3.04(e) of the Indenture for the benefit of the holders of such Series A Bonds. Such amounts shall be held by the Trustee, as trust funds, solely for the payment in full of principal and interest to maturity of such Series A Bonds and shall not be available for any other purpose and shall not be subject to the claims of the holders of Bonds of any other series.

This Bond shall be construed in accordance with and governed by the laws of the State of New York.

WHEREAS, all acts and things prescribed by law and by the by-laws of the Company have been duly performed and complied with and the Company has executed this Supplemental Indenture in the exercise of legal right, power and authority in it vested and all things necessary to make the Series B Bonds, when executed as herein and in the Indenture provided and authenticated by the Trustee, the valid and binding obligations of the Company entitled to the benefits of this Supplemental Indenture and of the Indenture have been done and performed; and

WHEREAS, for the purpose of making certain changes in the Original Indenture, and for the purpose of meeting the requirements of the Trust Indenture Act of 1939, the Company desires to enter into certain additional covenants with the Trustee, to impose certain conditions and restrictions in addition to those now set forth in the Original Indenture; and

WHEREAS, for the purposes hereinabove recited, and pursuant to due corporate action, the Company has duly determined to execute and deliver to the Trustee a supplemental indenture in the form hereof supplementing and modifying the Original Indenture (the Original Indenture, as hereby supplemented and as it may be supplemented from time to time after the date hereof, being herein referred to as the "Indenture");

NOW, THEREFORE, this Supplemental Indenture

WITNESSETH:

That for and in consideration of the premises and the purchase and acceptance of the Series B Bonds by the holders thereof, the Company does hereby covenant and agree with the Trustee as follows:

## PART ONE

## CREATION OF SERIES B BONDS

§ 1.01. The Company hereby creates a series of First Mortgage Bonds under the Indenture in an aggregate principal amount of \$20,000,000, the entire principal amount of which will be issued pursuant to Sections 3.03 and 3.04 thereof. Such Bonds shall be designated as the First Mortgage 9½% Bonds, Series B, Due 2002. The terms and provisions of the Series B Bonds shall be as in this Supplemental Indenture and the Indenture set forth. The Series B Bonds shall be limited to twenty million dollars (\$20,000,000) aggregate principal amount except as provided in Section 2.08 of the Original Indenture. The Series B Bonds shall be dated as provided in § 1.03 of this Supplemental Indenture. The Series B Bonds shall mature June 15, 2002; shall bear interest at the rate of 9½% per annum payable semi-annually on each June 15 and December 15; and shall be redeemable at the option of the Company and entitled to the benefits of a sinking fund, all as herein and in the Indenture provided.

§ 1.02. The Series B Bonds and the certificates of authentication shall be substantially in the form as in this Supplemental Indenture above recited. Any of the Series B Bonds may have imprinted thereon such legends or endorsements as the officers of the Company executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of the Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Series B Bonds may be listed, or to conform to usage.

§ 1.03. The Series B Bonds shall be issuable as registered Bonds without coupons in denominations of \$1,000 and any multiple of \$1,000, and shall be numbered, lettered or otherwise distinguished in such manner or in accordance with such plan as the officers of the Company may determine with the approval of the Trustee.

Every Series B Bond shall be dated the date of its authentication and, except as provided in this § 1.03, shall bear interest, payable semi-annually on June 15 and December 15 of each year, from the December 15 or June 15, as the case may be, next preceding the date of such Series B Bond to which interest has been paid, unless the date of such Series B Bond is a date to which interest has been paid, in which case from the date of such Series B Bond, or unless no interest has been paid on the Series B Bonds, in which

case from June 15, 1977. Notwithstanding the foregoing, when there is no existing default in the payment of interest on the Series B Bonds, all Series B Bonds authenticated by the Trustee after the close of business on the record date (as hereinafter in this § 1.03 defined) for any interest payment date (June 15 or December 15, as the case may be) and prior to such interest payment date shall be dated the date of authentication but shall bear interest from such interest payment date; *provided, however, that if and to the extent that the Company shall default in the interest due on such interest payment date then any such Series B Bond shall bear interest from the June 15 or December 15, as the case may be, next preceding the date of such Series B Bond to which interest has been paid, unless no interest has been paid on the Series B Bonds, in which case from June 15, 1977.*

The person in whose name any Series B Bond is registered at the close of business on any record date (as hereinafter defined) with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date notwithstanding the cancellation of such Series B Bond upon any transfer or exchange subsequent to the record date and prior to such interest payment date; *provided, however, that if and to the extent that the Company shall default in the payment of the interest due on such interest payment date, such defaulted interest shall be paid to the persons in whose names outstanding Series B Bonds are registered on a subsequent record date established by notice given by mail by or on behalf of the Company to the holders of Series B Bonds not less than 15 days preceding such subsequent record date, such subsequent record date to be not less than five days preceding the date of payment of such defaulted interest. The term "record date" as used in this § 1.03 with respect to any interest payment date shall mean the June 1 or December 1, as the case may be, next preceding such interest payment date, whether or not such day is a business day.*

§1.04. As long as any of the Series B Bonds remain outstanding, the Trustee may appoint an authenticating agent to act on its behalf and subject to its direction in connection with the authentication of the Series B Bonds. Such authenticating agent shall at all times be a corporation organized and doing business under the laws of the United States or of any State or Territory or of the District of Columbia authorized under such laws to act as authenticating agent, having a combined capital and surplus of at least \$20,000,000, and being subject to supervision or examination by Federal, State, Territorial or District of Columbia authority and having its principal



office and place of business in the Borough of Manhattan, The City of New York.

The Trustee hereby initially appoints Manufacturers Hanover Trust Company, New York, New York, as authenticating agent.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which any authenticating agent shall be a party, or any corporation succeeding to the corporate agency business of any authenticating agent, shall continue to be the authenticating agent without the execution or filing of any paper or any further act on the part of the Trustee or the authenticating agent.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such termination, or in case at any time any authenticating agent shall cease to be eligible in accordance with the provisions of this §1.04, the Trustee promptly shall appoint a successor authenticating agent, shall give written notice of such appointment to the Company and shall mail notice of such appointment to all holders of the Series B Bonds as the names and addresses of such holders appear upon the Bond register. Any successor authenticating agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers, duties and responsibilities of its predecessor hereunder, with like effect as if originally named as authenticating agent herein. No successor authenticating agent shall be appointed unless eligible under the provisions of this §1.04.

The Trustee agrees to pay to the authenticating agent from time to time reasonable compensation for its services, and the Trustee shall be entitled to be reimbursed for such payments from the Company.

§ 1.05. Amounts sufficient to pay at maturity the Series A Bonds and interest thereon to maturity will be deposited with the Trustee pursuant to Section 3.04(e) of the Original Indenture for the benefit of the holders of the Series A Bonds. Such amounts shall be held by the Trustee, as trust funds, solely for the payment in full of principal and interest to maturity of the Series A Bonds and shall not be available for any other purpose and shall not be subject to the claims of the holders of Bonds of any other series.

## PART TWO

REDEMPTION OF SERIES B BONDS—MANDATORY AND  
OPTIONAL SINKING FUND

§ 2.01. (a) The Company hereby reserves the right to redeem, at its option, the Series B Bonds, as a whole or from time to time in part, at the optional redemption prices specified in the form of Series B Bond hereinabove set forth and in accordance with the procedures upon redemption set forth therein and in Part Two of this Supplemental Indenture; *provided, however,* that no such redemption shall be effected prior to June 15, 1987 directly or indirectly from or in anticipation of moneys borrowed by or for the account of the Company at an interest cost (calculated in accordance with generally accepted financial practice) of less than 9.176% per annum. In the case of any redemption pursuant to this § 2.01(a) prior to June 15, 1987, the Company will deliver to the Trustee on or prior to the date fixed for redemption an Officers' Certificate stating that such redemption will comply with the provisions of the proviso contained in the foregoing sentence of this § 2.01(a).

(b) The Series B Bonds may also be redeemed in part on June 15, 1983 and on each June 15 thereafter to and including June 15, 2001, through the operation of the sinking fund as set forth in § 2.04 of this Supplemental Indenture, at the sinking fund redemption price set forth in the form of Series B Bond hereinabove recited (hereinafter called the "sinking fund redemption price"), together with accrued interest to the date fixed for redemption.

§ 2.02. In case the Company shall desire to exercise the right to redeem all, or, as the case may be, any part of the Series B Bonds pursuant to § 2.01(a) of this Supplemental Indenture, it shall fix a date for redemption and shall mail a notice of such redemption at least 30, but not more than 60 days prior to the date fixed for redemption to the holders of Series B Bonds so to be redeemed as a whole or in part at their last addresses as the same appear on the Bond register. Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. Failure to give such notice by mail or any defect in the notice to the holder of any Series B Bond designated for redemption as a whole or in part

shall not affect the validity of the proceedings for the redemption of any other Series B Bond.

Each such notice of redemption shall specify the date fixed for redemption, the redemption price at which Series B Bonds are to be redeemed, the place or places of payment, that payment will be made upon presentation and surrender of such Bonds, that interest accrued to the date fixed for redemption will be paid as specified in said notice, and that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue. If less than all the Series B Bonds are to be redeemed the notice of redemption shall specify the numbers of the Series B Bonds to be redeemed. In case any Series B Bond is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Series B Bond, a new Series B Bond or Bonds in principal amount equal to the unredeemed portion thereof will be issued.

On or before the redemption date specified in the notice of redemption given as provided in this § 2.02, the Company will deposit with the Trustee or with one or more paying agents an amount of money sufficient to redeem on the redemption date all the Series B Bonds so called for redemption at the appropriate redemption price, together with accrued interest to the date fixed for redemption.

If less than all the Series B Bonds are to be redeemed, the Company will give the Trustee notice not less than 45 days prior to the redemption date as to the aggregate principal amount of Series B Bonds to be redeemed, and the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Series B Bonds or portions thereof (in multiples of \$1,000) to be redeemed and advise the Company of the numbers of the Series B Bonds (or portions thereof) so selected.

§ 2.03. If notice of redemption has been given as provided in § 2.02 or § 2.04 of this Supplemental Indenture, Series B Bonds or portions of Series B Bonds with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable redemption price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall



fail to pay the redemption price of such Series B Bonds, together with interest accrued to said date) interest on the Series B Bonds or portions of Series B Bonds so called for redemption shall cease to accrue. On presentation and surrender of such Series B Bonds at the Place of Payment, the said Series B Bonds or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price, together with interest accrued thereon to the date fixed for redemption; *provided, however*, that semi-annual instalments of interest becoming due on the date fixed for redemption shall be payable to the holders of such Series B Bonds, or one or more previous Series B Bonds evidencing all or a portion of the same debt as that evidenced by such particular Series B Bonds, registered as such on the relevant record dates according to their terms and the provisions of § 1.03 of this Supplemental Indenture.

Upon presentation of any Series B Bond redeemed in part only, the Company shall execute and the Trustee, or the authenticating agent on its behalf, shall authenticate and deliver to the holder thereof, at the expense of the Company, a new Series B Bond or Bonds, of authorized denominations, in principal amount equal to the unredeemed portion of the Series B Bond so presented.

§ 2.04. As and for a sinking fund for the retirement of Series B Bonds and so long as any of the Series B Bonds remain outstanding and unpaid, the Company shall pay to the Trustee or to one or more paying agents in cash, except as hereinafter provided, on or before June 15, in each year commencing with the year 1983 and thereafter to and including June 15, 2001, an amount sufficient to redeem \$1,000,000 principal amount of Series B Bonds (or the principal amount then outstanding, if less) at the sinking fund redemption price. The last date on which any such payment may be made is herein referred to as a "sinking fund payment date".

At its option the Company may pay into the sinking fund for the retirement of Series B Bonds, on or before each sinking fund payment date, any additional sum in cash (except as hereinafter provided) up to but not exceeding the mandatory sinking fund payment due on such sinking fund payment date. If the Company intends to exercise its right to make any such optional sinking fund payment, it shall deliver to the Trustee at least 45 days prior to the next succeeding sinking fund payment date an Officers' Certificate stating that the Company intends to exercise such optional right and specifying the amount which the Company intends to pay on such

sinking fund payment date. If the Company fails to deliver such certificate at or before the time provided above, the Company shall not be permitted to make any optional sinking fund payment with respect to such sinking fund payment date. To the extent that such right is not exercised in any year it shall not be cumulative or carried forward to any subsequent year. No such optional payment shall operate to reduce the amount of any mandatory sinking fund payment.

If the sinking fund payment or payments (mandatory or optional) to be made in cash plus any unused balance of any preceding sinking fund payments made in cash shall exceed \$50,000 (or a lesser sum if the Company shall so request) on any May 1, such aggregate amount shall be applied by the Trustee or one or more paying agents on the next following June 15 to the redemption of Series B Bonds at the sinking fund redemption price together with accrued interest to the date fixed for redemption. The Trustee shall select, in the manner provided in § 2.02 of this Supplemental Indenture, for redemption on such June 15 a sufficient principal amount of Series B Bonds to absorb said cash, as nearly as may be practicable, and the Trustee shall, at the expense and in the name of the Company, thereupon cause notice of redemption of such Series B Bonds to be given in substantially the manner and with the effect provided in § 2.02 and § 2.03 of this Supplemental Indenture for the redemption of Series B Bonds in part at the option of the Company, except that the notice of redemption shall also state that the Series B Bonds are being redeemed for the sinking fund. Any sinking fund moneys not so applied or allocated by the Trustee or any paying agent to the redemption of Series B Bonds shall be added to the next cash sinking fund payment received by the Trustee or such paying agent and, together with such payment, shall be applied in accordance with the provisions of this § 2.04. Any and all sinking fund moneys held by the Trustee or any paying agent on June 15, 2001, and not held for the payment or redemption of particular Series B Bonds, shall be applied by the Trustee or such paying agent, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Series B Bonds at maturity.

On or before each sinking fund payment date, the Company shall pay to the Trustee or to one or more paying agents in cash a sum equal to all interest accrued to the date fixed for redemption on Series B Bonds to be redeemed on such date pursuant to this § 2.04.

In lieu of making all or any part of any sinking fund payment in cash, the Company at its option (i) may deliver to the Trustee Series B Bonds theretofore purchased by the Company and (ii) may apply as a credit, the amount of Series B Bonds which have been redeemed pursuant to § 2.01(a) of this Supplemental Indenture, provided that such amount of Series B Bonds shall not have previously been so applied. Series B Bonds so delivered or applied shall be credited at the sinking fund redemption price. If the Company intends so to deliver or apply Series B Bonds with respect to any sinking fund payment, it shall deliver to the Trustee at least 45 days prior to the next succeeding sinking fund payment date (a) an Officers' Certificate specifying the respective portions of such sinking fund payment to be satisfied by payment of cash and by the delivery or application of Series B Bonds and (b) (unless previously delivered) such Series B Bonds. All Series B Bonds so delivered to the Trustee shall be cancelled by the Trustee and no Series B Bonds shall be authenticated in lieu thereof. If the Company fails to deliver such certificate and Series B Bonds at or before the time provided above, the Company shall not be permitted to satisfy any portion of such sinking fund payment by delivery or application of Series B Bonds.

Neither the Trustee nor any paying agent shall redeem any Series B Bonds with sinking fund moneys, and the Trustee shall not mail any notice of redemption of Series B Bonds by operation of the sinking fund, during the continuance of a default in payment of interest on the Bonds of any series or of any event of default (other than an event of default occurring as a consequence of this paragraph), except that if the notice of redemption of any Series B Bonds shall theretofore have been mailed in accordance with the provisions hereof, the Trustee or any paying agent shall redeem such Series B Bonds if cash sufficient for that purpose shall be deposited with the Trustee or such paying agent for that purpose in accordance with the terms of this Part Two. Except as aforesaid, any moneys in the sinking fund at the time when any such default or event of default shall occur and any moneys thereafter paid into the sinking fund shall, during the continuance of such default or event of default, be held as security for the payment of all the Series B Bonds; *provided, however*, that in case such default or event of default shall have been cured or waived as provided in the Indenture, such moneys shall thereafter be applied on the next June 15 on which such moneys may be applied pursuant to the provisions of this § 2.04.



Subject to the provisions of Section 17.06 of the Indenture, the Trustee shall not be charged with knowledge of any such default or event of default unless either (a) an officer of the Trustee assigned to its corporate trust administration department shall, as such officer, have actual knowledge thereof or (b) written notice of such default or event of default shall have been given to the Trustee by the Company or by the holders of at least five percent in principal amount of the Series B Bonds at the time outstanding.

### PART THREE

#### AMENDMENTS

§ 3.01. The Original Indenture is hereby supplemented and amended so as to insert therein, immediately following Article Sixteen thereof, new Articles Seventeen, Eighteen, Nineteen and Twenty, reading, respectively, as follows:

### ARTICLE SEVENTEEN

#### ADDITIONAL PROVISIONS CONCERNING THE TRUSTEE

SECTION 17.01. (a) If the Trustee has or shall acquire any conflicting interest, as defined in this Section 17.01, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner specified in Section 12.04 hereof and with the effect specified in Section 17.03 hereof, and the Company shall take prompt steps to have a successor appointed in the manner provided in Section 12.05 hereof.

(b) In the event that the Trustee shall fail to comply with the provisions of this Section 17.01, the Trustee shall, within 10 days after the expiration of such 90 day period, transmit notice of such failure to the Bondholders in the manner and to the extent provided in Section 18.04(c) hereof.

(c) For the purposes of this Section 17.01 the Trustee shall be deemed to have a conflicting interest if

(1) the Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Bonds issued under this Indenture, provided that there shall be

excluded from the operation of this Section 17.01(c)(1) any indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding if (i) this Indenture and such other indenture or indentures are wholly unsecured, and such other indenture or indentures are hereafter qualified under the Trust Indenture Act of 1939, unless the Securities and Exchange Commission shall have found and declared by order pursuant to subsection (b) of Section 305 or subsection (c) of Section 307 of the Trust Indenture Act of 1939 that differences exist between the provisions of this Indenture and the provisions of such other indenture or indentures which are so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture or such other indenture or indentures, or (ii) the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under this Indenture or such other indenture or indentures;

(2) the Trustee or any of its directors or executive officers is an obligor upon the Bonds issued under this Indenture or an underwriter for the Company;

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with the Company or an underwriter for the Company;

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee, or representative of the Company; or of an underwriter (other than the Trustee itself) for the Company who is currently engaged in the business of underwriting, except that (A) one individual may be a director or an executive officer or both of the Trustee and a director or an executive officer or both of the Company, but may not be at the same time an executive officer of both the Trustee and the Company; (B) if and so long as the number of directors of the Trustee in office is more than nine, one additional

individual may be a director or an executive officer or both of the Trustee and a director of the Company; and (C) the Trustee may be designated by the Company or by any underwriter for the Company to act in the capacity of transfer agent, registrar, custodian, paying agent, sinking fund agent, fiscal agent, escrow agent, or depositary, or in any other similar capacity, or, subject to the provisions of paragraph (1) of this subsection (c), to act as trustee, whether under an indenture or otherwise;

(5) 10% or more of the voting securities of the Trustee is beneficially owned either by the Company or by any director, partner, or executive officer thereof, or 20% or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or 10% or more of the voting securities of the Trustee is beneficially owned either by an underwriter for the Company or by any director, partner, or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(6) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined in this Section 17.01(c), (A) 5% or more of the voting securities, or 10% or more of any other class of security, of the Company, not including the Bonds issued under this Indenture and securities issued under any other indenture under which the Trustee is also trustee, or (B) 10% or more of any class of security of an underwriter for the Company;

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined in this Section 17.01(c), 5% or more of the voting securities of any person who, to the knowledge of the Trustee, owns 10% or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, the Company;

(8) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default as hereinafter defined in this Section 17.01(c), 10% or more of any class of security of any person who, to the knowledge of the Trustee, owns 50% or more of the voting securities of the Company; or

(9) the Trustee owns on May 15 in any calendar year, in the capacity of executor, administrator, testamentary or inter vivos trustee,



guardian, committee or conservator, or in any other similar capacity, an aggregate of 25% or more of the voting securities, or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have constituted a conflicting interest under paragraph (6), (7), or (8) of this Section 17.01(c). As to any such securities of which the Trustee acquired ownership through becoming executor, administrator, or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply for a period of two years from the date of such acquisition, to the extent that such securities included in such estate do not exceed 25% of such voting securities or 25% of any such class of security. Promptly after May 15 in each calendar year, the Trustee shall make a check of its holdings of such securities in any of the above-mentioned capacities as of such May 15. If the Company fails to make payment in full of principal of or interest on any of the Bonds when and as the same become due and payable, and such failure continues for 30 days thereafter, the Trustee shall make a prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such 30 day period, and after such date, notwithstanding the foregoing provisions of this paragraph (9), all such securities so held by the Trustee, with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of paragraphs (6), (7), and (8) of this Section 17.01(c).

The specification of percentages in paragraphs (5) to (9), inclusive, of this Section 17.01(c) shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this Section 17.01(c).

For the purposes of paragraphs (6), (7), (8), and (9) of this Section 17.01(c) only, (A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness; (B) an obligation shall be

deemed to be in default when a default in payment of principal shall have continued for 30 days or more and shall not have been cured; and (C) the Trustee shall not be deemed to be the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default as defined in clause (B) above, or (ii) any security which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent, or depository, or in any similar representative capacity.

Except as provided in the next preceding paragraph, the word "security" or "securities" as used in this Indenture shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(d) For the purposes of this Section 17.01:

(1) The term "underwriter" when used with reference to the Company shall mean every person who, within three years prior to the time as of which the determination is made, has purchased from the Company with a view to, or has offered or has sold for the Company in connection with, the distribution of any security of the Company outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such terms shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

(2) The term "director" shall mean any director of a corporation or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.



(3) The term "person" shall mean an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization, or a government or political subdivision thereof. As used in this paragraph, the term "trust" shall include only a trust where the interest or interests of the beneficiary or beneficiaries are evidenced by a security.

(4) The term "voting security" shall mean any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person.

(5) The term "Company" shall mean any obligor upon the Bonds.

(6) The term "executive officer" shall mean the president, every vice president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors.

The percentages of voting securities and other securities specified in this Section 17.01 shall be calculated in accordance with the following provisions:

(A) A specified percentage of the voting securities of the Trustee, the Company or any other person referred to in this Section 17.01 (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(B) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.



(C) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(D) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(i) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(ii) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(iii) Securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise; and

(iv) Securities held in escrow if placed in escrow by the issuer thereof;

*provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.*

(E) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges; *provided, however, that in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes and provided, further, that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.*

SECTION 17.02. There shall be at all times a Trustee hereunder which shall be a corporation in good standing organized and doing business under

the laws of the United States or of the State of California or the State of New York, having an office in the City and County of San Francisco, California or the Borough of Manhattan, City and State of New York, which (a) is authorized under such laws to exercise corporate trust powers, and (b) is subject to supervision or examination by Federal or California or New York State authority and (c) shall have at all times a combined capital and surplus of not less than \$20,000,000. If such corporation publishes reports of condition at least annually, pursuant to law, or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 17.02, the combined capital and surplus of such corporation at any time shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 17.02, the Trustee shall resign immediately in the manner specified in Section 12.04 hereof and with the effect specified in Section 17.03 hereof.

SECTION 17.03. In case at any time any of the following shall occur—

(1) the Trustee shall fail to comply with the provisions of Section 17.01(a) hereof after written request therefor by the Company or by any Bondholder who has been a bona fide holder of a Bond or Bonds for at least six months, or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 17.02 hereof and shall fail to resign after written request therefor by the Company or by any such Bondholder, or

(3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, and shall publish notice of any such appointment as provided in Section 12.04 hereof. Subject to the provisions of Section 9.26 hereof, any Bondholder who has been a bona fide holder of a Bond for at least six

months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

Any resignation or removal of the Trustee pursuant to any of the provisions of Section 12.04 hereof or this Section 17.03 and any appointment of a successor trustee pursuant to any of the provisions of Section 12.05 or this Section 17.03 shall become effective upon acceptance of appointment by the successor trustee as provided in the fifth paragraph of Section 12.05 hereof. In the event of any resignation of the Trustee pursuant to Section 12.04 hereof, the date specified by the resigning Trustee pursuant to the first sentence of such Section 12.04 shall be the date of such acceptance of appointment by the successor trustee.

No successor trustee shall accept appointment as provided in this Section 17.03 unless at the time of such acceptance such successor trustee shall be qualified under the provisions of Section 17.01 hereof and eligible under the provisions of Section 17.02 hereof.

Upon acceptance of appointment by a successor trustee as provided in this Section 17.03, the Company shall give notice of the succession of such trustee hereunder to the holders of Bonds as provided in Section 12.05 hereof. If the Company fails to give such notice within ten days after the acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be so given at the expense of the Company.

In case at the time any successor to the Trustee shall succeed to the trusts created by this Indenture pursuant to the provisions of Section 12.03 hereof any of the Bonds shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Bonds so authenticated; and in case at that time any of the Bonds shall not have been authenticated, any successor to the Trustee may authenticate such Bonds either in the name of any predecessor hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Bonds or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Bonds in the name



of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 17.04. (a) Subject to the provisions of Section 17.04(b) hereof, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within four months prior to a default, as defined in Section 17.04(c) hereof, or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the benefit of the Trustee individually, the holders of the Bonds, and the holders of other indenture securities (as defined in paragraph (2) of Section 17.04(c) hereof)

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest, effected after the beginning of such four-month period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this Section 17.04(a), or from the exercise of any right of set-off which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received by the Trustee in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such four-month period, or an amount equal to the proceeds of any such property, if disposed of, *subject, however*, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize, for its own account, upon any property held by it as security for any such claim, if such property was so held prior to the beginning of such four-month period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such four-month period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property was so received the Trustee had no reasonable cause to believe that a default, as defined in Section 17.04(c) hereof, would occur within four months; or

(D) to receive payment on any claim referred to in the foregoing paragraph (B) or (C), against the release of any property held as security for such claim as provided in such paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of the foregoing paragraphs (B), (C) and (D), property substituted after the beginning of such four-month period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the Bondholders and the holders of other indenture securities in such manner that the Trustee, the Bondholders and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee, the Bondholders, and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their

respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership, or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee, the Bondholders, and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee, the Bondholders and the holders of other indenture securities with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee who has resigned or been removed after the beginning of such four-month period shall be subject to the provisions of this Section 17.04(a) as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such four-month period, it shall be subject to the provisions of this Section 17.04(a) if and only if the following conditions exist:

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such Trustee had continued as trustee, occurred after the beginning of such four-month period; and

(i.) such receipt of property or reduction of claim occurred within four months after such resignation or removal.



(b) There shall be excluded from the operation of this Section 17.04 a creditor relationship arising from

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction, or by this Indenture, for the purpose of preserving any property which shall at any time be subject to the lien of this Indenture or of discharging tax liens or other prior liens or encumbrances thereon, if notice of such advance and of the circumstances surrounding the making thereof is given to the Bondholders at the time and in the manner provided in Section 18.04 hereof with respect to reports pursuant to Section 18.04(a) and Section 18.04(b) hereof, respectively;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in Section 17.04(c) hereof;

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in Section 17.04(c) hereof.

(c) As used in this Section 17.04:

(1) The term "default" shall mean any failure to make payment in full of the principal of or interest upon any of the Bonds or upon the other indenture securities when and as such principal or interest becomes due and payable;

(2) The term "other indenture securities" shall mean securities upon which the Company is an obligor (as defined in the Trust Indenture Act of 1939) outstanding under any other indenture (i) under which the Trustee is also trustee, (ii) which contains provisions substantially similar to the provisions of Section 17.04(a) hereof, and (iii) under which a default exists at the time of the apportionment of the funds and property held in said special account;

(3) The term "cash transaction" shall mean any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand;

(4) The term "self-liquidating paper" shall mean any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacture, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security; *provided* that the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation;

(5) the term "Company" shall mean any obligor upon the Bonds.

SECTION 17.05. The Trustee shall, within 90 days after the occurrence of a default, mail to the holders of Bonds, in the manner and to the extent provided in Section 18.04(c) hereof, notice of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section 17.05 being hereby defined to be the events specified in clauses (a), (b), (c), (d), (e) and (f) of Section 9.02 hereof, not including periods of grace, if any, provided for therein and irrespective of the giving of written notice specified in clause (d) of such Section 9.02); *provided, however*, that, except in the case of default in the payment of the principal of, premium, if any, or interest on any of the Bonds, or in the payment of any sinking fund installment, the Trustee shall be protected in withholding such notice if and

so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Bondholders.

SECTION 17.06. The Trustee, prior to the occurrence of an event of default and after the curing or waiving of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. Notwithstanding any other provision in this Indenture, in case an event of default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that

(a) prior to the occurrence of an event of default and after the curing or waiving of all events of default which may have occurred

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

(b) the Trustee shall not be liable for any error of judgment made in good faith by an officer or officers of the Trustee, unless it shall be



proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it in good faith, in accordance with the direction of the holders of not less than a majority in principal amount of the Bonds at the time outstanding, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it.

SECTION 17.07. The provisions of Section 17.01, Section 17.03 (other than clause (2) of such Section 17.03), Section 17.04 and Section 17.06 hereof applicable to the Trustee shall be applicable to each co-trustee and separate trustee (referred to collectively as an additional trustee) as though such additional trustee were named as the Trustee in such Sections; *provided, however, that nothing contained in this Indenture shall be deemed to require the appointment of a successor to an additional trustee upon the resignation or removal of such additional trustee.*

#### ARTICLE EIGHTEEN

##### BONDHOLDERS LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

SECTION 18.01. The Company will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not more than 15 days after each record date with respect to the Bonds, (i) a list, in such form as the Trustee may reasonably require, of the names and addresses of the registered holders of such Bonds as of such record date and (ii) all other information in the possession or control of the Company, or of any paying agents, as to the names and addresses of the holders of Bonds, and

(b) at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list,

and such other information, of similar form and content, as of a date not more than 15 days prior to the time such list is furnished

except that no such list need be furnished with respect to the holders of registered Bonds of a series for which the Trustee is acting as Bond registrar.

**SECTION 18.02.** (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Bonds (i) contained in the most recent list and other information furnished to it as provided in Section 18.01 or (ii) received by it in the capacity of paying agent or Bond registrar (if so acting) hereunder. The Trustee may destroy any list furnished to it as provided in Section 18.01 upon receipt of a new list so furnished.

(b) In case three or more holders of Bonds (hereinafter referred to as "applicants") apply in writing to the Trustee and furnish to the Trustee reasonable proof that each such applicant has owned a Bond for a period of at least 6 months preceding the date of such application, and such application states that the applicants desire to communicate with other holders of Bonds with respect to their rights under this Indenture or under the Bonds and is accompanied by a copy of the form of proxy or other communication which such applicants propose to transmit, then the Trustee shall within 5 business days after the receipt of such application, at its election, either:

(1) afford such applicants access to the information preserved at the time by the Trustee in accordance with the provisions of Section 18.02(a); or

(2) inform such applicants as to the approximate number of holders of Bonds whose names and addresses appear in the information preserved at the time by the Trustee in accordance with the provisions of Section 18.02(a), and as to the approximate cost of mailing to such Bondholders the form of proxy or other communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Bondholder whose name and address appear in the information preserved at the time by the Trustee in accordance with the provisions of

Section 18.02(a) a copy of the form of proxy or other communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing, unless within 5 days after such tender, the Trustee shall mail to such applicants and file with the Securities and Exchange Commission, together with a copy of the material to be mailed, a written statement to the effect that, in the opinion of the Trustee, such mailing would be contrary to the best interests of the holders of Bonds or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. If said Commission, after opportunity for a hearing upon the objections specified in the written statement so filed, shall enter an order refusing to sustain any of such objections or if, after the entry of an order sustaining one or more of such objections, said Commission shall find, after notice and opportunity for hearing, that all the objections so sustained have been met and shall enter an order so declaring, the Trustee shall mail copies of such material to all such Bondholders with reasonable promptness after the entry of such order and the renewal of such tender; otherwise the Trustee shall be relieved of any obligation or duty to such applicants respecting their application.

(c) Each and every holder of the Bonds and coupons, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any paying agent nor any Bond registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the holders of Bonds in accordance with the provisions of this Section 18.02, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under this Section 18.02.

**SECTION 18.03. The Company agrees:**

(1) to file with the Trustee, within 15 days after the Company is required to file the same with the Securities and Exchange Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as such Commission may from time to time by rules and regulations prescribe) which the Company may be required to file with such Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act



of 1934; or, if the Company is not required to file information, documents or reports pursuant to either of such Sections, then to file with the Trustee and the Securities and Exchange Commission, in accordance with the rules and regulations prescribed from time to time by said Commission, such of the supplementary and periodic information, documents and reports in respect of the Company, which may be required pursuant to Section 13 of the Securities Exchange Act of 1934 in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations;

(2) to file with the Trustee and the Securities and Exchange Commission, in accordance with the rules and regulations prescribed from time to time by said Commission, such additional information, documents and reports with respect to compliance by the Company with the conditions and covenants provided for in this Indenture as may be required from time to time by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to (i) dates or periods not covered by annual reports required to be filed by the Company, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (ii) the amount and value of property additions (other than certificates or opinions of engineers, appraisers or other experts as to the fair value to the Company of any property additions made the basis for the authentication and delivery of Bonds, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of this Indenture, which are required to be filed with the Trustee by the provisions of Section 19.02(3) hereof) or (iii) the adequacy of depreciation, maintenance or repairs; and

(3) to transmit by mail to the holders of Bonds, in the manner and to the extent provided in Section 18.04(c) hereof, within 30 days after the filing thereof with the Trustee, such summaries of any information, documents and reports required to be filed by the Company pursuant to subsections (1) and (2) of this Section 18.03 as may be required by the

rules and regulations prescribed from time to time by the Securities and Exchange Commission.

SECTION 18.04. (a) The Trustee shall transmit by mail, on or before July 15 in each year beginning with the year 1978, to the holders of Bonds as hereinafter in this Section 18.04 provided, a brief report dated as of May 15 of such year with respect to:

(1) its qualification under Section 17.01 hereof and its eligibility under Section 17.02 hereof, or in lieu thereof, if to the best of its knowledge it has continued to be qualified and eligible under such Sections, a written statement to such effect;

(2) the qualification under Section 17.01 hereof of each additional trustee, if any, or in lieu thereof, if the reports furnished to the Trustee by the respective additional trustees pursuant to Section 18.05 hereof shall state that, to the best of the knowledge and belief of such additional trustees, respectively, they have continued to be qualified under said Section 17.01, a written statement to such effect;

(3) the character and amount of any advances (and if the Trustee elects so to state, or if any additional trustee making such advances requests the Trustee so to state, the circumstances surrounding the making thereof) made by the Trustee, or by any additional trustee, as such, which remain unpaid on the date of such report, and for the reimbursement of which the Trustee or such additional trustee claims or may claim a lien or charge, prior to that of the Bonds, on the trust estate, including property or funds held or collected by it as Trustee, if such advances so remaining unpaid aggregate more than one-half of one per cent of the principal amount of the Bonds outstanding on the date of such report;

(4) the amount, interest rate, and maturity date of all other indebtedness owing by the Company to the Trustee, or to any additional trustee, in its individual capacity on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4) or (6) of Section 17.04(b) hereof;

(5) the property and funds physically in the possession of the Trustee or any additional trustee, as such, or of a depository for any such Trustee or additional trustee, on the date of such report;

(6) any release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) made subsequent to June 15, 1977 which it has not previously reported; *provided, however*, that if the aggregate value of all the property the release of which is so reported, as shown by the certificates or opinions filed pursuant to the provisions of Section 19.02 hereof, does not exceed 1% of the principal amount of the Bonds then outstanding, the report need only indicate the number of such releases, the total value of property released as shown by such certificates or opinions, the aggregate amount of cash and purchase money obligations and the aggregate value of other securities and property substituted therefor as shown by such certificates or opinions;

(7) any additional issue of Bonds made subsequent to the original issue of the Series B Bonds which it has not previously reported; and

(8) any action taken subsequent to the original issue of the Series B Bonds by the Trustee or by any additional trustee in the performance of its duties under this Indenture which the Trustee has not previously reported and which in the opinion of the Trustee which shall have taken such action materially affects the Bonds or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by the trustee in accordance with the provisions of Section 17.05 hereof.

(b) The Trustee shall transmit by mail to the holders of Bonds as hereinafter in this Section 18.04 provided, within 90 days after the making, subsequent to the original issue of the Series B Bonds, of any release or advance as hereinafter specified, a brief report with respect to:

(1) the release, or release and substitution, of property subject to the lien of this Indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by Section 19.02 hereof, is less than 10% of the principal amount of the Bonds outstanding at the time of such release, or such release and substitution; and



(2) the character and amount of any advances (and if the Trustee elects so to state, or if any additional trustee making such advances requests the Trustee so to state, the circumstances surrounding the making thereof) made by the Trustee, or by any additional trustee, as such, since the date of the last report transmitted pursuant to the provisions of Section 18.04(a) hereof (or if no such report has yet been so transmitted, since June 15, 1977) for the reimbursement of which the Trustee or any additional trustee claims or may claim a lien or charge, prior to that of the Bonds, on the trust estate, including property or funds held or collected by any of them as Trustee, or additional trustee, and which has not previously been reported pursuant to this paragraph (2), if such advances remaining unpaid at any time aggregate more than 10% of the principal amount of the Bonds outstanding at such time.

(c) Reports pursuant to this Section 18.04 shall be transmitted by mail (i) to all holders of Bonds as the names and addresses of such holders appear upon the registration books of the Company; (ii) to such other holders of Bonds as have, within two years preceding such transmission, filed their names and addresses with the Trustee for such purpose; and (iii) except in the case of reports pursuant to Section 18.04(b) hereof, to all holders of Bonds as the names and addresses of such holders appear in the information preserved at the time by the Trustee in accordance with the provisions of Section 18.02 hereof.

(d) A copy of each such report shall, at the time of such transmission to Bondholders, be filed by the Trustee with each stock exchange upon which any Bonds are listed and also with the Securities and Exchange Commission. Upon the listing of the Bonds or any series thereof upon any stock exchange the Company will so advise the Trustee.

(e) The Trustee may state in any report made pursuant to the provisions of this Section 18.04, if such be the fact, that any or all information therein contained in respect of any additional trustee is based on reports made to the Trustee by such additional trustee pursuant to the provisions of Section 18.05 hereof, and, subject to the provisions of Section 12.01, Section 17.06 and Section 17.07 hereof, shall incur no liability for any statement made on the basis of any such report. If any additional trustee shall fail to furnish to the Trustee, pursuant to the provisions of said Section 18.05, within a reasonable time before the Trustee is required to make any

report under this Section 18.04, the information required to be included in such report in respect of such additional trustee, the Trustee shall be under no liability for failure to include such information in such report, but shall state in such report (if it knows that such information was required to be furnished) that such additional trustee failed to furnish such information.

SECTION 18.05. Each additional trustee, if any, shall report to the Trustee, in writing, not less than 15 days before the Trustee is required to make any report pursuant to the provisions of Section 18.04(a), all information concerning such additional trustee which the Trustee is required to report to Bondholders pursuant to paragraphs (2), (3), (4), (5), (6) and (8) of said Section 18.04(a).

In case of any release of property or any advance by any additional trustee which the Trustee would be required to report pursuant to the provisions of Section 18.04(b) hereof, such additional trustee shall, within 60 days after such release or such advance shall have been made, furnish to the Trustee, in writing, all information necessary to enable the Trustee to make the required report regarding such release or such advance.

#### ARTICLE NINETEEN

##### ADDITIONAL PROVISIONS AS TO CERTIFICATES AND OPINIONS

SECTION 19.01. Upon any application or demand by the Company to the Trustee for the authentication and delivery of Bonds under this Indenture, the release or the release and substitution of property subject to the lien of this Indenture, the satisfaction and discharge of this Indenture, or the taking of any other action by the Trustee under any of the provisions of this Indenture if such action shall be subject to conditions precedent to be complied with by the Company, the Company will furnish to the Trustee:

- (i) an Officers' Certificate stating that in the opinion of the signers all conditions precedent, if any, provided for in the Indenture relating to the proposed action have been complied with;
- (ii) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with; and
- (iii) in the case of the authentication and delivery of Bonds under the provisions of Article Three hereof which require, as a condition precedent to such authentication and delivery, a showing as to Net Cost

of Additions and Betterments, Cost of Purchased Property and Securities or satisfaction of the conditions specified in Section 3.03(2) or in Section 3.03(8) hereof, a certificate or opinion of an accountant as to compliance by the Company with such conditions precedent; such accountant shall be an independent public accountant if the aggregate principal amount of such Bonds and of other Bonds authenticated and delivered under this Indenture since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required, or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10% or more of the aggregate principal amount of the Bonds at the time outstanding; but no such certificate or opinion need be made by any person other than the Chief Financial Officer, Comptroller, Auditor, Treasurer, Assistant Comptroller, Assistant Auditor or Assistant Treasurer of the Company as to:

(A) dates or periods not covered by annual reports required to be filed by the Company with the Trustee, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports;

(B) the amount and value of additional property, except as provided in Section 19.02(3) hereof; or

(C) the adequacy of depreciation, maintenance or repairs.

SECTION 19.02. Notwithstanding any other provision in this Indenture, the Company will furnish to the Trustee, in addition to or as part of any certificate or opinion required by other applicable provisions of this Indenture:

(1) A certificate or opinion of an engineer, appraiser, or other expert as to the fair value, as of approximately the date of the application for the release, of any property or securities to be released from the lien of this Indenture pursuant to the provisions of Article Eleven hereof, which certificate or opinion shall state that in the opinion of the person making the same the proposed release will not impair the security under this Indenture in contravention of the provisions hereof; such certificate or opinion shall be made by an independent engineer,



appraiser, or other expert, if the fair value of such property or securities and of all other property or securities so released since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this Section 19.02(1), is 10% or more of the aggregate principal amount of the Bonds at the time outstanding; but such a certificate or opinion of an independent engineer, appraiser, or other expert shall not be required in the case of any release of property or securities, if the fair value thereof as set forth in the certificate or opinion required by this Section 19.02(1) is less than \$25,000 or less than 1% of the aggregate principal amount of Bonds at the time outstanding;

(2) A certificate or opinion of an engineer, appraiser, or other expert as to the fair value to the Company, as of approximately the date of the application for the authentication and delivery of Bonds, the withdrawal of cash, or the release of property or securities, as the case may be, of any securities (other than Bonds issued under this Indenture and securities secured by a lien prior to the lien of this Indenture upon property subject to the lien hereof), the deposit of which with the Trustee is to be made the basis (pursuant to the provisions of Article Three or the provisions of Article Eleven hereof) for the authentication and delivery of Bonds, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of this Indenture; if the fair value to the Company of such securities and of all other securities made the basis for any such authentication and delivery, withdrawal or release since the commencement of the then current calendar year, as set forth in the certificates or opinions required by this Section 19.02(2), is 10% or more of the aggregate principal amount of the Bonds at the time outstanding, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert and, in the case of the authentication and delivery of Bonds, shall cover the fair value to the Company of all other such securities so deposited since the commencement of the current calendar year as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished; but such a certificate of an independent engineer, appraiser, or other expert shall not be required with respect to any securities so deposited if the fair value thereof to the Company as set forth in the certificate or opinion required by this

Section 19.02(2) is less than \$25,000 or less than 1% of the aggregate principal amount of the Bonds at the time outstanding; and

(3) A certificate or opinion of an engineer, appraiser, or other expert as to the fair value to the Company, as of approximately the date of the application for the authentication and delivery of Bonds, the withdrawal of cash, or the release of property or securities, as the case may be, of any property, the subjection of which to the lien of this Indenture is to be made the basis (pursuant to the provisions of Article Three or the provisions of Article Eleven hereof) for the authentication and delivery of Bonds, the withdrawal of cash constituting a part of the trust estate, or the release of property or securities subject to the lien of this Indenture; and if

(a) within six months prior to the date of acquisition thereof by the Company, such property has been used or operated by a person or persons other than the Company in a business similar to that in which it has been or is to be used or operated by the Company, and

(b) the fair value to the Company of such property as set forth in such certificate or opinion is not less than \$25,000 and not less than 1% of the aggregate principal amount of Bonds at the time outstanding,

such certificate or opinion shall be made by an independent engineer, appraiser, or other expert, and, in the case of the authentication and delivery of Bonds, shall cover the fair value to the Company (which may be as of the date of the valuation set forth in the certificate or opinion previously furnished the Trustee in connection therewith) of any property so used or operated which has been subjected to the lien of this Indenture and used as the basis for any action as aforesaid since the commencement of the then current calendar year, and as to which a certificate or opinion of an independent engineer, appraiser, or other expert has not previously been furnished.

SECTION 19.03. In cases under this Article Nineteen in which a certificate or opinion is required to be made by an independent person, such certificate or opinion shall be made by an independent public accountant,

engineer, appraiser, or other expert, as the case may be, selected by the Company and approved by the Trustee in the exercise of reasonable care, and such certificate or opinion shall state that such person is "independent", as that term is defined in Section 19.06 hereof; in cases where such certificate or opinion is not required to be made by an independent person, such certificate or opinion may, except as otherwise provided in this Article Nineteen, be a certificate of an officer or employee of the Company or Opinion of Counsel, as the case may be.

SECTION 19.04. The Company will, so long as any bonds are outstanding hereunder, furnish to the Trustee:

(1) Promptly after the execution and delivery of each indenture supplemental hereto, executed and delivered after June 15, 1977 (including the Supplemental Indenture dated as of June 15, 1977), an Opinion of Counsel either stating that in the opinion of such counsel such supplemental indenture has been properly recorded and filed so as to make effective the lien, if any, intended to be created thereby, and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to make such lien, if any, effective. The requirements of this Section 19.04(1) shall have been complied with (i) if such Opinion of Counsel shall state that such supplemental indenture has been received for recording or filing in each public office in which it is required to be recorded or filed and that in the opinion of such counsel such receipt for recording or filing makes effective the lien thereof, if any; and (ii) if such Opinion of Counsel is delivered to the Trustee within such time, following the date of the execution and delivery of such supplemental indenture, as shall be practicable having due regard to the location and number of the public offices in which the same is required to be recorded or filed; and

(2) On or before June 15 in each year, beginning with the year 1978, an Opinion of Counsel either stating that in the opinion of such counsel such action has been taken with respect to the recording, filing, re-recording and re-filing of this Indenture and of each indenture supplemental hereto as is necessary to maintain the lien hereof and thereof and reciting the details of such action, or stating that in the opinion of such counsel no such action is necessary to maintain such lien.



SECTION 19.05. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the person making such certificate or opinion has read such covenant or condition; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (d) a statement as to whether or not in the opinion of such person, such condition or covenant has been complied with.

SECTION 19.06. For the purposes of this Indenture, the term "independent", when applied to any accountant, engineer, appraiser or other expert, shall mean such a person who (a) is in fact independent; (b) does not have any substantial interest, direct or indirect, in the Company or in any other obligor upon the Bonds issued hereunder or in any person directly or indirectly controlling, or controlled by, or under direct or indirect common control with, the Company or any such other obligor; and (c) is not connected with the Company or any other obligor upon the Bonds issued hereunder or any person directly or indirectly controlling, or controlled by, or under direct or indirect common control with, the Company or any such other obligor, as an officer, employee, promoter, underwriter, trustee, partner, or person performing similar functions.

For the purposes of this Indenture, the term "control" shall mean the power to direct the management and policies of a person, directly or through one or more intermediaries, whether through the ownership of voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing.

## ARTICLE TWENTY

### PROVISIONS AS TO PAYING AGENTS AND MISCELLANEOUS ADDITIONAL PROVISIONS

SECTION 20.01. (a) All moneys received by any Trustee whether as Trustee or paying agent shall, until used or applied as in this Indenture provided, be held in trust for the purposes for which they were received, but

need not be segregated from other funds except to the extent required by law.

(b) The Company will require each paying agent (other than the Company and the Trustee) to execute and deliver to the Trustee an undertaking that, subject to the provisions of this Section 20.01, such paying agent will hold in trust for the benefit of the Bondholders or holders of coupons, as the case may be, all sums held by such paying agent for the payment of the principal of, premium, if any, or interest on the Bonds and will give to the Trustee notice of any default by the Company in the making of any such payments. Such paying agent shall not be obligated to segregate such sums from other sums of such paying agent, except to the extent required by law.

(c) Anything in this Section to the contrary notwithstanding, the Company may at any time, for the purpose of obtaining a release or satisfaction of this Indenture or for any other purpose, cause to be paid to the Trustee all sums held in trust by any paying agent as required by this Section 20.01, such sums to be held by the Trustee upon the trusts herein contained.

SECTION 20.02. (a) Except as otherwise specifically provided in Section 20.02(b) hereof, whenever reference is made in this Indenture to the Trust Indenture Act of 1939, reference is made to such Act as in force on June 15, 1977.

(b) Any supplemental indenture entered into subsequent to June 15, 1977 pursuant to any authorization contained in this Indenture shall comply with the provisions of the Trust Indenture Act of 1939 as then in effect unless no Bonds are then outstanding under this Indenture and all Bonds to be issued under this Indenture as supplemented by such supplemental indenture shall either be themselves exempt from the provisions of such Act or are to be issued in a transaction exempt therefrom.

(c) If and to the extent that any provision of this Indenture limits, qualifies or conflicts with any other provision of the Indenture which is required to be included therein by any of Sections 310 to 317, inclusive, of the Trust Indenture Act of 1939, such required provision shall control.

§ 3.02. The Original Indenture is hereby further supplemented and amended as follows:

(a) The following shall be substituted for Part II of the First Granting Clause of the Original Indenture:

**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—Tracy to Teekay (formerly Carbona to Kerlinger)***

A branch line of railroad having its initial point and connection with the Company's main line at or near Tracy, San Joaquin County, California, and extending thence in a general southwesterly direction to Teekay, San Joaquin County, California; being about 1.92 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 12.34 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—Delle to Rowley*

A branch line of railroad having its initial point and connection with the Company's main line at or near Delle, Tooele County, Utah, and extending thence in a general northerly direction to Rowley, Tooele County, Utah; being about 11.15 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 5.89 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.

(b) The property mortgaged and assigned to the Trustee pursuant to the Fifth Granting Clause of the Original Indenture shall be released from such mortgage and all such property shall be excepted and reserved out of the conveyances, mortgages and pledges of the Original Indenture.

(c) The following shall be inserted in the Granting Clauses of the Original Indenture immediately following the second proviso thereto:

"AND PROVIDED FURTHER, that there is hereby excepted and reserved out of the conveyances, mortgages and pledges hereby made all of the timber and all of the coal, oil, gas,

sulphur, iron, uranium, and other minerals, including, without limitation, geothermal reserves (whether similar or dissimilar to the minerals herein specifically mentioned, and whether now known to exist or hereafter discovered), and any interest, right or title of any kind or character whatsoever in said timber and minerals in, under or upon the property and premises at any time subject to the lien of the Indenture, and all structures, equipment, and facilities used or provided in connection therewith, and the Company, its lessees, successors or assigns, shall have the right of ingress and egress over, on or upon any and all of the property and premises subject to the lien of the Indenture at any and all times for the purpose of developing, exploring for, drilling, mining, removing or processing said timber and minerals in, under or upon the above-described property and premises, subject to the limitation that the use of the property and premises subject to the lien of the Indenture for railroad purposes may not be interfered with or adversely affected;

"AND PROVIDED FURTHER, that there is hereby excepted and reserved out of the conveyances, mortgages and pledges hereby made any air rights in connection with the trust estate, provided that the use of such air rights does not unreasonably interfere with or adversely affect the use for railroad purposes of the surface of the earth beneath such air rights (the term "air rights" as used herein being deemed to include any estate or interest in space above the surface of the earth, together with any estate or interest in the surface or sub-surface below any space which is conveyed with such space for the purpose of providing support for, or access to, or any other right necessary in connection with, any structure or structures within such space or to be constructed within such space);".

(d) The following definitions shall be inserted in Section 1.02 of the Original Indenture:

"The term "authenticating agent" shall mean the authenticating agent, if any, appointed by the Trustee pursuant to any supplemental indenture hereto until a successor



authenticating agent shall have become such pursuant to such supplemental indenture and thereafter shall mean each such successor;

"The term *"business day"* shall mean each day which is neither a Saturday, Sunday nor other day on which banking institutions in New York or California are authorized or required by law or executive order to be closed;

"The term *"consolidated net income"* shall mean the amount of consolidated net income (or deficit) of the Company and its subsidiaries for such period determined on a consolidated basis in accordance with generally accepted accounting principles; *provided, however*, that there shall not be included in consolidated net income any net income (or net loss) of a subsidiary for any period during which it was not a subsidiary, or any net income (or net loss) of any business, properties or assets acquired (by way of merger, consolidation, purchase or otherwise) by the Company or any subsidiary for any period prior to the acquisition thereof;

"The term *"net income"* of any corporation for any period means the amount of net income of such corporation properly attributable to the conduct of the business for such period, as determined in accordance with generally accepted accounting principles;

"The term *"Opinion of Counsel"* shall mean a written opinion of Counsel;

"The term *"Place of Payment"* shall mean the Borough of Manhattan, The City of New York."

(e) The following shall be inserted at the end of the definition of "Cost" in Section 1.02 of the Original Indenture, after "therein" and before the period:

"but not exceeding the cost thereof to the Company of such securities".

(f) The following shall be inserted after "Assistant Secretaries" in the first sentence of the second paragraph of Section 2.02 of the Original Indenture:

"(the signature of either of whom may be a facsimile signature)".



(g) The following shall be inserted at the end of the first paragraph of Section 2.05 of the Original Indenture, after "Trustee" and before the period:

*"; provided, however, that if any series of Bonds are to be registered and transferred only at an office or agency other than in the City and County of San Francisco, California, the Company shall not be required to maintain an office or agency in San Francisco, California therefor."*

(h) The following shall be deleted from the ninth paragraph of Section 2.05 of the Original Indenture:

*" , except as otherwise provided in Sections 2.07, 4.02 and 5.03 hereof, may at its option require the payment of a sum not exceeding \$2.00 for each new Bond issued upon such exchange or transfer. In addition, the Company"*

(i) The reference to "\$3,000,000" in Section 3.02 of the Original Indenture shall be changed to "\$10,000,000".

(j) The following shall be substituted for Clause (D)(1) of the first paragraph of Section 3.03 of the Original Indenture:

*"(1) That no Bonds of any series shall be authenticated under this Section 3.03 on the basis of the Cost or Net Cost of Additions, as the case may be, unless the expenditures constituting the Cost or Net Cost thereof shall have been made, or liability incurred therefor, by the Company since May 1, 1977;"*

(k) The following shall be substituted for clause (b)(i) of the second paragraph of Section 3.03 of the Original Indenture:

*"(i) That the Company since May 1, 1977, made, constructed, purchased or otherwise acquired certain Additions (describing them in reasonable detail); that all such Additions are of such a character that under the provisions of this Section 3.03 the Cost or Net Cost thereof, as the case may be, may be made the basis for the authentication of Bonds; and that all such Additions are subject to the lien hereof,*

subject only to Permitted Encumbrances and to the prior liens and charges, if any, specified in said Officers' Certificate;"

(1) The following shall be inserted as a new Section 3.10 immediately following Section 3.09 in the Original Indenture:

"SECTION 3.10. Anything in this Indenture contained to the contrary notwithstanding, Bonds authenticated and issued pursuant to any provision of Article Three hereof need not be issued nor designated as a separate series of Bonds hereunder provided such Bonds are issued in conjunction with other Bonds issuable pursuant to any other provision or provisions of Article Three hereof and provided that such Bonds and such other Bonds are issued simultaneously and distinctively designated as a separate series of Bonds."

(m) The following shall be substituted for the second paragraph of Subsection C of Section 4.02 of the Original Indenture:

"Bonds owned or held by or for the account of the Company or any subsidiary company, or any corporation or person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company, shall not be deemed to be outstanding for any purpose of this Section 4.02, or for purposes of giving any direction, waiver or consent under this Indenture, except that any Bond pledged by the Company, or by any subsidiary company, or by any such corporation or person, as security for loans and 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 Section 4.02 and for purposes of giving any direction, waiver or consent under this Indenture, 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. No Bond which shall have been called for redemption and payment duly provided for shall be deemed to be outstanding for any purpose of this Section 4.02 or for purposes of giving any direction, waiver or consent under this Indenture."



(n) The following shall be inserted at the end of the second paragraph of Section 5.01 of the Original Indenture, after "redeemable" and before the period:

"and except to the extent that the indenture supplemental to this Indenture creating any such series shall provide otherwise"

(o) The following shall be inserted at the end of the first sentence of the second paragraph of Section 7.01 of the Original Indenture, after "served" and before the period:

"; *provided, however*, that if any series of Bonds are payable only at an office or agency other than in the City and County of San Francisco, California, the Company shall not be required to maintain an office or agency in San Francisco, California therefor".

(p) The reference to "six months" in subdivision (1) of the second paragraph of Section 7.12 of the Original Indenture shall be changed to "one year" and the references to "66%" in subdivisions (3) and (4) of the second paragraph of Section 7.12 of the Original Indenture shall be changed to "100%".

(q) The following shall be inserted as new Sections 7.17 and 7.18 immediately following Section 7.16 in the Original Indenture:

"SECTION 7.17. The Company will not declare any dividend (other than a dividend payable solely in the common stock of the Company) on any class of its stock or make any other distribution in respect thereof to the holders of any shares of its capital stock of any class, or make any payment on account of the purchase, redemption or other retirement of any shares of such stock, or make any advance or loan to or any guaranty of any securities of any affiliated company (other than a company of which the Company, directly or indirectly, owns at least 25% of the outstanding voting securities and in which no affiliated company, other than an affiliated company directly or indirectly controlled by the Company, has any stock interest); *provided, however*, that the Company may make such declarations, distributions, payments, advances, loans and guaranties (collectively referred to as Payments), unless an event of default, or event which with



notice and/or lapse of time could constitute such an event of default, shall have occurred and be continuing, so long as the aggregate total of Payments (less any Payments repaid or satisfied) since January 1, 1977, shall not exceed the sum of:

(a) \$3,000,000 plus

(b) the aggregate consolidated net income of the Company for each full calendar year beginning January 1, 1977, taken as one accounting period and determined in accordance with generally accepted accounting principles.

"SECTION 7.18. The Company will deliver to the Trustee, within 120 days after the end of each fiscal year, commencing with the fiscal year ending December 31, 1977, a written statement signed by the Chairman of the Board, President or a Vice President and by the Treasurer, Assistant Treasurer, the Secretary or an Assistant Secretary of the Company, stating, as to each signer, thereof, that

(i) a review of the activities of the Company during such year and of performance under this Indenture has been made under his supervision; and

(ii) to the best of his knowledge, based on such review, the Company has fulfilled all of its obligations under this Indenture throughout such year, or, if there has been a default in the fulfilment of any such obligation, specifying each such default known to him and the nature and status thereof."

(r) The phrase "legal rate on overdue principal and at the" shall be deleted from clause (ii) of the first paragraph of Section 9.02 of the Original Indenture.

(s) The following shall be substituted for the second paragraph of Section 9.06 of the Original Indenture:

"Anything in this Indenture contained to the contrary notwithstanding, the holders of a majority in principal amount of the Bonds then outstanding, shall have the right, from time to time, if they so elect and manifest such election by an

instrument in writing to the Trustee, to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if it shall in good faith by responsible officers determine that the action or proceeding so directed would be illegal or involve the Trustee in personal liability, and *provided further*, that nothing in this Indenture shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by such holders."

(t) At such time as the Series A Bonds are no longer outstanding, the following shall be substituted for the second paragraph of Section 9.27 of the Original Indenture:

"The Company hereby waives, to the extent legally permissible, the statutory provisions of any State which provide that there shall be but one form of action for the recovery of any debt or the enforcement of any right secured by mortgage upon real or personal property."

(u) The following shall be inserted after the phrase "all cash received for property so released" in the second paragraph of Section 11.04 of the Original Indenture:

"(less any expenses or commissions incurred in connection with the sale or other disposition of such property)".

(v) The reference to "\$100,000" in Section 11.07 of the Original Indenture shall be changed to "\$250,000".

(w) The following shall be substituted for clause (b) of the first paragraph of Section 11.10 of the Original Indenture:

"(b) if such release is made before final judgment, decree or order, an Officers' Certificate shall be delivered to it stating that in their opinion the value of the consideration to be received by the Company, if any, is at least equal to the value of the property to the Company less the probable cost to the Company of the litigation, or, if no consideration is to be

received, stating that in their opinion the balance of the consideration, if any, which would be received by the Company if the action or proceedings in question were continued to final judgment, decree or order, would be less than the probable cost of the litigation."

(x) The following shall be inserted as a new Section 11.17 immediately following Section 11.16 in the Original Indenture:

"SECTION 11.17. At the request of the Company, the Trustee shall execute and deliver such agreements as shall be reasonably necessary to subordinate the lien created by this Indenture where such subordination is provided for herein or permissible hereunder.

"At the request of the Company, the Trustee also shall execute and deliver such agreements as shall be reasonably necessary to grant subdivision restrictions and easements to public authorities and instrumentalities and public utilities and to file subdivision and parcel maps; *provided, however*, that prior to the execution and delivery of such agreements there shall have been delivered to the Trustee in each case:

(a) if the Company is to receive any consideration for the granting of such restrictions and easements or the filing of such maps, such consideration shall be subject to the lien hereof and any cash received by the Trustee pursuant to this Section 11.17 shall be held by it as part of the trust estate, and shall, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof, and subject to the provisions of said Section 8.04;

(b) an Officers' Certificate, dated not more than 30 days prior to its delivery, which shall:

(i) set forth a description of the restrictions, easements or maps to be granted or filed;

(ii) certify that the action so requested will not impair or prejudice the security for the Bonds or the interest of the holders of the Bonds; and



(iii) set forth any consideration received for the granting of such restrictions and easements or the filing of such maps."

(y) The references to "six years" in the second paragraph of Section 12.02 and in the third paragraph of Section 13.02 of the Original Indenture shall be changed to "four years".

(z) The following shall be inserted after the phrases "San Francisco, California" in Section 12.03 and the fourth paragraph of Section 12.05 of the Original Indenture:

"or the Borough of Manhattan, City and State of New York".

(aa) The references to "\$5,000,000" in Sections 12.03 and 12.05 of the Original Indenture shall be changed to "\$20,000,000".

(bb) The following shall be inserted at the end of the first paragraph of Section 12.04 and the first paragraph of Section 12.05 of the Original Indenture, after "New York" and before the period:

"or, in any case where all of the outstanding Bonds shall be registered Bonds, such notice shall be mailed, postage prepaid, to the respective registered holders of such Bonds at their last addresses appearing upon the Bond register".

(cc) The following shall be inserted as a new paragraph immediately following the first paragraph of Section 12.06 of the Original Indenture:

"Every separate trustee or co-trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms:

(i) The Bonds shall be authenticated and delivered solely by the Trustee, and all powers, duties, obligations and rights hereunder in respect of the custody of cash and other personal property held by, or required to be deposited or pledged with the Trustee hereunder, shall be exercised solely by the Trustee.

(ii) The rights, powers, duties and obligations hereby conferred on or imposed upon the trustees or any of them shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such separate trustee or separate trustees or co-trustee or co-trustees jointly, as shall be provided in the instrument appointing such separate trustee or separate trustees or co-trustee or co-trustees, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such separate trustee or separate trustees or co-trustee or co-trustees."

(dd) The following shall be substituted for clause (a)(5) of the second paragraph of Section 14.02:

"(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 to or incident to properties subject to the lien of this Indenture; *provided, however,* that if any property referred to in this Clause (5) is also required to be subject to the lien of a successor corporation by reason of a comparable provision in a mortgage of such successor corporation, the lien hereof may be *pari passu* with the lien under any such mortgage or an equitable adjustment made between such mortgage and this Indenture; and".

#### PART FOUR

##### MISCELLANEOUS

§ 4.01. Part Three of this Supplemental Indenture, excluding § 3.02(b) and (c), shall not be deemed to affect any series of Bonds, other than the Series B Bonds, until such time as the Series A Bonds are no longer outstanding. § 3.02 (b) and (c) shall not be deemed to affect any series of Bonds until such time as the Series A Bonds are no longer outstanding.

§ 4.02. This Supplemental Indenture is executed by the Company and the Trustee pursuant to Section 4.01 of the Original Indenture and shall be

deemed to be part of the Indenture for any and all purposes. Any provision of the Original Indenture inconsistent with the provisions of this Supplemental Indenture shall be deemed to be superseded by the provisions of this Supplemental Indenture. The Original Indenture, as supplemented by this Supplemental Indenture, is, except as modified by this Supplemental Indenture, in all respects hereby ratified and confirmed.

§ 4.03. The headings of the several Parts and Articles hereof and the statements contained in the Table of Contents prefixed hereto are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

§ 4.04. This Supplemental Indenture may be executed in several counterparts, each of which shall be an original, and all collectively shall constitute but one instrument.

§ 4.05. This Supplemental Indenture shall be construed in accordance with and governed by the laws of the State of New York. Subject to Section 9.21 of the Original Indenture, the Company hereby consents to be sued in the State of New York upon its obligations under this Supplemental Indenture and, for such purpose, appoints the paying agent in New York City for the Series B Bonds its agent to accept service of process in the State of New York.

IN WITNESS WHEREOF, THE WESTERN PACIFIC RAILROAD COMPANY has caused this Supplemental Indenture to be signed and acknowledged by its President or one of its Vice Presidents, and its corporate seal to be affixed hereunto and the same to be attested by the signature of its Secretary or one of its Assistant Secretaries, and CROCKER NATIONAL BANK, as Trustee, has caused this Supplemental Indenture to be signed and acknowledged by one of its Vice Presidents, and its corporate seal to be affixed hereunto and the same to be attested by the signature of its Secretary or one of its Assistant Secretaries, all as of the day and year first above written.

RWS JMK

THE WESTERN PACIFIC RAILROAD  
COMPANY

By R. W. STUMBO, JR.

VICE PRESIDENT - FINANCE

[CORPORATE SEAL]

BOOK 59 PAGE 444



59

Attest:

14. Charles Brinkhoff  
Assistant Secretary

CROCKER NATIONAL BANK,  
as Trustee

By 15. J. M. Kellison  
TRUST OFFICER

[CORPORATE SEAL]

Attest:

15. J. Bell  
NOTARY PUBLIC

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

51 Esther Lutigliano

Notary Public  
in and for the City and County of  
New York, State of New York.

My Commission expires *March 30, 1919.*

61

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

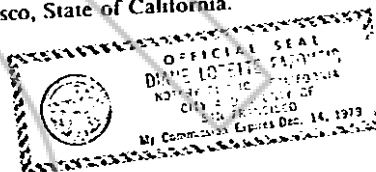
On this 16<sup>th</sup> day of June, 1977, before me, Diane Lorette Fafoutis, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared J. M. Kalden, known to me to be a TRUST OFFICER of CROCKER NATIONAL BANK, 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 authority of a 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 executed 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.

(SEAL)

DIANE LORETTE FAFOUTIS

Notary Public  
in and for the City and County of San  
Francisco, State of California.

My Commission expires Dec. 14, 1979.BOOK 59 PAGE 447



THE WESTERN PACIFIC RAILROAD COMPANY

---

THE WESTERN PACIFIC RAILROAD COMPANY

TO

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO,  
Trustee

Mortgage of Chattels and Trust Indenture

First and Refunding Mortgage

*Dated as of January 1, 1951*

---

BOOK 59 PAGE 448

## Table of Contents\*

	Pages
Parties.....	1
Recitals .....	1
Form of Series A Coupon Bond .....	3
Form of Interest Coupon for Series A Bonds.....	7
Form of Series A Registered Bond.....	8
Form of Trustee's Authentication Certificate .....	12
Consideration Clause .....	13
Granting Clauses	
Lines of Railroad .....	13
Real Estate.....	16
Leases and Trackage, Terminal, Joint Facility and Operating Contracts	16
Appurtenant Railroad Property .....	16
Equipment, with exception and proviso.....	17
Securities.....	17
Other Property .....	18
Additions, betterments and improvements.....	18
Rights, Powers, Franchises, Privileges and Immunities whenever owned or possessed .....	18
Property hereafter expressly conveyed to or pledged with Trustee....	18
Property whenever acquired which the Company is required to convey or pledge with Trustee.....	19
After acquired property generally .....	19
The Company's interest whenever acquired in mortgaged or pledged property.....	19
Income from mortgaged property except as otherwise provided.....	19
Cash, Government securities, accounts receivable, material and sup- plies and income excluded from lien until event of default exists...	20
Property excepted and reserved from lien .....	20, 21
Habendum Clause .....	21
Subject Clauses .....	21, 22
Declaration of Trust.....	22

\*The Table of Contents is not in the Indenture as executed and recorded.



## TABLE OF CONTENTS

## ARTICLE ONE.

	Page
<i>Definitions.</i>	
Sec. 1.01. Rules of Construction .....	23
Sec. 1.02. Words and terms defined in this Section, or elsewhere specially defined in Indenture with reference thereto in this Section:	
Additions.....	23
Additions and Betterments .....	23
Board of Directors.....	23
Bonds, coupons, bondholders and holders.....	23
Bonds at any one time outstanding.....	24
Bonds outstanding, outstanding Bonds.....	24
Bond registrar.....	24
Bond registry books.....	24
Certified Resolutions .....	25
Commission.....	25
Company.....	25
Cost .....	25
Cost of Additions and Betterments .....	25
Counsel .....	25
Daily newspaper.....	25
Deposited cash .....	26
Event of default.....	26
Granting Clauses .....	26
Income After Fixed Charges .....	26
Indenture, or this Indenture.....	26
Independent engineer or independent appraiser.....	26
Lessee corporation .....	26
Lines of railroad directly or indirectly subject to the lien hereof .....	26
Majority .....	26
Net Cost .....	26
Officers' Certificate .....	27
Optional redemption price.....	27
Outstanding Bonds .....	27
Paying agent.....	27
Permitted Encumbrances .....	27
Purchase money mortgage .....	28



TABLE OF CONTENTS

iii

	Page
Purchased Property .....	28
Securities.....	28
Sinking fund redemption price.....	28
Standard Accounting Rules .....	28
Subject Clauses .....	29
Subsidiary or subsidiary company.....	29
Successor corporation .....	29
Trust estate .....	29
Trustee .....	29
Unrestricted Bonds .....	29
Wholly owned subsidiary.....	29
Sec. 1.03. Form and execution of various instruments delivered to Trustee by Company .....	29

ARTICLE TWO.

*Form, Execution, Delivery, Registration and  
Exchange of Bonds.*

Sec. 2.01. Bonds limited to \$75,000,000 at any one time outstanding .....	29
Sec. 2.02. Execution of Bonds.....	30
One facsimile signature permissible.....	30
Facsimile signature on Coupons .....	30
Signatures of former officers .....	30
Authentication of Bonds; detachment of matured Coupons.....	30
Sec. 2.03. Bonds issuable in series.....	31
Forms of Bonds .....	31
Matters to be determined upon creation of any series.....	31
Permissible variations between the several series of Bonds.....	31
Sec. 2.04. Issue as Coupon or Registered Bonds; interchangeability.....	33
Dates of Bonds.....	33
Place of payment of principal and interest of Bonds .....	33
Denominations of Coupon Bonds .....	33
Denominations of Registered Bonds.....	33
Sec. 2.05. Registration and transfer books to be kept at agencies in San Francisco and New York .....	34

## TABLE OF CONTENTS

	Page
Registration of Coupon Bonds as to principal.....	34
Exchanges and transfers of Bonds.....	35
Payment of stamp taxes on transfers.....	36
Charges upon exchange or transfer .....	36
Trustee may in its discretion authenticate and deliver Bonds on exchanges or transfers although an event of default exists..	36
Sec. 2.06. Ownership of Bonds .....	37
Sec. 2.07. Temporary Bonds .....	37
Sec. 2.08. Mutilated, destroyed, stolen or lost Bonds .....	38
Sec. 2.09. Series A Bonds limited to \$22,000,000.....	38
Specific provisions as to Series A Bonds.....	38

## ARTICLE THREE.

*Authentication and Issue of Bonds.*

Sec. 3.01. Issuance of Series A Bonds before recording of Indenture.....	39
Covenant of Company to deposit redemption price for redemption of its outstanding First Mortgage Bonds on March 1, 1951 and thereupon to cause its First Mortgage to be discharged .....	40
Covenant of Company to deposit redemption price for redemption of its outstanding General Mortgage Bonds on May 1, 1951 and thereupon to cause its General Mortgage to be discharged .....	40
Bonds issued subsequent to Series A Bonds may be entitled "First Mortgage Bonds" and Indenture may be referred to as a "First Mortgage".....	40
Sec. 3.02. Issuance of "Unrestricted Bonds".....	41
"Unrestricted Bonds" limited to \$3,000,000 at any time outstanding.....	41
Sec. 3.03. Issuance of Bonds on account of "Additions" .....	41
Conditions upon issuance of Bonds for Additions:	
—Bonds issuable for not exceeding 66⅔% of Net Cost of Additions and Betterments .....	41
—Bonds issuable for not exceeding 66⅔% of Cost of Purchased Property or Securities .....	41

# THE WESTERN PACIFIC RAILROAD COMPANY

## TABLE OF CONTENTS

v

	Page
—Additions must have been acquired after June 30, 1950...	41
—railroad corporation whose securities are bonded must be wholly owned subsidiary.....	41
—terminal or other specified corporation whose securities are bonded must be wholly owned subsidiary or owned jointly with one or more railroad corporations.....	42
—Cost or Net Cost must have been expended or liability incurred therefor within seven years prior to adoption of resolutions authorizing Bonds.....	42
—Bonds issuable for Additions and Betterments only to extent of 66⅔% of net unbonded Additions and Betterments subsequent to June 30, 1950.....	43
—shares of stock of wholly owned subsidiary having indebtedness cannot be bonded unless such indebtedness acquired by Company and pledged under Indenture.....	43
—shares of stock of corporation owned jointly by Company and one or more railroad corporations which has indebtedness cannot be bonded unless Company and other stockholders acquire proportionate share of such indebtedness and Company pledges its portion under Indenture.....	43
—only uncapitalized part of Cost or Net Cost of Additions bondable.....	44
—bondable Cost or Net Cost of Additions must reflect deduction of any principal indebtedness secured by prior lien.....	44
—Indenture must be first lien on Additions subject only to Permitted Encumbrances and specified prior liens.....	44
Documents required.....	44
Securities included in Additions and any other securities required to be pledged must be delivered with documents.....	47
Sec. 3.04. Issuance of Bonds to refund Bonds or other obligations.....	47
Conditions upon issuance of Bonds for refunding purposes:	
—issuable on basis of concurrent surrender for cancellation of Bonds or other obligations.....	48
—issuable on basis of payment, redemption or other retirement of Bonds or other obligations.....	48
—Bonds cannot be issued under Section 3.04 to refund Unrestricted Bonds.....	48
—not issuable to refund Bonds issued solely by way of pledge.....	48



	Page
—not issuable to refund obligations for deferred or serial payment of purchase price of equipment .....	48
—issuable in principal amount of Bonds or other obligations .....	49
Documents required .....	49
Bonds or other obligations being refunded must be concurrently delivered, or amount due deposited as trust fund ....	50
Refunded Bonds must be cancelled .....	51
Pledged Bonds securing a refunded obligation must be cancelled .....	52
Sec. 3.05. Issuance of Bonds for cash ("deposited cash") .....	52
Payment of deposited cash in lieu of issuance of Bonds under Sections 3.03 or 3.04 .....	52
Documents required .....	52
Trustee may be required to pay part of purchase price or cost of construction of Additions to person entitled thereto, from deposited cash, in lieu of reimbursing Company to that extent therefor .....	53
Documents required .....	53
Sec. 3.06. Documents required upon any issuance of Bonds, including supplemental indenture creating and describing each new series .....	53
Company must have contracted to sell or pledge Bonds forthwith .....	54
Sec. 3.07. Documents received by Trustee to be conclusive and full authority .....	55
Trustee not accountable for use or application by Company of Bonds authenticated and delivered .....	55
Trustee not accountable for use or application by Company of deposited cash .....	55
Sec. 3.08. Bonds authenticated under Sections 3.02, 3.03, 3.04 or 3.05 may be pledged by Company to secure indebtedness .....	55
Board of Directors of Company may fix price or consideration and terms upon which Bonds may be issued, exchanged, pledged, sold or disposed of .....	55
Sec. 3.09. Bonds cannot be authenticated or delivered or deposited cash paid out if event of default exists .....	56

TABLE OF CONTENTS

vii

ARTICLE FOUR.

*Supplemental Indentures; Bondholders' Meetings.*

	Page
Sec. 4.01. Execution of supplemental indentures without action by bondholders.....	56
—to convey additional property.....	56
—to correct description.....	56
—to evidence creation of series of Bonds and establish terms.....	56
—to evidence succession of another corporation.....	56
—to make modifications for purpose of listing.....	57
—to make modifications required by law.....	57
—to add restrictions and limitations.....	57
—other purposes.....	57
Trustee authorized to join in execution.....	57
Documents to be furnished Trustee.....	57
Sec. 4.02. Amendment of, addition to, modification or repeal of, any provision of Indenture, etc. by bondholders.....	57
Call for meeting of bondholders.....	58
Notice.....	58
Evidence of ownership; regulations.....	59
Proxies.....	60
Persons entitled to attend meeting.....	60
Right of Trustee and representatives of Company to attend... ..	60
Bonds owned by Company not "outstanding".....	61
Bonds called for redemption not "outstanding".....	61
Quorum; organization.....	61
Actions that may be taken; limitations.....	62
Votes required.....	63
Procedure; record of meeting.....	64
Action binding on all bondholders and Trustee.....	65
Notation on Bonds or issuance of new Bonds.....	65
Execution of supplemental indenture.....	66
Powers exercisable at meeting may be exercised by written instrument.....	66



## TABLE OF CONTENTS

## ARTICLE FIVE.

*Redemption of Bonds.*

	Page
Sec. 5.01. Right to redeem Series A Bonds .....	66
If Company reserves right to redeem other series of Bonds, certain redemption provisions shall be determined on crea- tion of series and included in supplemental indenture evi- dencing creation.....	67
Sec. 5.02. Notice of redemption of Series A Bonds.....	67
Sec. 5.03. Redemption of less than all of any series; Trustee shall deter- mine by lot .....	68
Redemption of part of a Bond.....	69
Sec. 5.04. Bonds due and payable on redemption date; interest ceases... 69	
Deposit of redemption price in trust.....	69
Coupons maturing on redemption date.....	70
Penalty interest .....	70
Sec. 5.05. Cancellation of redeemed bonds and coupons .....	70

## ARTICLE SIX.

*Sinking Fund for Series A Bonds.*

Sec. 6.01. Amount of sinking fund for Series A Bonds.....	70
When Company may postpone payment in whole or in part...	70
Sinking fund cumulative .....	71
Sinking fund for Series A Bonds automatically and corre- spondingly increased if Company creates another series of Bonds with an annual sinking fund greater than 1%.....	72
Delivery of Bonds in lieu of all or part of sinking fund pay- ment.....	72
Trustee may rely on certificate as to Income After Fixed Charges of the Company, adjustment amounts and amount resulting from adjustments .....	72
Sec. 6.02. Purchase of Series A Bonds with sinking fund moneys .....	73
Temporary purchase of obligations of United States of America	73
Redemption of Series A Bonds with sinking fund moneys.....	73



# THE WESTERN PACIFIC RAILROAD COMPANY

## TABLE OF CONTENTS

ix

	Page
Company to pay accrued interest and brokerage expenses and compensation of Trustee and any redemption expenses on Series A Bonds acquired for sinking fund. ....	74
Interest and profits from government obligations added to sinking fund; any losses thereon reimbursed by Company .....	74
No application of sinking fund moneys while an event of default exists; exceptions.....	75
Sec. 6.03. Sinking fund moneys held in trust as security for all Series A Bonds until notice of redemption or acceptance of tender of Bonds if purchased.....	75
Sec. 6.04. Sinking fund moneys to be repaid to Company in certain cases	75
Sec. 6.05. Cancellation of Series A Bonds and coupons purchased or redeemed through sinking fund; no new Bonds issued in lieu thereof.....	76

## ARTICLE SEVEN.

### *Particular Covenants of the Company.*

Sec. 7.01. To pay principal and interest on Bonds.....	76
Cancellation of Bonds and coupons paid .....	76
To maintain office or agency in San Francisco and office or agency in New York for payment of Bonds and coupons, for registration, transfer and exchange of Bonds, etc.....	76
To notify Trustee of location of each office or agency and of any change in location thereof .....	77
Sec. 7.02. To give further assurances in respect of after acquired property	77
Sec. 7.03. Title and warranty of ownership.....	78
Not to permit prior liens and to discharge all mechanics' liens, etc., within six months .....	78
Sec. 7.04. To pay taxes.....	78
Sec. 7.05. To duly pay equipment obligations and make payments required by liens prior to lien of Indenture.....	79
Sec. 7.06. To fulfill obligations under leases, joint facility and trackage contracts .....	79
Sec. 7.07. Trustee may pay sums in default under Sections 7.03 to 7.06, inclusive .....	80
Trustee given lien for any such advances.....	80

## TABLE OF CONTENTS

	Page
Sec. 7.08. To preserve rights and franchises and maintain property, including equipment .....	80
To keep lines of railroad supplied with sufficient equipment, etc. ....	80
Sec. 7.09. To issue Bonds or procure payment of moneys deposited under Indenture only in accordance therewith .....	80
Sec. 7.10. To subordinate future mortgages .....	80
Sec. 7.11. To maintain its corporate existence .....	81
Sec. 7.12. Not to permit subsidiary to issue additional shares of stock; exceptions .....	81
Not to permit wholly owned subsidiary to issue or guarantee bonds, obligations or other indebtedness unless such indebtedness is acquired by Company and delivered to Trustee, <i>except</i> :	
—current operating accounts for preceding six months .....	81
—obligations for purchase price of equipment .....	81
—purchase money obligations for not to exceed 66⅔% of cost of after acquired property .....	82
—Bonds, obligations or other indebtedness to finance or reimburse not to exceed 66⅔% of cost of additional lines of railroad or additions and betterments .....	82
—obligations created pursuant to Section 8.11 of Indenture .....	82
—liens created to secure excepted obligations .....	82
—further assurances required by mortgage on property of such wholly owned subsidiary .....	82
Not to permit a subsidiary to sell, lease or otherwise dispose of its property as a whole except to Company's affiliate without Trustee's consent .....	82
Documents required to obtain Trustee's consent .....	83
Sec. 7.13. To insure property .....	83
Insurance proceeds exceeding \$100,000 from one loss to be deposited with Trustee .....	83
—application of such insurance proceeds .....	83
—only proceeds from equipment insurance may be used to purchase equipment, etc. ....	84
—documents required .....	84
Insurance proceeds of \$100,000 or less from one loss to be paid to Company and applied by it in same manner .....	84



THE WESTERN PACIFIC RAILROAD COMPANY

TABLE OF CONTENTS

xi

	Pages
Sec. 7.14. Not to pledge Bonds to secure indebtedness if excess of principal amount of all Bonds pledged over principal amount of all indebtedness secured thereby would thereupon exceed 10% of principal amount of all Bonds then outstanding, including pledged Bonds .....	85
Not to pledge Bonds if the aggregate principal amount of all Bonds pledged would thereupon exceed 150% of principal amount of all indebtedness secured by pledged Bonds.....	85
Sec. 7.15. To pledge under Indenture all securities held by Company upon consummation of reorganization or recapitalization of Sacramento Northern Railway.....	85
Sec. 7.16. To record Indenture .....	85

ARTICLE EIGHT.

*Control of Pledged Securities.*

Sec. 8.01. Delivery to Trustee .....	86
Qualifying shares for Directors.....	86, 87
Sec. 8.02. Registration of pledged securities in name of Trustee; exceptions .....	86
Trustee entitled to stock dividends.....	88
Sec. 8.03. Unless Trustee of Indenture or a trustee in bankruptcy or receiver takes possession of trustee estate or an event of default exists:	
—Trustee shall not enforce collection of any of pledged securities.....	88
—Company entitled to receive cash dividends and interest on pledged securities; exception .....	88
—Company entitled to receive interest coupons, etc. on Request.....	88
Company not entitled to principal of any pledged obligation..	89
Company not entitled to interest on any pledged obligation not paid from earnings; exception.....	89
Company not entitled to dividends not paid out of earned surplus.....	90
Company not to sue for collection of interest dividends or indebtedness without consent of Trustee.....	90



	Page
Trustee may assume interest and any cash dividend received is paid out of earned surplus; unless notified to contrary by holders of 5% of outstanding Bonds .....	90
Sec. 8.04. Application of payments to Trustee which Company is not entitled to receive.....	91
Documents required.....	91
Sec. 8.05. Right of Company to vote pledged stock while in possession of trust estate and no event of default exists.....	91
Sec. 8.06. Enforcement of defaulted pledged Bonds.....	92
Power of Trustee to purchase property of corporations any of whose securities are pledged .....	93
Company to pay expenditures.....	94
—Trustee to have lien for advances.....	94
Sec. 8.07. When Trustee may join in reorganization of corporation any of whose securities are pledged.....	94
Sec. 8.08. Application of moneys received by Trustee on dissolution, liquidation, sale, readjustment, recapitalization or reorganization of corporation any of whose securities are pledged....	95
Sec. 8.09. Extension and renewal of pledged obligations.....	95
Sec. 8.10. Cancellation of pledged securities which become valueless.....	96
When Trustee may consent to reduction in capitalization of corporation any of whose stock is pledged.....	96
Sec. 8.11. Consolidation with, merger into or sale or lease to Company by corporation any of whose stock is subject to lien of Indenture .....	97
—with, into or to any other person or corporation.....	97

## ARTICLE NINE.

*Remedies of Trustee and Bondholders in Event of Default.*

Sec. 9.01. Company not to extend time for payment of Bond interest....	99
Any extended coupon or claim for interest penalized in case of default; exception .....	99
Any coupon or claim for interest transferred or pledged separate from Bond at or after maturity penalized in case of default.....	99

## TABLE OF CONTENTS

xiii

	Page
Any matured coupons or claims for interest owned by Company must be cancelled; not entitled to benefit of Indenture	99
Sec. 9.02. Events of default.....	100
—nonpayment of interest.....	100
—nonpayment of principal.....	100
—nonpayment of sinking fund.....	100
—nonperformance of other covenants of Indenture.....	100
—appointment of receiver or trustee in involuntary bankruptcy, insolvency, reorganization, readjustment or debtor relief proceeding.....	100
—voluntary appointment of receiver or trustee, or reorganization or readjustment proceeding.....	101
Trustee's right on happening of event of default to enter and operate properties and receive income.....	101
Application of income received by Trustee.....	102
Sec. 9.03. Trustee's rights in respect of pledged securities.....	103
Sec. 9.04. Acceleration of Bonds if default exists.....	103
Waiver of default and acceleration.....	104
Sec. 9.05. Sale of trust estate at public auction if default exists.....	104
Protect and enforce rights of Trustee and bondholders by judicial proceedings.....	104
Sec. 9.06. Trustee's duty to act upon request and indemnification by bondholders.....	105
Majority of bondholders may direct and control Trustee.....	105
Sec. 9.07. Sale as an entirety or in parcels.....	105
Majority of bondholders may compel sale in parcels.....	105
Waiver by Company of right to marshalling.....	106
Personal property as fixtures.....	106
Sec. 9.08. Notice of sale.....	106
Sec. 9.09. Adjournment of sale.....	107
Sec. 9.10. Trustee's Deed on sale.....	107
Company perpetually barred.....	107
Sec. 9.11. Trustee's Receipt sufficient to discharge purchaser.....	107
Sec. 9.12. Acceleration of Bonds upon sale.....	108



	Page
Sec. 9.13. Application of proceeds of sale.....	108
Sec. 9.14. Application of Bonds to purchase price; bondholders' right to purchase.....	109
Sec. 9.15. Company covenants on demand to pay Trustee defaulted interest and principal.....	109
Trustee's right to obtain money judgment; limitation.....	110
Application of moneys collected .....	110
Sec. 9.16. Waiver by Company of stays, appraisal, right of redemption, etc.....	111
Sec. 9.17. Right of Trustee to appointment of receiver upon commencement by it of judicial proceedings.....	111
Sec. 9.18. Exercise of remedies by Trustee before expiration of grace period .....	111
Sec. 9.19. Voluntary surrender of possession of trust estate to Trustee.....	112
Trustee entitled to appointment of receiver.....	113
Sec. 9.20. Receiver appointed under Sections 9.17, 9.18 or 9.19 shall pay net income to Trustee for benefit of bondholders.....	113
Trustee entitled to retain moneys and securities in its possession .....	113
Sec. 9.21. Limitations on suits by holders of Bonds or coupons.....	113
Trustee must be indemnified .....	114
Trustee need not produce Bonds to enforce remedies.....	114
Sec. 9.22. Remedies cumulative.....	115
Sec. 9.23. Omission to act not waiver.....	115
Sec. 9.24. Restoration of Company and Trustee to former positions on abandonment of remedy, etc.....	115
Sec. 9.25. Trustee may act to prevent impairment of security.....	115
Sec. 9.26. Consent to assessment of costs against party litigant.....	116
Sec. 9.27. Any invalid or unenforceable provision in Article Nine deemed inoperative.....	116
No waiver of "one-action" statutory provisions of California, Nevada and Utah .....	116



THE WESTERN PACIFIC RAILROAD COMPANY

TABLE OF CONTENTS

xv

ARTICLE TEN.

*Evidence of Rights of Bondholders and Ownership of Bonds.*

	Page
Sec. 10.01. Execution of instruments by bondholders.....	117
Proof of execution .....	117
Proof of ownership of unregistered Bonds.....	117
Proof of ownership of registered Bonds.....	118
Future holders of Bonds bound by acts of predecessors.....	118

ARTICLE ELEVEN.

*Releases of Mortgaged Property.*

Sec. 11.01. Release of property sold, exchanged or otherwise disposed of, requirements for .....	118
Sec. 11.02. Changes of location of property, release of former location...	119
Sec. 11.03. Documents to be delivered to Trustee for releases under Sections 11.01 and 11.02.....	120
—appraisal required if fair value of property exceeds \$100,000 .....	121
Sec. 11.04. Permissible consideration for released property disposed of under Sections 11.01 or 11.02.....	122
—cash.....	122
—obligations secured by purchase money mortgage, subject to limitations.....	122
—bondable Additions.....	122
—premises at new location in releases under Section 11.02.	123
Cash consideration must be delivered to Trustee.....	123
—disposition thereof.....	123
Additional documents when obligation secured by purchase money mortgage is part of consideration.....	123
Additional documents when consideration consists of bondable Additions.....	124
Sec. 11.05. When Company permitted to abandon railroads or terminals and surrender franchises.....	124
Documents to be delivered to Trustee before abandonment or surrender.....	124
Release of surrendered franchises .....	125

	Page
Company may sell dismantled property free from lien for cash	125
Company's disposition of other property governed by Sections 11.01 or 11.07.....	125
—disposition of cash consideration .....	125
Company may reconvey right of way of abandoned line of railroad to former owner without consideration.....	125
Trustee shall execute confirmatory release.....	125
Documents required .....	125
Sec. 11.06. Company may convey easements to governmental bodies free from lien without consideration.....	126
Trustee shall execute confirmatory release.....	126
Documents required .....	126
Sec. 11.07. Company may dispose of property of a value of \$100,000 per year free from lien.....	126
Confirmatory release by Trustee .....	127
Documents required .....	126
Company to reinvest proceeds to replace property disposed of	126
Annual certificate of property disposed of under Section 11.07	127
Sec. 11.08. Without release by Trustee or notice to it Company may:	
—alter, remove, demolish or retire buildings, branch, spur, industrial, switch, etc. tracks or other property unfit for use; dispose of scrap therefrom.....	127
—sell as units or dismantle and sell as scrap, etc. any portion of fixtures, equipment, etc. which have become obsolete or otherwise unfit for use or not necessary or advantageous longer to retain for use on trust estate..	128
Disposition of net cash proceeds:	
—Company to invest in replacement or substitute property or	
—pay to Trustee.....	128
Disposition of cash paid to Trustee.....	128
Sec. 11.09. Company may without notice to Trustee lease or make contracts with respect to any part of trust estate; limitations.	129
Company may without notice to Trustee make alterations in or substitutions for any leases or contracts constituting part of trust estate; limitations.....	129



# THE WESTERN PACIFIC RAILROAD COMPANY

## TABLE OF CONTENTS

xvii

	Page
Sec. 11.10. Release of property sought to be taken by eminent domain..	129
Documents required .....	129
Involuntary sale by Company to governmental body .....	130
Documents required for release.....	130
Disposition of compensation from condemnation and from involuntary sale .....	130
Sec. 11.11. Property and rights received in exchange or substitution for property or rights released subject to lien.....	131
Sec. 11.12. Purchaser of released property not concerned with application of purchase money.....	131
Sec. 11.13. Release of pledged securities in certain cases.....	131
Documents required .....	131
Conditions on which Trustee may cancel and discharge mortgage debt subject to lien .....	131
Documents required .....	131
Sec. 11.14. Receiver or trustee in possession of trust estate may exercise powers under Article Eleven with approval of Trustee of Indenture .....	132
Documents required .....	132
Trustee of Indenture in possession of trust estate may exercise powers under Article Eleven .....	132
Sec. 11.16. Release and reversion to Company free of lien of any property if requested by bondholders.....	132

## ARTICLE TWELVE.

### *Concerning the Trustee.*

Sec. 12.01. Conditions upon which trust accepted:	
No responsibility for recitals, value of property, validity of lien or Bonds, etc.....	133
No duty to record.....	134
No duty to see to payment of taxes.....	134
No duty as to disposition of Bonds or any moneys paid to Company.....	134
To be reimbursed for taxes paid by it.....	134
May act through agents, etc.; only accountable for its own negligence or bad faith .....	134



	Page
May require reasonable indemnity before acting on default, etc.....	135
Address for mailing notices to Company.....	135
Address for mailing notices to Trustee.....	135
May require production of Bonds to prove ownership.....	135
Trustee justified in relying upon documents.....	136
May rely upon advice of counsel.....	136
No duty to investigate matters covered by documents delivered to Trustee except on request of bondholders and indemnification; Trustee may investigate.....	136
Trustee protected in action taken after investigation; expenses of investigation.....	137
Trustee entitled to compensation, reasonable expenses, etc. ....	137
Company covenants to indemnify Trustee against any claim of liability; Trustee entitled to interest on amounts paid, advanced or disbursed.....	137
Trustee has lien for compensation, expenses, etc.....	137
Proof or determination of matter or question of fact.....	138
Trustee may acquire Bonds and act for Company in other capacities.....	138
No duty to invest moneys or liability for interest except as stated.....	138
Future holders of Bonds bound by acts of predecessors.....	138
No need for Trustee to have possession of any Bonds to enforce rights.....	139
Sec. 12.02. Moneys deposited with Trustee to pay Bonds or interest to be held as trust fund.....	139
Moneys unclaimed for six years to be repaid to Company....	139
Holders of Bonds and coupons not entitled to interest on deposited moneys.....	139
Paid Bonds and coupons to be cancelled.....	139
Other moneys deposited with Trustee held in trust but need not be segregated.....	140
Sec. 12.03. Merger, conversion or consolidation of Trustee.....	140
Sec. 12.04. Resignation of Trustee.....	140
Removal of Trustee.....	141

# THE WESTERN PACIFIC RAILROAD COMPANY

## TABLE OF CONTENTS

xix

	Page
Sec. 12.05. Appointment of successor trustee by bondholders .....	141
Temporary appointment of successor trustee by Company ...	141
Appointment of successor trustee by Court .....	142
Qualifications of successor trustee .....	142
Acceptance of appointment by successor trustee .....	142
Sec. 12.06. Appointment of co-trustee or separate trustee .....	143
Sec. 12.07. Trustee appointed Attorney in Fact to file proofs of debt, etc.	144

## ARTICLE THIRTEEN.

### *Possession Until Default; Discharge of Indenture.*

Sec. 13.01. Company's right to possession .....	144
Sec. 13.02. Defeasance upon payment in full of Bonds or deposit therefor	145
Unclaimed deposited moneys to be repaid to Company after six years .....	146

## ARTICLE FOURTEEN.

### *Consolidation, Merger, Conveyance, Acquisition and Lease.*

Sec. 14.01. Consolidation and merger of Company and conveyance or lease by Company of trust estate as a whole or acquisitions or leases by Company of property of another corporation as a whole permitted .....	146
Restrictions .....	147
Successor corporation or lessee corporation shall expressly assume payment of Bonds and interest by supplemental indenture .....	147
Sec. 14.02. Indenture not to become a lien, in absence of express grant, on	
—properties theretofore owned by other corporation .....	148
—after acquired properties of successor corporation or Company, with certain exceptions .....	148
—securities of Class I carrier acquired by Company or properties of such corporation acquired or leased as a whole by Company, and additions and betterments thereto, with certain exceptions .....	148
Provisions of supplemental indenture .....	149
Sec. 14.03. Powers and duties of successor corporation .....	150

xx

# TABLE OF CONTENTS

	Pages
Sec. 14.04. Issue of Bonds by successor corporation .....	151
Sec. 14.05. Term "Company" to include also any successor corporation. ....	151
Sec. 14.06. Supplemental indentures to be approved by counsel.....	151
Sec. 14.07. Surrender to Company by Trustee of securities of corporation the property of which is acquired by Company by consoli- dation, and subject to lien.....	151
Sec. 14.08. Company not to make consolidations, etc. except as provided in Article Fourteen.....	152

## ARTICLE FIFTEEN.

### *No Rights In Strangers; No Individual Liability.*

Sec. 15.01. Indenture for sole benefit of parties and holders of Bonds and coupons .....	152
Sec. 15.02. Individuals exempted from liability.....	153

## ARTICLE SIXTEEN.

### *Miscellaneous Provisions.*

Sec. 16.01. Indenture wholly binding on successors and assigns of Com- pany.....	153
Sec. 16.02. Bonds owned by Company excluded in determining principal amount of Bonds outstanding, etc.....	154
Sec. 16.03. Amount of interest payable to Trustee on advances made by it	154
Sec. 16.04. Dating of Mortgage .....	154
Execution of counterparts.....	154
Testimonium.....	154
Signatures.....	155
Acknowledgments .....	156, 157



**MORTGAGE OF CHATTELS  
AND  
TRUST INDENTURE.**

**THIS INDENTURE**, dated as of the first day of January, 1951, 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 **CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO**, a corporation organized and existing under the laws of the United States of America, and having its principal office and place of business in the City and County of San Francisco, California (hereinafter referred to as the "Trustee"), party of the second part;

**WHEREAS**, the Company owns and operates certain lines of railroad in the States of California, Nevada and Utah; and

**WHEREAS**, the Company has heretofore created a \$10,000,000 issue of First Mortgage 4% Bonds, Series A (hereinafter called the "First Mortgage Bonds"), maturing January 1, 1974, secured by its First Mortgage dated as of January 1, 1929 to Crocker First National Bank of San Francisco (hereinafter called the "First Mortgage"), all of which are now outstanding; and

**WHEREAS**, the Company has heretofore also created an issue of \$21,219,000 of General Mortgage 4½% Income Bonds, Series A (hereinafter called the "General Mortgage Income Bonds"), maturing January 1, 2014, secured by its General Mortgage dated as of January 1, 1939 to The Chase National Bank of the City of New York (hereinafter called the "General Mortgage"), of which \$6,111,300 principal amount are now outstanding; and

**WHEREAS**, the Company desires to provide for the retirement of said First Mortgage Bonds and said General Mortgage Income Bonds and for the satisfaction, cancellation and discharge of said First Mortgage and said General Mortgage, and to provide funds for other lawful corporate purposes, by the issue and sale of its initial series of bonds hereunder, and desires to issue additional bonds hereunder from time to time, as hereinafter provided; and

WHEREAS, by resolutions duly adopted by the Board of Directors at a meeting of said Board duly held, the Company has authorized the execution and delivery of this Indenture to the Trustee and an issue of bonds of the Company, designated generally as its "First and Refunding Mortgage Bonds" (hereinafter called the "Bonds"), limited to an aggregate principal amount of Seventy-Five Million Dollars (\$75,000,000) at any one time outstanding, all to be issued in series, from time to time, upon the conditions, and in the manner, provided in this Indenture, subject, however, to any consent of the Company's stockholders which may be required by its Articles of Incorporation to issue bonds, and has authorized the issue of an initial series of Bonds hereunder and secured hereby for the purpose of borrowing money to retire its bonds outstanding as aforesaid and for its lawful corporate purposes; and

WHEREAS, the holders of more than two-thirds in par value of the Preferred Stock, Series A, of the Company, which is the only preferred stock of the Company presently outstanding, have duly consented in writing to the creation of this Indenture, and to the issuance and sale of an initial series of bonds, secured by this Indenture, of not to exceed \$22,000,000 in principal amount; and

WHEREAS, the Company is duly authorized upon the execution and delivery of this Indenture to issue its said initial series, known as "First and Refunding Mortgage 3½% Bonds, Series A" (hereinafter sometimes called the "Series A Bonds"), in the principal amount of Twenty-Two Million Dollars (\$22,000,000), due January 1, 1981, bearing interest at the rate of three and one-eighth per cent. (3½%) per annum; and the Series A Bonds in coupon form, the coupons to be attached thereto, the Series A Bonds 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:

THE WESTERN PACIFIC RAILROAD COMPANY

3

[FORM OF SERIES A COUPON BOND]

No.....

\$1,000

THE WESTERN PACIFIC RAILROAD COMPANY

First and Refunding Mortgage  $3\frac{1}{8}\%$  Bond, Series A  
due January 1, 1981

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 the bearer, or, if this Bond be registered as to principal, then to the registered holder hereof, on the first day of January, 1981 (unless this Bond shall be called for previous redemption and payment thereof duly provided for), the principal sum of One Thousand Dollars (\$1,000), and to pay interest on said principal sum at the rate of three and one-eighth per cent. ( $3\frac{1}{8}\%$ ) per annum from the date hereof, semi-annually on the first day of January and the first day of July in each year until said principal sum becomes due and payable as herein provided and thereafter at the legal rate of interest until payment of said principal sum, but, in the case of interest due on or before the date said principal sum becomes due and payable, only upon presentation and surrender of the appropriate coupons for such interest installments, hereto attached, as they severally mature. The principal, of, premium, if any, and interest on this Bond are payable at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the option of the holder, 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.

This Bond is one of a duly authorized issue of Bonds of the Company, designated generally as its "First and Refunding Mortgage Bonds" (hereinafter called the "Bonds"), limited to an aggregate principal amount of Seventy-Five Million Dollars (\$75,000,000) 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 (hereinafter called the "Indenture"), dated as of January 1, 1951, executed by the Company to CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, as Trustee (here-

BOOK 59 PAGE 471



inafter called the "Trustee"), to which Indenture and any and all supplements thereto reference is hereby made for a statement of the property mortgaged and pledged, the nature and extent of the security, the rights of the holders of the Bonds and coupons thereunder, the rights, duties and immunities of the Trustee thereunder, and also for a statement of the terms and conditions upon which the Bonds are issued, received and held, to all of which the holder of this Bond assents by the acceptance hereof. This Bond is one of a series of the Bonds designated as First and Refunding Mortgage  $3\frac{1}{8}\%$  Bonds, Series A, which series is limited to an aggregate principal amount of Twenty-Two Million Dollars (\$22,000,000).

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.

The Bonds of this series are entitled to the benefit of, and are subject to redemption through operation of, the sinking fund provided for in the Indenture, to the extent therein provided.

As provided in the Indenture, the Bonds of this series are redeemable before maturity (1) at the option of the Company at any time, as a whole or from time to time in part by lot, and (2) through the operation of the sinking fund on January 1, 1953, or on the first day of January of any year thereafter, in each case upon publication of notice of such redemption once in each week, on any day in the 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) 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, at prices equal to the following percentages of their principal amount:

THE WESTERN PACIFIC RAILROAD COMPANY

5

Redemption During the Years	Optional Redemption Price	Sinking Fund Redemption Price
1951 and 1952	104.500%	(not redeemable)
1953 and 1954	104.000%	102.000%
1955 and 1956	103.625%	101.813%
1957 to 1959, inclusive	103.125%	101.563%
1960 to 1962, inclusive	102.750%	101.375%
1963 to 1965, inclusive	102.250%	101.125%
1966 to 1968, inclusive	101.750%	100.875%
1969 to 1971, inclusive	101.375%	100.688%
1972 to 1974, inclusive	100.875%	100.438%
1975 to 1977, inclusive	100.500%	100.250%
1978 and 1979	100.125%	100.125%
1980	100 %	100 %

in each case plus accrued and unpaid interest thereon to the date designated for redemption. If this Bond is duly called for redemption and payment of the optional redemption price or the sinking fund redemption price, as the case may be, duly provided for, this Bond shall cease to bear interest from and after the date designated for such redemption.

This Bond is transferable by delivery unless registered as herein and in the Indenture provided. This Bond may be registered as to principal in the name of the holder at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, such registration being noted hereon, after which no transfer hereof shall be valid unless made at one of said offices or agencies by the registered holder, in person or by duly authorized attorney, and similarly noted hereon; but this Bond may be discharged from registration by like transfer to bearer similarly noted hereon, whereupon transferability by delivery shall be restored. This Bond shall continue to be subject to successive registrations and transfers to bearer. No such registration, however, shall affect the negotiability of the coupons for interest hereto attached, which shall continue to be payable to bearer and to be transferable by delivery.

The Bonds of this series are issuable in the form of coupon Bonds in the denomination of \$1,000 and in the form of registered Bonds without coupons in denominations of \$1,000, \$5,000, \$10,000, and any multiple of \$10,000. In the manner and upon the conditions,

including payment of charges, prescribed in the Indenture, coupon Bonds and registered Bonds without coupons of this series, and registered Bonds without coupons of the several denominations are interchangeable, upon presentation thereof for that purpose at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York.

On the conditions, in the manner and to the extent permitted by the Indenture, the provisions of the Indenture may be amended and the rights of the bondholders under the Indenture may be modified or compromised, by the action of the holders of 66-2/3% in principal amount of the Bonds then outstanding to be affected by any such action, and certain other powers set out in the Indenture may be exercised by the action of the holders 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 amendment, modification or compromise, nor any exercise of any such powers, shall change the maturity, or the principal amount, or redemption price, or rate of interest, of any of the Bonds or otherwise alter or impair the obligation of the Company in respect of the payment of the principal thereof or the interest thereon, without the consent of the holder of each Bond affected thereby, or reduce the percentage required by the Indenture for any action authorized to be taken by the holders of Bonds.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on this Bond, or any part thereof, or for any claim based hereon or otherwise in respect hereof, or of the indebtedness represented hereby, or in respect of the Indenture, or under or upon the obligations, covenants and agreements contained in the Indenture, 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, all such liability being expressly waived and released as a condition of, and as a part of the consideration for the execution of the Indenture and the issue of the Bonds and coupons.

Neither this Bond nor any coupon attached hereto shall be valid or obligatory for any purpose unless and until the certificate of



7

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 the manual or facsimile signature of its President, or one of its Vice Presidents, and its corporate seal or a facsimile thereof to be affixed hereunto or imprinted hereon and to be attested by the manual signature of its Secretary, or one of its Assistant Secretaries, and coupons for said interest, bearing the facsimile signature of its Treasurer, to be attached hereto, and this Bond to be dated as of the 1st day of January, 1951.

THE WESTERN PACIFIC RAILROAD COMPANY

By.....  
Vice President

Attest:

.....  
Assistant Secretary

[FORM OF INTEREST COUPON FOR SERIES A COUPON BOND]

No..... \$.....

On the first day of \_\_\_\_\_, 19\_\_\_\_, unless the Bond hereinafter mentioned shall have been called for previous redemption and payment thereof duly provided for, The Western Pacific Railroad Company will pay to the bearer at its office or agency in the City and County of San Francisco, California, or, at the option of the bearer, at its office or agency in the Borough of Manhattan, City and State of New York, upon surrender of this coupon .... Dollars (\$....) 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, being six months' interest then due on its First and Refunding Mortgage 3½% Bond, Series A, due January 1, 1981, No.....

.....  
Treasurer

## [FORM OF SERIES A REGISTERED BOND WITHOUT COUPONS]

No. .... \$.....

## THE WESTERN PACIFIC RAILROAD COMPANY

First and Refunding Mortgage  $3\frac{1}{8}\%$  Bond, Series A  
due January 1, 1981

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 the first day of January, 1981 (unless this Bond shall be called for previous redemption and payment thereof duly provided for), the principal sum of Dollars

(\$ ), and to pay interest on said principal sum at the rate of three and one-eighth per cent. ( $3\frac{1}{8}\%$ ) per annum from the date hereof, semi-annually on the first day of January and the first day of July in each year until said principal sum becomes due and payable as herein provided and thereafter at the legal rate of interest until payment of said principal sum. The principal of, premium, if any, and interest on this Bond are payable at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the option of the registered holder, 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.

This Bond is one of a duly authorized issue of Bonds of the Company, designated generally as its "First and Refunding Mortgage Bonds" (hereinafter called the "Bonds"), limited to an aggregate principal amount of Seventy-Five Million Dollars (\$75,000,000) 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 (hereinafter called the "Indenture"), dated as of January 1, 1951, executed by the Company to CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, as Trustee (hereinafter called the "Trustee"), to which Indenture and any and all supplements thereto reference is hereby made for a statement of the property mortgaged and pledged, the nature and extent of the security, the rights of the holders of the Bonds and coupons thereunder, the rights, duties and immunities of the Trustee thereunder, and also for a statement of the terms and conditions upon which the Bonds

are issued, received and held, to all of which the holder of this Bond assents by the acceptance hereof. This Bond is one of a series of the Bonds designated as First and Refunding Mortgage 3½% Bonds, Series A, which series is limited to an aggregate principal amount of Twenty-Two Million Dollars (\$22,000,000).

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.

The Bonds of this series are entitled to the benefit of, and are subject to redemption through operation of the sinking fund provided for in the Indenture, to the extent therein provided.

As provided in the Indenture, the Bonds of this series are redeemable before maturity (1) at the option of the Company at any time, as a whole or from time to time in part by lot, and (2) through the operation of the sinking fund on January 1, 1953, or on the first day of January of any year thereafter, in each case upon publication of notice of such redemption once in each week, on any day in the 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) 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, at prices equal to the following percentages of their principal amount:



Redemption During the Years	Optional Redemption Price	Sinking Fund Redemption Price
1951 and 1952	104.500%	(not redeemable)
1953 and 1954	104.000%	102.000%
1955 and 1956	103.625%	101.813%
1957 to 1959, inclusive	103.125%	101.563%
1960 to 1962, inclusive	102.750%	101.375%
1963 to 1965, inclusive	102.250%	101.125%
1966 to 1968, inclusive	101.750%	100.875%
1969 to 1971, inclusive	101.375%	100.688%
1972 to 1974, inclusive	100.875%	100.438%
1975 to 1977, inclusive	100.500%	100.250%
1978 and 1979	100.125%	100.125%
1980	100 %	100 %

in each case plus accrued and unpaid interest thereon to the date designated for redemption. If this Bond is duly called for redemption and payment of the optional redemption price or the sinking fund redemption price, as the case may be, duly provided for, this Bond shall cease to bear interest from and after the date designated for such redemption.

This Bond is transferable by the registered holder hereof in person or by his attorney duly authorized, at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York, upon surrender 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, and upon cancellation of this Bond. Thereupon a new Bond or Bonds of the same series, in registered form without coupons, for a like aggregate principal amount, will be issued to the transferee in exchange therefor as provided in the Indenture.

The Bonds of this series are issuable in the form of coupon Bonds in the denomination of \$1,000 and in the form of registered Bonds without coupons in denominations of \$1,000, \$5,000, \$10,000, and any multiple of \$10,000. In the manner and upon the conditions, including payment of charges, prescribed in the Indenture, coupon Bonds and registered Bonds without coupons of this series, and registered Bonds without coupons of the several denominations are inter-

changeable, upon presentation thereof for that purpose at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York.

On the conditions, in the manner and to the extent permitted by the Indenture, the provisions of the Indenture may be amended and the rights of the bondholders under the Indenture may be modified or compromised, by the action of the holders of 66-2/3% in principal amount of the Bonds then outstanding to be affected by any such action, and certain other powers set out in the Indenture may be exercised by the action of the holders 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 amendment, modification or compromise, nor any exercise of any such powers, shall change the maturity, or the principal amount, or redemption price, or rate of interest, of any of the Bonds or otherwise alter or impair the obligation of the Company in respect of the payment of the principal thereof or the interest thereon, without the consent of the holder of each Bond affected thereby, or reduce the percentage required by the Indenture for any action authorized to be taken by the holders of Bonds.

No recourse shall be had for the payment of the principal of, or premium, if any, or interest on this Bond, or any part thereof, or for any claim based hereon or otherwise in respect hereof, or of the indebtedness represented hereby, or in respect of the Indenture, or under or upon the obligations, covenants and agreements contained in the Indenture, 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, all such liability being expressly waived and released as a condition of, and as a part of the consideration for the execution of the Indenture and the issue of the Bonds and coupons.

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 the manual or facsimile signature of its President, or one of its Vice Presidents, and its corporate seal or a facsimile thereof to be affixed hereunto or imprinted hereon and to be attested by the manual signature of 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.

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO  
as Trustee,

By.....  
Authorized Officer

and

WHEREAS, the Bonds of series other than Series A, and the coupons to be attached to such thereof as may be coupon Bonds, are to be substantially in the forms, respectively, hereinabove set forth for the Series A Bonds, with such omissions, insertions and variations as may be authorized or permitted by this Indenture, to be determined as to each series by the Board of Directors of the Company at the time of the creation thereof; and

WHEREAS, all acts and things prescribed by law (including the laws of the State of California), 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 and have happened:

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, the Company, in consideration of the premises and of the purchase and acceptance of the Bonds and coupons by the holders thereof, and of the sum of ten dollars lawful money of the United States of America to it paid by the Trustee, receipt whereof is hereby acknowledged, has executed and delivered this Indenture, and has mortgaged, pledged, granted, conveyed, assigned and transferred, and by these presents does mortgage, pledge, grant, convey, assign and transfer unto the Trustee, its successors in the trust, and its and their assigns, all and singular, the following described properties, viz.:

FIRST: The following described lines of railroad now owned by the Company:

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 general 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 Kerlinger*

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 Kerlinger, San Joaquin County, California; being about 2.34 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, Humboldt, 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 and operating contracts.

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 now or at any time hereafter subject to the lien hereof, 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 anywise 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: Except as in these Granting Clauses otherwise specifically provided, all the right, title and interest, of every name and nature, of the Company in and to all engines, locomotives, tenders, cars, coaches, buses, 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 or for the Company, if the Company shall (a) prior to the beginning of construction of any such equipment deliver to the Trustee written Notice that it intends to construct the same or have the same constructed for it and on or before a specified date, not later than one year after the completion of construction 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 shares of capital stock now owned by the Company:

<u>Name of Company</u>	<u>Par Value Per Share</u>	<u>No. of Shares</u>	<u>Total Par Value</u>
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	—
The Pullman Company .....	10.	3,072	30,720.00

SEVENTH: Except as in these Granting Clauses otherwise specifically provided, any and all other property of every kind and description, real, personal or mixed, owned by the Company 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: Except as in these Granting Clauses otherwise specifically provided, 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: 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.

FOURTEENTH: Except as in these Granting Clauses otherwise specifically provided, all the revenues, rents, earnings, 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 these Granting Clauses and in Articles Four, Eleven and Fourteen 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 9.02 hereof shall have happened and be continuing, it is not intended to include under the lien of this Indenture, and this conveyance, mortgage and pledge shall not be deemed to apply to (1) any cash, Federal, State or local government securities, bills, notes or accounts receivable, or materials and supplies (except cash deposited with the Trustee pursuant to any of the provisions hereof, or government securities, bills, notes or accounts receivable specifically subjected to the lien hereof and assigned to or deposited with the Trustee), or (2) any revenues, rents, earnings, issues, tolls, profits or other income from the premises or property constituting the trust estate (except as otherwise provided in Articles Eight and Nine 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, earnings, issues, tolls, profits and 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 conveyances, mortgages and pledges hereby made all shares of stock, bonds, notes and other indebtedness of Sacramento Northern Railway owned or held by the Company;

AND PROVIDED FURTHER, that there is hereby excepted and reserved out of the conveyances, mortgages and pledges 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 any securities of, or acquire or lease as a whole or substantially as a whole 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, neither the securities so acquired nor the properties so acquired or leased nor any betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions or alterations of, to, upon or for said properties purchased, constructed or acquired by the Company after the date of any such acquisition or lease shall become subject to the lien hereof, unless such securities or properties of such corporation shall have been made the basis in whole or in part for the authentication and delivery of Bonds hereunder or the payment of cash or the release of property hereunder or acquired with proceeds of insurance on property subject to the lien hereof; and (b) if the Company shall be consolidated with or merged into, or shall convey the trust estate as a whole, or substantially as a whole, to any corporation or if any corporation shall be merged into the Company, 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 the Company makes any such conveyance or which is merged into the Company 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 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, bonds or other obligations of carrier or other corporations of the kinds specified in Clause D of Section 3.03 hereof, to such rights, if any, as other railroad corporations, states or municipalities may have with respect to the acquisition or disposition of such stock, bonds or other obligations:

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, mortgagees or vendors, however designated, under any presently existing equipment trust agreements, leases, conditional sale agreements, mortgages or other liens relating to equipment;

SUBJECT, ALSO, to the title or lien of any owner, lessor, noteholder, certificate holder, mortgagee or vendor, whether as trustee or otherwise, and however designated, 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 present and future holders of the Bonds or coupons, without preference, priority or distinction as to lien or otherwise of any one Bond over any other Bond by reason of priority in the issue or negotiation thereof, or otherwise, subject to the provisions of Section 9.01 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, agree-

ments, uses and trusts; and it is covenanted between the parties hereto and expressly for the benefit of the respective holders from time to time of the Bonds and coupons, as follows:

## ARTICLE ONE.

## DEFINITIONS.

SECTION 1.01. Certain words and terms are specially or variously defined in this Indenture. Reference to certain, although not necessarily all, sections hereof containing special definitions is included in this Article One only for convenience.

Unless the context otherwise requires, the words and terms defined in this Article One, wherever used in this Indenture, shall be deemed and construed to have the meanings herein set forth.

SECTION 1.02. The word "Additions" is defined in Section 3.03.

The term "Additions and Betterments" shall mean all physical additions to or improvements, extensions and betterments of any property of the Company (whether now owned or hereafter acquired which at the time is owned by the Company and is subject to the lien of this Indenture) acquired or constructed by the Company after June 30, 1950, the cost of which, at the time of acquisition or construction, shall be properly chargeable to the accounts of the Standard Accounting Rules presently entitled: Road and Equipment Account, Improvements on Leased Property Account and Miscellaneous Physical Property Account, except

- (a) Equipment;
- (b) Betterments to Equipment; and
- (c) Purchased Property.

The term "Board of Directors" shall mean the Board of Directors of the Company, and shall include both the Board of Directors and the Executive Committee, if any, of the Company.

The words "Bonds", "coupons", "bondholders" and "holders" of Bonds and coupons shall include both the singular and the plural number. The word "Bonds" is defined in the fifth Recital.

The term "*Bonds at any one time outstanding*", when used in Sections 2.03 and 6.01 hereof with respect to any series, shall mean all Bonds of such series which have theretofore been authenticated and delivered, except Bonds of such series held in the treasury of the Company which have never been issued.

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 5.04 hereof, (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, and (f) Bonds in lieu of or in substitution for which other Bonds shall have been authenticated and delivered pursuant to the provisions of Section 2.03 hereof.

The terms "*Bonds outstanding*" and "*outstanding Bonds*" are specially and variously defined in Sections 4.02 and 16.02.

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 7.01 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 or by the Executive Committee of the Company, 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 "*Company*" is defined in Section 14.05.

The term "*Cost*" when used with reference to any Purchased Property shall mean the amount properly charged to Investment Accounts under Standard Accounting Rules as the investment of the Company therein, except that (a) in the case of Purchased Property which shall be required or permitted by Standard Accounting Rules to be charged to Road and Equipment Account at the original cost thereof when first devoted to public utility use, the Cost thereof shall mean the investment of the Company therein; and (b) in the case of Purchased Property subject to any lien or charge prior to the lien hereof (other than Permitted Encumbrances) the Cost thereof shall mean the investment of the Company therein less the aggregate principal amount of indebtedness secured by such lien or charge, whether or not assumed or guaranteed by the Company; and, when used with reference to securities, shall mean the amount properly charged to Investment Accounts in accordance with Standard Accounting Rules as the investment of the Company therein.

The term "*Cost of Additions and Betterments*" shall mean the amount properly charged to that portion of Road and Equipment Account relating solely to Road Property, Improvements on Lensed Property Account, and Miscellaneous Physical Property Account, under Standard Accounting Rules, as the cost or investment of the Company therein.

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 "*deposited cash*" is defined in Section 3.05.

The term "*event of default*" is defined in Section 9.02.

The term "*Granting Clauses*" shall mean all those provisions of this Indenture which follow the Recitals and precede the Habendum.

The term "*Income After Fixed Charges*" shall mean Income After Fixed Charges as determined in Section 6.01.

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*" or "*independent appraiser*" shall mean an engineer or appraiser, 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 or appraiser regularly employed by other railroad companies not affiliated with the Company.

The term "*lessee corporation*" is specially defined in Article Fourteen.

The term "*lines of railroad directly or indirectly subject to the lien hereof*" is defined in Section 11.01.

The word "*majority*" shall mean majority in principal amount.

The term "*Net Cost*", when used with respect to Additions and Betterments for a specified period, shall mean the Cost of such Additions and Betterments as herein defined minus the aggregate amounts credited to that portion of Road and Equipment Account relating solely to Road Property, Improvements on Leased Property Account and Miscellaneous Physical Property Account, in accordance with the requirements of Standard Accounting Rules, by reason of the retirement of any of such Additions and Betterments during such period.

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

Assistant Treasurer, or the Comptroller and General Auditor, or other chief accounting officer of the Company.

The term "*optional redemption price*" is defined in Section 5.01.

The term "*outstanding Bonds*": See "*Bonds outstanding*" above.

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, assessments or governmental charges not then delinquent; liens for the payment or discharge of which provision satisfactory to the Trustee has been made; mechanics', laborers', materialmen's and similar liens not then delinquent; any of such liens, irrespective of amount, whether or not delinquent, the validity of which is being contested at the time by the Company in good faith and by appropriate legal proceedings; and undetermined liens or charges incidental to construction;

(b) any obligation or duty affecting the trust estate or any part thereof or the use, removal, control or regulation thereof, arising under any provision of law or any franchise, grant, license or permit granted or issued by any public authority;

(c) interests of others than the Company in property owned jointly or in common;

(d) easements and rights of way, and liens or encumbrances subject to which such easements or rights of way may be possessed, exceptions, reservations, restrictions, conditions, limitations, covenants, party wall agreements, and adverse rights or interests, and any other defects or irregularities in title affecting the trust estate customarily found in cases of properties of the size and character of the trust estate;



*provided* that, in the opinion of Counsel, none of such items materially impairs the use of the affected property by the Company, and may be properly ignored as to its effect upon the security of this Indenture.

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 "*Purchased Property*" shall mean lines of railroad, bridges, railroad terminals or other carrier property, purchased or acquired by the Company which the Board of Directors shall consider necessary or useful in the operation of the lines of railroad comprised in the trust estate, except lines of railroad, bridges, railroad terminals or other carrier property purchased or acquired from a corporation at least 95% of whose stock of each class was owned by the Company at the time of the execution and delivery of this Indenture or at least 95% of whose stock was thereafter acquired and theretofore made the basis of the authentication and delivery of Bonds hereunder, or the payment of cash, or the release of property hereunder, or acquired with proceeds of the insurance on property subject to the lien hereof.

The term "*Securities*" is specially defined in Section 3.03.

The term "*sinking fund redemption price*" is defined in Section 5.01.

The term "*Standard Accounting Rules*" shall mean the rules and regulations of the Commission for a uniform system of accounts for steam railroads (or its rules and regulations for a uniform system of accounts for electric railways as to any carrier the accounts of which are governed thereby), 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 WESTERN PACIFIC RAILROAD COMPANY

Article One  
Section 1.03  
Article Two  
Section 2.01

29

The term "*Subject Clauses*" shall mean the four paragraphs immediately following the Habendum.

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 "*successor corporation*" is specially defined in Article Fourteen.

The term "*trust estate*" is defined in the Habendum. For certain exclusions from the "*trust estate*" see Section 14.02.

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

The term "*Unrestricted Bonds*" is defined in Section 3.02.

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

SECTION 1.03. Whenever a "*Consent*", "*Order*", "*Notice*", "*Request*" or other instrument of the Company (other than an "*Officers' Certificate*") is required to be delivered to the Trustee preliminary to any action authorized to be taken by it upon same, it shall be in writing, duly executed on behalf of the Company by the President or a Vice President and have the corporate seal of the Company thereto affixed, attested by the Secretary or an Assistant Secretary.

ARTICLE TWO.

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

SECTION 2.01. The authorized principal amount of Bonds issuable under this Indenture is limited so that the aggregate principal amount at any one time outstanding shall not exceed Seventy-Five Million Dollars (\$75,000,000), except as otherwise provided in Section 2.08 of this Article Two.

SECTION 2.02. From time to time the Bonds shall be executed on behalf of the Company, and delivered to the Trustee for authentication by it, and thereupon, as provided in this Indenture and not otherwise, the Trustee shall authenticate and deliver the same. Bonds may be authenticated and delivered hereunder in advance of the recording, registering or filing of this Indenture, but the Company covenants that, with all convenient speed, it will cause this Indenture to be duly recorded.

The Bonds shall be signed on behalf of the Company by its President or any Vice President (the signature of either of whom may be a facsimile signature) and its corporate seal shall be affixed (or a facsimile thereof imprinted thereon) and attested by its Secretary or one of its Assistant Secretaries. In case any of the officers of the Company who shall have signed or sealed and attested any of the Bonds shall cease to be such officers of the Company before the Bonds so signed or sealed and attested shall have been actually authenticated and delivered by the Trustee or issued, such Bonds, nevertheless, may be authenticated and delivered and issued as though the persons who signed or sealed and attested such Bonds had not ceased to be officers of the Company, and also any such Bond may be signed or sealed and attested on behalf of the Company by such persons as at the actual date of the execution of such Bond shall be the proper officers of the Company, although at the nominal date of such Bond any such person shall not have been such officer of the Company. The coupons to be attached to coupon Bonds shall bear the facsimile signature of the present Treasurer or of any future Treasurer of the Company, and the Company may adopt and use for that purpose the facsimile signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such Bonds shall be actually authenticated and delivered.

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, when issued, shall be conclusive evidence that the Bond so authenticated and any coupons appertaining thereto have been duly issued hereunder and that the holder is entitled to the benefit of the trust hereby created. Before authenticating or delivering any coupon Bond, the Trustee shall (except as provided in Sections 2.05 and 2.08 of this Article Two) detach and cancel all coupons then matured and thereafter, upon the written request of the Company, deliver the same to it.

SECTION 2.03. The Bonds shall be issuable in series and the Bonds of each series shall be distinctively designated. The Series A Bonds and the coupons attached thereto shall be in substantially the respective forms hereinbefore recited. Bonds of other series shall also be in substantially the forms hereinbefore recited, with such variations, permitted by this Indenture, as the Board of Directors shall determine at the time of creation of each series.

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.

All Bonds of the same series shall be identical in form, except that they may be of 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 several series of Bonds may differ from the Series A Bonds and as between series in respect of any or all of the following characteristics:

- (a) title;
- (b) date;
- (c) date of maturity, but, except with respect to Unrestricted Bonds issued pursuant to Section 3.02 hereof, not

earlier than January 1, 1981, so long as any Series A Bonds are outstanding;

- (d) interest rate;
- (e) interest payment dates;
- (f) denominations;
- (g) provisions, if any, in respect of sinking fund, but except with respect to Unrestricted Bonds issued pursuant to Section 3.02 hereof, if the annual sinking fund provided for the benefit of the Bonds of any other series shall be greater than 1% of the principal amount of the Bonds of such series at any one time outstanding, the sinking fund provided herein for the benefit of Series A Bonds shall, so long as any Series A Bonds are outstanding, be automatically and correspondingly increased from and after the date of the creation of such series;
- (h) provisions, if any, as to registration of coupon Bonds as to principal, as to interchangeability of coupon Bonds and registered Bonds without coupons, and as to exchangeability of Bonds for Bonds of different denominations;
- (i) limitations upon the aggregate principal amount of Bonds of such series which may be issued;
- (j) provisions, if any, for the payment of principal or interest without deductions for taxes or for reimbursement for taxes;
- (k) provisions, if any, in respect of the right of the Company to redeem Bonds before maturity (subject to the provisions of Article Five hereof);
- (l) provisions, if any, for conversion of Bonds into stock of the Company or otherwise; and
- (m) in any other respect not inconsistent with the provisions of this Indenture.

more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was published or mailed as provided in Subsection A of this Section 4.02. 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.

G. Any such resolution so adopted in accordance with the provisions of Subsection E of this Section 4.02 at a meeting of the holders of Bonds 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 issued under this Indenture 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, and the passing of any such resolution shall be conclusive evidence that the circumstances justified the passing thereof.

H. Bonds authenticated and delivered after the date of any such meeting, or after the delivery to the Trustee of any instrument pursuant to Subsection I of this Section 4.02, 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 theretofore delivered, and upon the demand of the holder of any Bond outstanding at the date of any such meeting, or at the date 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 of the Company, to any resolution adopted as provided in this Section 4.02, or to any instru-



ment delivered pursuant to Subsection I 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 to this Indenture embodying any modification or repeal of or addition to the provisions of this Indenture, or any modification of or addition to the rights and obligations of the Company or the rights of the holders of the Bonds and appurtenant coupons, made as provided in this Section 4.02, 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 Section 4.02, shall be executed by the Company and the Trustee.

I. Any action which may be taken or any power which may be exercised at a meeting convened pursuant to this Section 4.02 may also be taken or exercised by an instrument or instruments signed by the holders of such percentage of the principal amount of outstanding Bonds affected thereby 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 take such action or exercise such power.

#### ARTICLE FIVE.

##### REDEMPTION OF BONDS.

SECTION 5.01. The Series A Bonds may be redeemed before maturity at the option of the Company on any date or dates, in whole or in part by lot, in the manner and upon the conditions hereinafter stated, and are also subject to redemption through the operation of the sinking fund provided for in Section 6.01 hereof on January 1,

1953 or on the first day of January of any year thereafter, at prices equal to the following percentages of their principal amount:

Redemption During the Years	Optional Redemption Price	Sinking Fund Redemption Price
1951 and 1952	104.500%	(not redeemable)
1953 and 1954	104.000%	102.000%
1955 and 1956	103.625%	101.813%
1957 to 1959, inclusive	103.125%	101.563%
1960 to 1962, inclusive	102.750%	101.375%
1963 to 1965, inclusive	102.250%	101.125%
1966 to 1968, inclusive	101.750%	100.875%
1969 to 1971, inclusive	101.375%	100.688%
1972 to 1974, inclusive	100.875%	100.438%
1975 to 1977, inclusive	100.500%	100.250%
1978 and 1979	100.125%	100.125%
1980	100 %	100 %

in each case plus accrued and unpaid interest thereon to the date designated for redemption.

The redemption provisions of any series of Bonds, other than the Series A Bonds (if the right to redeem Bonds of any such series before maturity is reserved by the Company), shall be determined by the Board of Directors at the time of the creation of such series, as provided in Section 2.03 hereof, and shall be set out in an indenture supplemental hereto executed pursuant to Sections 3.06 and 4.01 hereof, except that Sections 5.03, 5.04 and 5.05 hereof shall apply to the redemption of all series of Bonds which are redeemable.

SECTION 5.02. Notice of redemption of all of the Series A Bonds, or any part thereof, shall be given by the Company by publication 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, once in each week, on any day in the 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 desig-

nated for such redemption. 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 Series A Bonds called for redemption shall cease to accrue from and after the date designated for redemption, and shall require that the Series A Bonds called for redemption be presented for payment at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or, at the option of the holder, at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York. The Company shall also cause a copy of such notice to be mailed, postage prepaid, at least thirty days prior to the date designated for such redemption, to the registered holders of registered Series A Bonds without coupons and of Series A Bonds in coupon form registered as to principal called for redemption, at their last addresses appearing on the Bond registry books, but neither failure to mail any such notice nor any defect therein or in the mailing thereof shall affect the validity of any proceedings for the redemption of such Bonds. In any case where all of the Series A Bonds to be redeemed shall be registered Bonds without coupons or coupon Bonds registered as to principal, no notice by publication shall be required, but notice of redemption shall be mailed, postage prepaid, at least thirty days prior to the redemption date to the respective registered holders of the Bonds called for redemption at their last addresses appearing on the Bond registry books.

SECTION 5.03. In case the Company shall elect to redeem less than all of the Bonds of any series then outstanding, it shall give the Trustee adequate advance written notice of the aggregate principal amount of Bonds of such series to be redeemed, and thereupon the Trustee shall determine by lot the particular Bonds to be redeemed, in any manner deemed by it, in its unrestricted discretion, to be fair, and the notice of redemption in that case shall specify the serial numbers of the Bonds to be redeemed. In any such determination by lot the unit for redemption purposes shall be \$1,000 in prin-



principal amount and to that end each Bond of a denomination larger than \$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. If less than the whole principal amount of any Bond shall be called for redemption, said notice shall also specifically state the portion of the principal amount thereof which is to be redeemed, and that, upon surrender 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. Upon surrender of any Bond which is to be redeemed in part only, accompanied by a written instrument of transfer in a 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 without charge to the holder 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, in any authorized denomination or denominations, all as requested by such holder, for the unredeemed portion of the principal amount of the surrendered Bond.

SECTION 5.04. Notice of redemption having been duly given in the manner provided in Section 5.02 in the case of Series A Bonds or in the manner provided at the time of the creation of such series in the case of Bonds of any other series, the Bonds so called for redemption (including the designated portion of any Bond to be redeemed in part only) shall, on the date designated for redemption in such notice, become due and payable at the redemption price thereof; and if the Company on or before the date designated for redemption shall have deposited in trust with the Trustee, or with any paying agent, an amount in cash sufficient to redeem all the Bonds or portions of 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 or said portions thereof, and upon presentation

thereof in accordance with said notice, with all unmatured coupons, if any, thereto appertaining, said Bonds or said portions thereof shall be paid at such redemption price; *provided, however*, that in case the date designated for redemption shall be an interest payment date and any Bond so presented shall not be accompanied by the coupon maturing on such date, 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; and *provided, further*, that accrued unpaid interest represented by coupons which shall have matured prior to the date designated for redemption shall continue to be payable to the respective holders thereof on presentation for payment. If not so paid and redeemed on such presentation thereof, the Bonds shall continue to bear interest at the legal rate of interest until paid.

SECTION 5.05. All Bonds redeemed and paid under the provisions of this Article Five, 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 the written request of the Company, be delivered to it.

#### ARTICLE SIX.

##### SINKING FUND FOR SERIES A BONDS.

SECTION 6.01. The Company shall pay to the Trustee on or before the first day of May, 1952 and on or before the first day of May in each year thereafter so long as any Series A Bonds are outstanding, as and for a sinking fund for the retirement of such Bonds, the sum of \$220,000 in cash; *provided, however*, that if in any such year the Income After Fixed Charges of the Company for the calendar year next preceding such sinking fund payment date, determined in accordance with the regulations of the Commission at the time in force, adjusted as follows:

(1) There shall be added to such income such amounts as shall have been charged to operating expenses during such year representing the service value (i.e. the ledger value less the value of salvage, if any) of any nondepreciable road property retired and not replaced; and

(2) In determining such income, any adjustment necessary to correct the income account for any prior year shall be made by appropriate entries either in the accounts of the current year (unless in violation of the applicable orders, instructions and regulations) or, in the discretion of the Board of Directors and subject to any requisite approval of the Commission or other public regulatory body having jurisdiction in the premises, in whole or in part in the accounts of any subsequent year or years; and in determining such income for any year any such entries made in the accounts of that year to adjust the income accounts of prior years cleared through income accounts shall be treated as items affecting the income accounts for the year in which they are entered on the books, *provided, however*, that in determining such income for any year no adjustments necessary to correct the income account of any prior year need be taken into account except to the extent that cash shall have been received or paid or set aside for payment in respect thereof in such year, or prior to March 31 in the next succeeding year; and

(3) If prior to March 31 in any year the Board of Directors shall determine that a substantial liability exists which would have reduced such income for the preceding calendar year or years if such liability had been accrued in such year or years, then all or such portion of such liability as the Board of Directors shall determine may be deducted in arriving at such income for the preceding calendar year, in which case such amount so deducted shall not again be deducted in arriving at such income for any subsequent year or years;

shall be less than \$220,000, the Company shall have the right to pay into the sinking fund on May 1 of such year the lesser amount and to postpone the payment of the difference between \$220,000 and such



lesser amount until the amount of such Income After Fixed Charges, adjusted as aforesaid, for the next succeeding calendar year or years exceeds \$220,000, whereupon an amount equal to such excess shall be paid into the sinking fund on the next May 1 until no deficiency remains. If at any time the Company shall create a series of Bonds, other than Series A Bonds and any series created pursuant to Section 3.02 hereof, with provision for an annual sinking fund greater than 1% of the principal amount of the Bonds of such series at any one time outstanding, the sinking fund provided herein for the benefit of Series A Bonds shall, so long as any Series A Bonds are outstanding, be automatically and correspondingly increased from and after the date of the creation of such series, but the provisions of this Article Six shall not be otherwise affected in any respect whatsoever.

At the option of the Company sinking fund payments may be made either in cash or in Series A Bonds previously authenticated and delivered by the Trustee and issued and sold by the Company and subsequently purchased by the Company, with all unmatured coupons and matured coupons not fully paid attached, at the principal amount thereof or at the cost thereof to the Company (exclusive of accrued interest and brokerage commissions), whichever is less, or partly in cash and partly in such Bonds; *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 cost or costs (exclusive of accrued interest and brokerage commissions) therein specified and the Trustee shall be fully protected in relying thereon.

For the purposes of this Article Six the Trustee shall be fully protected in relying upon an Officers' Certificate delivered to it by the Company with respect to the amount of Income After Fixed Charges of the Company for such preceding calendar year, the ad-

justments thereof as aforesaid, and the amount resulting from such adjustments.

SECTION 6.02. The Trustee shall from time to time apply the moneys in such sinking fund

(1) to the purchase of outstanding Series A Bonds (which purchases may be made at private sale, 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 such price including accrued interest (but exclusive of brokerage commissions) shall not exceed the then current sinking fund redemption price; or

(2) on the written Order of the Company, to the purchase of obligations of the United States of America and obligations guaranteed by the United States of America at or about market prices prevailing at the time, plus accrued interest; or

(3) to the redemption of Series A Bonds as hereinafter provided.

If on the 10th day of November in any year, beginning with the year 1952, the moneys then in the sinking fund plus the then market value plus accrued interest of any obligations specified in the above subparagraph (2) then held in the sinking fund aggregate an amount sufficient to provide for the redemption for the sinking fund, exclusive of accrued interest, on the following January 1 of at least \$50,000 principal amount of Series A Bonds, the Trustee shall sell promptly all such obligations and the Company shall call Series A Bonds for redemption for the sinking fund on the first day of January following, as provided in Article Five hereof, in an amount sufficient to exhaust as nearly as practicable the moneys in the sinking fund. In such case the Trustee is authorized to give the notices required by Section 5.02 hereof 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 5.04 hereof provided.

Any such moneys not so applied may be applied by the Trustee prior to the next sinking fund payment date to the purchase of Series A Bonds upon the terms set forth in this Section 6.02, and any part thereof not so applied prior to the next sinking fund payment date shall be added to the next sinking fund payment and, together with said payment, applied in accordance with the provisions of this Article Six.

Upon the request of the Trustee, the Company shall pay to the Trustee, or reimburse it for, the accrued interest on and any brokerage commissions payable with respect to the purchase of any Series A Bonds so purchased by the Trustee, and the expenses of redemption and accrued interest upon such Bonds so called for redemption as herein provided, and the compensation and other expenses of the Trustee for acting as sinking fund agent, it being the intention that such brokerage commissions, expenses, accrued interest and compensation shall not be charged against the sinking fund. The Trustee, however, shall not be liable for the payment of the principal of, premium, if any, 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.

The Trustee shall, from time to time, on the written Order of the Company, sell in such manner and on such terms as the Company may direct, any obligations specified in subparagraph (2) of this Section 6.02 at the time held in the sinking fund, and the proceeds thereof, as well as the proceeds of payment of any such obligations which become due while held in the sinking fund, and any interest paid thereon while held in the sinking fund, shall constitute moneys in the sinking fund and shall be applied from time to time as in this Article Six provided. All profits realized from such sales shall be credited to the sinking fund. The Company shall reimburse the sinking fund, upon the request of the Trustee, for all losses incurred from such sales.

Anything in this Section 6.02 to the contrary notwithstanding, if at any time any one or more of the events of default as defined in Section 9.02 hereof shall have happened and be continuing, no



moneys in the sinking fund shall be applied as hereinabove provided in this Section 6.02, except for the redemption of Bonds publication of the notice of redemption of which had theretofore been commenced (or notice of redemption of which had theretofore been mailed in case all Bonds to be redeemed are registered Bonds or Bonds registered as to principal), or for the purchase of Bonds the tender of which had theretofore been accepted, but all moneys and obligations held in the sinking fund while any such event of default shall exist shall, unless and until all such defaults are remedied, be held as additional security for the payment of all the Series A Bonds then outstanding, and the Trustee may in its discretion sell any obligations specified in subparagraph (2) of this Section 6.02 at the time held in the sinking fund and the proceeds thereof shall thenceforth constitute moneys in the sinking fund.

SECTION 6.03. Until the first publication of notice of redemption (or the mailing of notice of redemption in case all Bonds to be redeemed are registered Bonds or Bonds registered as to principal), or the acceptance of any tender of Bonds if purchased as provided in Section 6.02 hereof, all moneys and obligations in the sinking fund provided for in Section 6.01 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 mailing 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 Bonds the tender of which has been accepted as aforesaid.

SECTION 6.04. If the Company shall pay or cause to be paid the whole amount of the principal and premium, if any, and interest due and payable upon all of the outstanding Series A Bonds at maturity or upon redemption or shall provide for payment of such Bonds by depositing with the Trustee or with any paying agent the entire amount then due and payable thereon for principal and premium, if any, and interest to the date of payment, or shall make other provision satisfactory to the Trustee for the payment thereof, or shall at any time deliver all of the Series A Bonds and coupons apper-

Article Six  
Section 6.05  
Article Seven  
Section 7.01

76

taining thereto then outstanding to the Trustee for cancellation, and shall also pay, or cause to be paid, all other sums payable hereunder in respect of Series A Bonds by the Company, then and in that case the Trustee shall release from the sinking fund and turn over to the Company free from any of the provisions of this Indenture all moneys and obligations remaining in the sinking fund after such payment has been made or provided for or such Bonds and coupons have been delivered to the Trustee, as the case may be.

SECTION 6.05. All Bonds purchased or redeemed by operation of the sinking fund as provided in Section 6.02 hereof, or delivered to the Trustee pursuant to Section 6.01 hereof, and the coupons appertaining thereto, shall be forthwith cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it. No new Bonds of any series shall be issued in lieu of any Series A Bonds acquired through the operation of the sinking fund.

#### ARTICLE SEVEN.

##### PARTICULAR COVENANTS OF THE COMPANY.

*The Company covenants with the Trustee as hereinafter in this Article set forth:*

SECTION 7.01. The Company will duly and punctually pay the principal of and the interest on the Bonds, at the places, on the dates, in the manner and in the amounts specified in the Bonds or in the coupons thereto appertaining, according to the true intent and meaning thereof and hereof. When and as paid, all Bonds, together with the coupons thereto appertaining, if any, and all coupons, shall be surrendered to the Trustee and shall be cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it.

At all times until the payment of the principal of the Bonds, the Company will maintain an office or agency in the City and County of San Francisco, California, and will also maintain an office or agency in the Borough of Manhattan, City and State of New York, at each of which the Bonds and coupons may be presented for pay-

ment, 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 of such Bonds are outstanding, an office or agency in such other place at which such Bonds and their coupons may be presented for payment, where such Bonds may, if registerable, transferable or exchangeable, be presented for registration, transfer or exchange, and where notices and demands in respect thereof may be served. The Company will give written 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 such written Notice thereof or of any change thereof, presentation and demand may be made and notices served at the principal office of the Trustee.

SECTION 7.02. 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.



SECTION 7.03. 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 has good right and lawful authority to convey, mortgage and pledge the same as provided in and by this Indenture. Upon compliance with the covenants contained in Section 3.01 hereof, said lines of railroad, franchises and other property will be free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon affecting the title thereto prior to this Indenture except those set forth in the Subject Clauses, 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 voluntarily create, or suffer to be created, or to arise, any debt, lien or charge (except to the extent permitted by the Granting Clauses and the Subject Clauses) having priority or preference over or equality with the lien of this Indenture upon the trust estate, or any part thereof; and within six 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 given 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 the validity or the amount thereof shall, in good faith, be duly contested; and *provided, further*, that nothing in this Section 7.03 shall require the Company to pay or discharge any debt, lien, charge, claim or demand described in the Subject Clauses, or subject to which any property may be acquired by the Company, until the maturity thereof.

SECTION 7.04. The Company from time to time 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 and priority of this Indenture shall be fully 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 tax, assessment or governmental charge so long as the validity or the amount thereof shall, in good faith, be duly contested; and *provided, further*, that the Company shall not be required to pay any such tax, assessment or governmental charge on property it has abandoned pursuant to permission granted by the Commission or other governmental body, if any, having jurisdiction; and *provided, further*, that the Company shall not be required to pay any such tax, assessment or governmental charge on property it has abandoned where no governmental body has jurisdiction if the property abandoned is no longer necessary for the maintenance or operation of the lines of railroad subject to the lien of this Indenture.

SECTION 7.05. The Company from time to time will duly make any and all payments required by the terms 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.

SECTION 7.06. 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 7.06 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.

SECTION 7.07. If the Company shall fail to pay any sum which in Sections 7.03, 7.04, 7.05 or 7.06 of this Article Seven the Company has covenanted to pay or discharge when such sum is payable by the terms of any such section, the Trustee, without prejudice to any of its rights hereunder by reason of such default, from time to time in its discretion may, but shall not be obligated to, pay any sum so in default, and shall have a lien upon the trust estate prior to the lien of the Bonds for any advances made by it for that purpose. The Trustee shall be under no obligation to give any notice to the holders of Bonds of any such payment.

SECTION 7.08. 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 thereof, in good repair, working order and condition, and will, from time to time, make thereto all needful and proper repairs, renewals and replacements, additions, betterments and improvements.

The Company will at all times keep and maintain in good repair and condition, ordinary wear and tear excepted, all equipment which, or the Company's interest in which, shall be or become subject to the lien of this Indenture, and will at all times keep the lines of railroad, premises and estate subject to the lien hereof supplied with motive power, rolling stock, other equipment, machinery, tools and supplies sufficient to operate the railroad efficiently and properly.

SECTION 7.09. The Company will not procure the authentication or delivery of, issue, negotiate, sell or dispose of 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 7.10. In case the Company shall hereafter create any mortgage, deed of trust or other lien upon any property subject to the lien hereof, such mortgage, deed of trust or other lien, except as



Bonds in an aggregate principal amount not exceeding the principal amount of the 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) 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 3.06 hereof;
- (b) An Officers' Certificate stating that none of the 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 obligation of the Company hereunder or under any indenture supplemental hereto, 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 any indenture supplemental hereto, or through the application of any moneys held by the Trustee as security hereunder;
- (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 obligations of the Company secured by the pledge of Bonds, a further Officers' Certificate stating, as the case may be, either (i) that none of the 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, and that the principal amount of Bonds then proposed to be authenticated and delivered under this Section 3.04 is not in excess of the principal amount so stated or the principal amount of such obligations, whichever is less; and
- (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 and obligations se-

cured by the pledge of 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 that such prior lien is or was the only other lien thereon except Permitted Encumbrances, and (iii) that the aggregate principal amount of Bonds theretofore and then proposed to be authenticated and delivered under this Section 3.04 with respect to such obligations is not in excess of 66⅔% of that part of the Cost (as defined in Section 1.02 hereof) to the Company of acquiring such property which has not theretofore been used as the basis for the authentication and delivery of Bonds, 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 been paid through the use of insurance proceeds, or for which the Company has not been reimbursed from other moneys in, or property released from, the trust estate—together with an Opinion of Counsel stating that such obligations are, or prior to such retirement were, 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 that such prior lien is or was the only other lien thereon except Permitted Encumbrances; and

(e) The Bonds or other obligations made the basis for the authentication and delivery of the Bonds then to be authenticated and any pledged Bonds securing such obligations; *provided, however*, that (i) in lieu of surrendering Bonds to the Trustee for cancellation the Company may deposit with the Trustee as trust funds an amount sufficient to pay at maturity or to redeem such Bonds, including premium, if any, and interest thereon to maturity or the date of redemption, subject, however, in the case of Bonds called or to be called for redemption, to the making of arrangements satisfactory to the Trustee for the completion of the call for such redemption and (ii) in

lien of surrendering such 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 satisfying, releasing or discharging the mortgage, deed of trust or other instrument under which such obligations were issued, 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 or other obligations so deposited with the Trustee shall, if uncanceled, be either in bearer form or accompanied by proper instruments of assignment or transfer. All Bonds deposited with the Trustee pursuant to this Section 3.04 shall forthwith be cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it. Other obligations, if uncanceled when deposited with the Trustee, shall be cancelled by the Trustee if paid or redeemed and if the Trustee shall have been furnished 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 or if furnished with an Opinion of Counsel that the obligations and/or the lien securing the same are extinguished as a matter of law by the acquisition thereof by the Company. Every other uncanceled obligation shall be held by the Trustee as additional security for the payment of the Bonds.

In case upon the payment, redemption or other retirement of any obligations of the Company which are secured by the pledge of Bonds and which are thereafter used as the basis for the authentication and delivery of Bonds under the provisions of this Section 3.04 the Company shall become entitled to the release of any Bonds theretofore



so pledged, the Company will immediately give written Notice to the Trustee of that fact, and shall obtain such Bonds and deliver them to the Trustee. Any Bonds so delivered to the Trustee shall forthwith be cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it; and no Bonds shall be authenticated or delivered in lieu thereof.

SECTION 3.05. At the option of the Company Bonds of any series, other than Series A and any series created pursuant to Section 3.02 hereof, may, from time to time, in accordance with and subject to the limitations of Section 2.01, this Section 3.05 and Sections 3.06 and 3.09 hereof, be executed by the Company and shall be authenticated by the Trustee and delivered to or upon the written Order of the Company against the deposit with the Trustee of an amount in cash equal to the principal amount of Bonds so authenticated and delivered, and upon the delivery to the Trustee of the documents required by Section 3.06 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 3.03 or Section 3.04 hereof, the Trustee shall, in lieu of such Bonds, pay over in accordance with the written Order of the Company, 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 3.03 hereof, such of the documents required by paragraphs (b), (c), (d) and (e) of said Section 3.03 as shall be applicable;
- (c) In case the payment of deposited cash is to be made in lieu of the authentication of Bonds under Section 3.04 hereof, such of the documents required by paragraphs (b), (c), (d) and (e) of said Section 3.04 as shall be applicable.

Whenever the Company shall have contracted for the acquisition or construction of Additions of such a character and under such circumstances that the Company would be entitled to partial reimbursement from deposited cash for expenditures made by the Company therefor, the Company may in lieu of paying and obtaining reimbursement thereof to the extent provided in Section 3.03 hereof require the Trustee in the first instance to make payment to such extent of or on account of the purchase price or the cost of construction of such Additions out of deposited cash to the person entitled to receive such payment upon or simultaneously with the subsection of any such Additions to this Indenture and the delivery to the Trustee of the documents specified in (a) and (b) of this Section 3.05, with appropriate modifications as far as necessitated by the fact that such expenditures are to be made by the Trustee instead of reimbursed by the Trustee.

SECTION 3.06. 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 2.05, 2.07, 2.08, 4.02 and 5.03 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) Certified Resolutions authorizing the issuance of such Bonds; and

(3) 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 (except with respect to Unrestricted Bonds issued pursuant to Section 3.02 hereof, not earlier than January 1, 1981 so long as any Series A Bonds are outstanding), 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;

(4) Unless the Opinion of Counsel hereinafter in paragraph (5) of this Section 3.06 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;

(5) An Opinion of Counsel stating that the execution and delivery of such Bonds have 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 (4) of this Section 3.06; 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;

(6) 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 all Bonds then outstanding, including pledged Bonds; and that upon the making of such pledge the aggregate principal amount of all such Bonds pledged by it will not exceed 150% of the aggregate principal amount of all indebtedness secured by such pledges.

SECTION 3.07. The Certified Resolutions, Officers' Certificates and Opinions of Counsel required or provided for by any provision of this Article Three to be delivered to the Trustee as a condition of the authentication of Bonds or payment of deposited cash hereunder may be received by the Trustee as conclusive evidence of any statement therein contained, and shall be full authority and protection to the Trustee acting on the faith thereof, for the authentication and delivery by it of Bonds or the payment of deposited cash.

The Trustee shall not be concerned with or be accountable to anyone for the use or application by the Company of any of the Bonds authenticated and delivered by the Trustee to or upon the Order of the Company or of any of the deposited cash paid by it to or upon the Order of the Company.

SECTION 3.08. Bonds authenticated and delivered under Sections 3.02, 3.03, 3.04 or 3.05 hereof may be pledged or hypothecated by the Company to secure indebtedness created, assumed or guaranteed, directly or indirectly, by the Company.

Nothing in this Indenture contained, except the limitations on the pledge of Bonds imposed in Section 7.14 hereof, shall limit the power of the Board of Directors to fix the price at which Bonds authenticated and delivered under any of the provisions of this Indenture may be issued, exchanged, sold or disposed of, but, subject to Section 7.14 hereof and to any provisions of law in respect thereof, any or all of the Bonds may be issued, exchanged, pledged, sold or disposed of upon such terms and for such considerations as shall be fixed by, or in accordance with, a resolution of the Board of Directors.

SECTION 3.09. 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 2.05, 2.07, 2.08, 4.02 and 5.03 hereof, shall be authenticated or delivered, and no deposited cash shall be paid to or upon the Order of the Company under Section 3.05 hereof, if an event of default as defined in Section 9.02 hereof shall, to the knowledge of the Trustee, have happened and be continuing.

#### ARTICLE FOUR.

##### SUPPLEMENTAL INDENTURES; BONDHOLDERS' MEETINGS.

SECTION 4.01. Without any action or consent by, or notice to, the holders of any of the Bonds, the Company, when authorized by resolution of its Board of Directors, and the Trustee, from time to time and at any time, may, and when so required by this Indenture shall, enter into an indenture supplemental hereto and which thereafter shall form a part hereof and be binding upon the holders of all Bonds then outstanding or thereafter issued hereunder, for any one or more of the following purposes:

- (a) To convey, transfer and assign to the Trustee and to subject to the lien of this Indenture additional property, subject to such liens or encumbrances and to such appropriate provisions not inconsistent herewith as shall be therein specifically described;
- (b) To correct the description of any property at any time subject to the lien of this Indenture;
- (c) To evidence the creation and provide for the issue of any series of Bonds hereunder and to prescribe the form of such Bonds and the coupons appertaining thereto, and to establish the terms, provisions and conditions thereof, all in accordance with Articles Two and Three hereof;
- (d) 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 under this Indenture;

(e) To make any modifications herein or in the form of any Bonds or their interest coupons which may be expedient to facilitate 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;

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

(g) To provide additional or other restrictions and limitations on the authorized amount, issue and purposes of Bonds, or additional covenants and undertakings of the Company with respect thereto;

(h) For any other purpose not inconsistent with the terms of this Indenture and which shall not impair the security of the same, whether in regard to matters or questions arising under this Indenture or for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective or inconsistent provision or any manifest error contained herein or in any supplemental indenture.

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, and to accept the conveyance, transfer and assignment of any property thereunder, upon delivery to it by the Company of

(1) Certified Resolutions authorizing such supplemental indenture; and

(2) An Opinion of Counsel stating that the execution of any such supplemental indenture is authorized by, and is in compliance with, the provisions hereof.

SECTION 4.02. In addition to the power and authority given under Section 4.01 hereof, whenever the Company shall desire any amendment or addition to or modification or repeal of any of the provisions



of this Indenture or any indenture supplemental hereto, or any sanction, authorization or waiver in Subsection E of this Section 4.02 authorized, it shall file a written Request with the Trustee, pursuant to and accompanied by Certified Resolutions, requesting the Trustee to call a meeting of the holders of the Bonds to be affected by any action proposed to be taken, for the purpose of considering and acting upon such proposal. The Trustee at any time in its discretion may, or upon receipt of any such Request or upon receipt of such a written request signed by the holders of at least 10% of the aggregate principal amount of the Bonds then outstanding shall, call a meeting of the holders of the Bonds that may be affected by the matters to be considered at such meeting, *provided*, that it shall be furnished at the time of delivering any such request with an amount sufficient to defray the cost of publishing, printing and mailing the notice in accordance with the provisions of Subsection A of this Section 4.02. Every such written request shall state the purposes of such meeting in reasonable detail. If the Trustee shall fail to call a meeting within ten days after being requested so to do, the Company, pursuant to a resolution of its Board of Directors, may call such meeting in the manner herein provided. Every such meeting of holders of Bonds shall be held in the City and County of San Francisco, California, or in the Borough of Manhattan, City and State of New York.

A. Notice of every such meeting, setting forth in reasonable detail the purpose thereof, shall be given by publishing the same once in each week on any day in the week for four successive calendar weeks in one daily newspaper printed in the English language and published and of general circulation in the City and County of San Francisco, California, and in one daily newspaper similarly printed, and published and of general circulation in the Borough of Manhattan, City and State of New York, 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 mailed, postage prepaid, at least 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, or, if such meeting shall be called by the Company, shall be determined by it in its discretion.

In any case where all of the outstanding Bonds to be affected by any action requested to be taken at such meeting shall be registered Bonds without coupons or coupon Bonds registered as to principal, no notice by publication shall be required, but notice of such meeting shall be mailed, postage prepaid, at least thirty days prior to the date so fixed, to the respective registered holders of such Bonds at their last addresses appearing upon the Bond register.

B. The Trustee, or upon its refusal so to do, the Company, (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) may 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 or the Company, as the case may be, and for the issue to the persons so depositing or exhibiting the same, of certificates by any 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 regulations 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. If such regulations are made by the Company, copies thereof and any amendments thereto shall be filed with the Trustee prior to the meeting.

Holders of registered Bonds without coupons and coupon Bonds registered as to principal to be affected by the matters to be considered at the meeting 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.

C. To be entitled to vote at any such meeting a person shall be (1) the holder of a coupon Bond transferable by delivery, (2) 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 (3) subject to Clauses (1), (2) and (3) of Subsection B of this Section 4.02, the person named in a certificate issued pursuant to said Subsection B 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 owned or held by or for the account of the Company or any subsidiary company, or any corporation 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 Section 4.02, 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 Section 4.02 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. No Bond which shall have been called for redemption and payment duly provided for shall be deemed to be outstanding for any purpose of this Section 4.02.

D. The representation of a majority in aggregate principal amount of the outstanding Bonds to be affected by the matters to be considered at the meeting, 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 Subsection B of this Section 4.02, by the persons named in certificates issued pursuant to said Subsection B or their respective proxies, 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, subject to the provisions of this Section 4.02, 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 less than a quorum. The Trustee, or the Company, as the case may be, shall by an instrument in writing appoint a temporary chairman of the meeting; and, a quorum being present, 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. The chairman of the meeting shall have no

right to vote other than by virtue of Bonds held by him or instrument in writing as aforesaid duly designating him as the person to vote on behalf of other bondholders or as the proxy of such designated person.

E. 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

(1) to authorize the Trustee to join with the Company in making any modification 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;

(2) 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;

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

(4) 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;

(5) 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 imposed at said meeting;

(6) to waive any default on the part of the Company, other than the nonpayment 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

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

*provided, however*, that no action taken at any meeting held pursuant to this Section 4.02 shall (a) change the maturity or the principal amount of any Bond, the redemption price thereof, or the rate of interest thereon, or otherwise alter or impair the obligation of the Company in respect of the payment of the principal thereof and interest thereon as prescribed therein, except with the consent of the holder of each Bond which would be affected thereby, to be evidenced by an appropriate legend stamped thereon, or (b) reduce the percentage required by the provisions of this Section 4.02 for any action authorized to be taken by the holders of Bonds; and *provided, further*, that no modification or repeal of or addition to the provisions of this Indenture or of any indenture supplemental hereto shall be effective until approved by resolution of the Board of Directors of the Company; and *provided, further*, that no such modification or repeal of or addition to the provisions of this Indenture or of any indenture supplemental hereto which, in the opinion of the Trustee, shall affect its rights, duties or immunities under this Indenture or any indenture supplemental hereto, may be made without the written consent of the Trustee.

The affirmative vote of the holders of 66 $\frac{2}{3}$ % in principal amount of the Bonds at the time outstanding to be affected by any such action shall be necessary for the adoption of any resolution under paragraphs (1), (2), (3) or (4) of this Subsection E. The affirmative vote of the holders of a majority in principal amount of the Bonds at the time outstanding to be affected by any such action shall be necessary for the adoption of any resolution under paragraphs (5) or (6) of this Subsection E. In the case of any resolution adopted pursuant to paragraph (7) of this Subsection E, such resolution may be adopted by the affirmative vote of the holders of such percentage of the outstanding Bonds, or of the outstanding Bonds of any particular series, as is elsewhere in this Indenture specified as to the action set forth in such resolution. If more than one series of Bonds shall be out-



standing under this Indenture and any business to be submitted to such meeting shall affect the rights of the holders of the Bonds of one or more series and shall not affect the rights of the holders of the Bonds of one or more of the other series, then the holders of the Bonds of the one or more series whose rights are not affected shall not be entitled to notice of, or to attend or vote at, any such meeting or to be counted for the purpose of a quorum. If the business to be submitted to such meeting shall affect the holders of all Bonds then outstanding hereunder in common, or shall involve the modification of any terms or provisions of this Indenture or of any indenture supplemental hereto applicable to the Bonds of all series then outstanding, the affirmative vote of the holders of the necessary percentage of the principal amount of the Bonds of all series then outstanding shall be required to effect such modification, but such vote need not include such percentage of the principal amount of each series. If any business to be submitted to such meeting shall 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 the holders of the necessary percentage of the principal amount of the Bonds of the series so affected, voting separately, and such percentage of the principal amount of the Bonds of all series affected in common, voting collectively, shall be required.

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.

F. The votes upon any resolution shall be by ballot, and the permanent 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 meeting and showing that said notice was published or mailed as provided in Subsection A of this Section 4.02. 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.

G. Any such resolution so adopted in accordance with the provisions of Subsection E of this Section 4.02 at a meeting of the holders of Bonds 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 issued under this Indenture 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, and the passing of any such resolution shall be conclusive evidence that the circumstances justified the passing thereof.

H. Bonds authenticated and delivered after the date of any such meeting, or after the delivery to the Trustee of any instrument pursuant to Subsection I of this Section 4.02, 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 theretofore delivered, and upon the demand of the holder of any Bond outstanding at the date of any such meeting, or at the date 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 of the Company, to any resolution adopted as provided in this Section 4.02, or to any instru-

ment delivered pursuant to Subsection I 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 to this Indenture embodying any modification or repeal of or addition to the provisions of this Indenture, or any modification of or addition to the rights and obligations of the Company or the rights of the holders of the Bonds and appurtenant coupons, made as provided in this Section 4.02, 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 Section 4.02, shall be executed by the Company and the Trustee.

I. Any action which may be taken or any power which may be exercised at a meeting convened pursuant to this Section 4.02 may also be taken or exercised by an instrument or instruments signed by the holders of such percentage of the principal amount of outstanding Bonds affected thereby 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 take such action or exercise such power.

#### ARTICLE FIVE.

##### REDEMPTION OF BONDS.

SECTION 5.01. The Series A Bonds may be redeemed before maturity at the option of the Company on any date or dates, in whole or in part by lot, in the manner and upon the conditions hereinafter stated, and are also subject to redemption through the operation of the sinking fund provided for in Section 6.01 hereof on January 1,



1953 or on the first day of January of any year thereafter, at prices equal to the following percentages of their principal amount:

Redemption During the Years	Optional Redemption Price	Sinking Fund Redemption Price
1951 and 1952	104.500%	(not redeemable)
1953 and 1954	104.000%	102.000%
1955 and 1956	103.625%	101.813%
1957 to 1959, inclusive	103.125%	101.563%
1960 to 1962, inclusive	102.750%	101.375%
1963 to 1965, inclusive	102.250%	101.125%
1966 to 1968, inclusive	101.750%	100.875%
1969 to 1971, inclusive	101.375%	100.688%
1972 to 1974, inclusive	100.875%	100.438%
1975 to 1977, inclusive	100.500%	100.250%
1978 and 1979	100.125%	100.125%
1980	100 %	100 %

in each case plus accrued and unpaid interest thereon to the date designated for redemption.

The redemption provisions of any series of Bonds, other than the Series A Bonds (if the right to redeem Bonds of any such series before maturity is reserved by the Company), shall be determined by the Board of Directors at the time of the creation of such series, as provided in Section 2.03 hereof, and shall be set out in an indenture supplemental hereto executed pursuant to Sections 3.06 and 4.01 hereof, except that Sections 5.03, 5.04 and 5.05 hereof shall apply to the redemption of all series of Bonds which are redeemable.

SECTION 5.02. Notice of redemption of all of the Series A Bonds, or any part thereof, shall be given by the Company by publication 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, once in each week, on any day in the 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 desig-

nated for such redemption. 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 Series A Bonds called for redemption shall cease to accrue from and after the date designated for redemption, and shall require that the Series A Bonds called for redemption be presented for payment at the office or agency of the Company designated for that purpose in the City and County of San Francisco, California, or, at the option of the holder, at the office or agency of the Company designated for that purpose in the Borough of Manhattan, City and State of New York. The Company shall also cause a copy of such notice to be mailed, postage prepaid, at least thirty days prior to the date designated for such redemption, to the registered holders of registered Series A Bonds without coupons and of Series A Bonds in coupon form registered as to principal called for redemption, at their last addresses appearing on the Bond registry books, but neither failure to mail any such notice nor any defect therein or in the mailing thereof shall affect the validity of any proceedings for the redemption of such Bonds. In any case where all of the Series A Bonds to be redeemed shall be registered Bonds without coupons or coupon Bonds registered as to principal, no notice by publication shall be required, but notice of redemption shall be mailed, postage prepaid, at least thirty days prior to the redemption date to the respective registered holders of the Bonds called for redemption at their last addresses appearing on the Bond registry books.

SECTION 5.03. In case the Company shall elect to redeem less than all of the Bonds of any series then outstanding, it shall give the Trustee adequate advance written notice of the aggregate principal amount of Bonds of such series to be redeemed, and thereupon the Trustee shall determine by lot the particular Bonds to be redeemed, in any manner deemed by it, in its unrestricted discretion, to be fair, and the notice of redemption in that case shall specify the serial numbers of the Bonds to be redeemed. In any such determination by lot the unit for redemption purposes shall be \$1,000 in prin-

principal amount and to that end each Bond of a denomination larger than \$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. If less than the whole principal amount of any Bond shall be called for redemption, said notice shall also specifically state the portion of the principal amount thereof which is to be redeemed, and that, upon surrender 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. Upon surrender of any Bond which is to be redeemed in part only, accompanied by a written instrument of transfer in a 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 without charge to the holder 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, in any authorized denomination or denominations, all as requested by such holder, for the unredeemed portion of the principal amount of the surrendered Bond.

SECTION 5.04. Notice of redemption having been duly given in the manner provided in Section 5.02 in the case of Series A Bonds or in the manner provided at the time of the creation of such series in the case of Bonds of any other series, the Bonds so called for redemption (including the designated portion of any Bond to be redeemed in part only) shall, on the date designated for redemption in such notice, become due and payable at the redemption price thereof; and if the Company on or before the date designated for redemption shall have deposited in trust with the Trustee, or with any paying agent, an amount in cash sufficient to redeem all the Bonds or portions of 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 or said portions thereof, and upon presentation



thereof in accordance with said notice, with all unmatured coupons, if any, thereto appertaining, said Bonds or said portions thereof shall be paid at such redemption price; *provided, however*, that in case the date designated for redemption shall be an interest payment date and any Bond so presented shall not be accompanied by the coupon maturing on such date, 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; and *provided, further*, that accrued unpaid interest represented by coupons which shall have matured prior to the date designated for redemption shall continue to be payable to the respective holders thereof on presentation for payment. If not so paid and redeemed on such presentation thereof, the Bonds shall continue to bear interest at the legal rate of interest until paid.

SECTION 5.05. All Bonds redeemed and paid under the provisions of this Article Five, 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 the written request of the Company, be delivered to it.

#### ARTICLE SIX.

##### SINKING FUND FOR SERIES A BONDS.

SECTION 6.01. The Company shall pay to the Trustee on or before the first day of May, 1952 and on or before the first day of May in each year thereafter so long as any Series A Bonds are outstanding, as and for a sinking fund for the retirement of such Bonds, the sum of \$220,000 in cash; *provided, however*, that if in any such year the Income After Fixed Charges of the Company for the calendar year next preceding such sinking fund payment date, determined in accordance with the regulations of the Commission at the time in force, adjusted as follows:

(1) There shall be added to such income such amounts as shall have been charged to operating expenses during such year representing the service value (i.e. the ledger value less the value of salvage, if any) of any nondepreciable road property retired and not replaced; and

(2) In determining such income, any adjustment necessary to correct the income account for any prior year shall be made by appropriate entries either in the accounts of the current year (unless in violation of the applicable orders, instructions and regulations) or, in the discretion of the Board of Directors and subject to any requisite approval of the Commission or other public regulatory body having jurisdiction in the premises, in whole or in part in the accounts of any subsequent year or years; and in determining such income for any year any such entries made in the accounts of that year to adjust the income accounts of prior years cleared through income accounts shall be treated as items affecting the income accounts for the year in which they are entered on the books, *provided, however*, that in determining such income for any year no adjustments necessary to correct the income account of any prior year need be taken into account except to the extent that cash shall have been received or paid or set aside for payment in respect thereof in such year, or prior to March 31 in the next succeeding year; and

(3) If prior to March 31 in any year the Board of Directors shall determine that a substantial liability exists which would have reduced such income for the preceding calendar year or years if such liability had been accrued in such year or years, then all or such portion of such liability as the Board of Directors shall determine may be deducted in arriving at such income for the preceding calendar year, in which case such amount so deducted shall not again be deducted in arriving at such income for any subsequent year or years;

shall be less than \$220,000, the Company shall have the right to pay into the sinking fund on May 1 of such year the lesser amount and to postpone the payment of the difference between \$220,000 and such

lesser amount until the amount of such Income After Fixed Charges, adjusted as aforesaid, for the next succeeding calendar year or years exceeds \$220,000, whereupon an amount equal to such excess shall be paid into the sinking fund on the next May 1 until no deficiency remains. If at any time the Company shall create a series of Bonds, other than Series A Bonds and any series created pursuant to Section 3.02 hereof, with provision for an annual sinking fund greater than 1% of the principal amount of the Bonds of such series at any one time outstanding, the sinking fund provided herein for the benefit of Series A Bonds shall, so long as any Series A Bonds are outstanding, be automatically and correspondingly increased from and after the date of the creation of such series, but the provisions of this Article Six shall not be otherwise affected in any respect whatsoever.

At the option of the Company sinking fund payments may be made either in cash or in Series A Bonds previously authenticated and delivered by the Trustee and issued and sold by the Company and subsequently purchased by the Company, with all unmatured coupons and matured coupons not fully paid attached, at the principal amount thereof or at the cost thereof to the Company (exclusive of accrued interest and brokerage commissions), whichever is less, or partly in cash and partly in such Bonds; *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 cost or costs (exclusive of accrued interest and brokerage commissions) therein specified and the Trustee shall be fully protected in relying thereon.

For the purposes of this Article Six the Trustee shall be fully protected in relying upon an Officers' Certificate delivered to it by the Company with respect to the amount of Income After Fixed Charges of the Company for such preceding calendar year, the ad-



justments thereof as aforesaid, and the amount resulting from such adjustments.

SECTION 6.02. The Trustee shall from time to time apply the moneys in such sinking fund

(1) to the purchase of outstanding Series A Bonds (which purchases may be made at private sale, 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 such price including accrued interest (but exclusive of brokerage commissions) shall not exceed the then current sinking fund redemption price; or

(2) on the written Order of the Company, to the purchase of obligations of the United States of America and obligations guaranteed by the United States of America at or about market prices prevailing at the time, plus accrued interest; or

(3) to the redemption of Series A Bonds as hereinafter provided.

If on the 10th day of November in any year, beginning with the year 1952, the moneys then in the sinking fund plus the then market value plus accrued interest of any obligations specified in the above subparagraph (2) then held in the sinking fund aggregate an amount sufficient to provide for the redemption for the sinking fund, exclusive of accrued interest, on the following January 1 of at least \$50,000 principal amount of Series A Bonds, the Trustee shall sell promptly all such obligations and the Company shall call Series A Bonds for redemption for the sinking fund on the first day of January following, as provided in Article Five hereof, in an amount sufficient to exhaust as nearly as practicable the moneys in the sinking fund. In such case the Trustee is authorized to give the notices required by Section 5.02 hereof 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 5.04 hereof provided.

Any such moneys not so applied may be applied by the Trustee prior to the next sinking fund payment date to the purchase of Series A Bonds upon the terms set forth in this Section 6.02, and any part thereof not so applied prior to the next sinking fund payment date shall be added to the next sinking fund payment and, together with said payment, applied in accordance with the provisions of this Article Six.

Upon the request of the Trustee, the Company shall pay to the Trustee, or reimburse it for, the accrued interest on and any brokerage commissions payable with respect to the purchase of any Series A Bonds so purchased by the Trustee, and the expenses of redemption and accrued interest upon such Bonds so called for redemption as herein provided, and the compensation and other expenses of the Trustee for acting as sinking fund agent, it being the intention that such brokerage commissions, expenses, accrued interest and compensation shall not be charged against the sinking fund. The Trustee, however, shall not be liable for the payment of the principal of, premium, if any, 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.

The Trustee shall, from time to time, on the written Order of the Company, sell in such manner and on such terms as the Company may direct, any obligations specified in subparagraph (2) of this Section 6.02 at the time held in the sinking fund, and the proceeds thereof, as well as the proceeds of payment of any such obligations which become due while held in the sinking fund, and any interest paid thereon while held in the sinking fund, shall constitute moneys in the sinking fund and shall be applied from time to time as in this Article Six provided. All profits realized from such sales shall be credited to the sinking fund. The Company shall reimburse the sinking fund, upon the request of the Trustee, for all losses incurred from such sales.

Anything in this Section 6.02 to the contrary notwithstanding, if at any time any one or more of the events of default as defined in Section 9.02 hereof shall have happened and be continuing, no

moneys in the sinking fund shall be applied as hereinabove provided in this Section 6.02, except for the redemption of Bonds publication of the notice of redemption of which had theretofore been commenced (or notice of redemption of which had theretofore been mailed in case all Bonds to be redeemed are registered Bonds or Bonds registered as to principal), or for the purchase of Bonds the tender of which had theretofore been accepted, but all moneys and obligations held in the sinking fund while any such event of default shall exist shall, unless and until all such defaults are remedied, be held as additional security for the payment of all the Series A Bonds then outstanding, and the Trustee may in its discretion sell any obligations specified in subparagraph (2) of this Section 6.02 at the time held in the sinking fund and the proceeds thereof shall thenceforth constitute moneys in the sinking fund.

SECTION 6.03. Until the first publication of notice of redemption (or the mailing of notice of redemption in case all Bonds to be redeemed are registered Bonds or Bonds registered as to principal), or the acceptance of any tender of Bonds if purchased as provided in Section 6.02 hereof, all moneys and obligations in the sinking fund provided for in Section 6.01 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 mailing 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 Bonds the tender of which has been accepted as aforesaid.

SECTION 6.04. If the Company shall pay or cause to be paid the whole amount of the principal and premium, if any, and interest due and payable upon all of the outstanding Series A Bonds at maturity or upon redemption or shall provide for payment of such Bonds by depositing with the Trustee or with any paying agent the entire amount then due and payable thereon for principal and premium, if any, and interest to the date of payment, or shall make other provision satisfactory to the Trustee for the payment thereof, or shall at any time deliver all of the Series A Bonds and coupons apper-



taining thereto then outstanding to the Trustee for cancellation, and shall also pay, or cause to be paid, all other sums payable hereunder in respect of Series A Bonds by the Company, then and in that case the Trustee shall release from the sinking fund and turn over to the Company free from any of the provisions of this Indenture all moneys and obligations remaining in the sinking fund after such payment has been made or provided for on such Bonds and coupons have been delivered to the Trustee, as the case may be.

SECTION 6.05. All Bonds purchased or redeemed by operation of the sinking fund as provided in Section 6.02 hereof, or delivered to the Trustee pursuant to Section 6.01 hereof, and the coupons appertaining thereto, shall be forthwith cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it. No new Bonds of any series shall be issued in lieu of any Series A Bonds acquired through the operation of the sinking fund.

#### ARTICLE SEVEN.

##### PARTICULAR COVENANTS OF THE COMPANY.

*The Company covenants with the Trustee as hereinafter in this Article set forth:*

SECTION 7.01. The Company will duly and punctually pay the principal of and the interest on the Bonds, at the places, on the dates, in the manner and in the amounts specified in the Bonds or in the coupons thereto appertaining, according to the true intent and meaning thereof and hereof. When and as paid, all Bonds, together with the coupons thereto appertaining, if any, and all coupons, shall be surrendered to the Trustee and shall be cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it.

At all times until the payment of the principal of the Bonds, the Company will maintain an office or agency in the City and County of San Francisco, California, and will also maintain an office or agency in the Borough of Manhattan, City and State of New York, at each of which the Bonds and coupons may be presented for pay-

THE WESTERN PACIFIC RAILROAD COMPANY

Article Seven  
Section 7.02

77

ment, 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 of such Bonds are outstanding, an office or agency in such other place at which such Bonds and their coupons may be presented for payment, where such Bonds may, if registerable, transferable or exchangeable, be presented for registration, transfer or exchange, and where notices and demands in respect thereof may be served. The Company will give written 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 such written Notice thereof or of any change thereof, presentation and demand may be made and notices served at the principal office of the Trustee.

SECTION 7.02. 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.

SECTION 7.03. 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 has good right and lawful authority to convey, mortgage and pledge the same as provided in and by this Indenture. Upon compliance with the covenants contained in Section 3.01 hereof, said lines of railroad, franchises and other property will be free and clear of any deed of trust, mortgage, lien, charge or encumbrance thereon affecting the title thereto prior to this Indenture except those set forth in the Subject Clauses, 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 voluntarily create, or suffer to be created, or to arise, any debt, lien or charge (except to the extent permitted by the Granting Clauses and the Subject Clauses) having priority or preference over or equality with the lien of this Indenture upon the trust estate, or any part thereof; and within six 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 given 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 the validity or the amount thereof shall, in good faith, be duly contested; and *provided, further,* that nothing in this Section 7.03 shall require the Company to pay or discharge any debt, lien, charge, claim or demand described in the Subject Clauses, or subject to which any property may be acquired by the Company, until the maturity thereof.

SECTION 7.04. The Company from time to time 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 WESTERN PACIFIC RAILROAD COMPANY

Article Seven  
Sections 7.05, 7.06

79

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 and priority of this Indenture shall be fully 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 tax, assessment or governmental charge so long as the validity or the amount thereof shall, in good faith, be duly contested; and *provided, further*, that the Company shall not be required to pay any such tax, assessment or governmental charge on property it has abandoned pursuant to permission granted by the Commission or other governmental body, if any, having jurisdiction; and *provided, further*, that the Company shall not be required to pay any such tax, assessment or governmental charge on property it has abandoned where no governmental body has jurisdiction if the property abandoned is no longer necessary for the maintenance or operation of the lines of railroad subject to the lien of this Indenture.

SECTION 7.05. The Company from time to time will duly make any and all payments required by the terms 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.

SECTION 7.06. 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

BOOK 59 PAGE 547

contained in this Section 7.06 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.

SECTION 7.07. If the Company shall fail to pay any sum which in Sections 7.03, 7.04, 7.05 or 7.06 of this Article Seven the Company has covenanted to pay or discharge when such sum is payable by the terms of any such section, the Trustee, without prejudice to any of its rights hereunder by reason of such default, from time to time in its discretion may, but shall not be obligated to, pay any sum so in default, and shall have a lien upon the trust estate prior to the lien of the Bonds for any advances made by it for that purpose. The Trustee shall be under no obligation to give any notice to the holders of Bonds of any such payment.

SECTION 7.08. 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 thereof, in good repair, working order and condition, and will, from time to time, make thereto all needful and proper repairs, renewals and replacements, additions, betterments and improvements.

The Company will at all times keep and maintain in good repair and condition, ordinary wear and tear excepted, all equipment which, or the Company's interest in which, shall be or become subject to the lien of this Indenture, and will at all times keep the lines of railroad, premises and estate subject to the lien hereof supplied with motive power, rolling stock, other equipment, machinery, tools and supplies sufficient to operate the railroad efficiently and properly.

SECTION 7.09. The Company will not procure the authentication or delivery of, issue, negotiate, sell or dispose of 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 7.10. In case the Company shall hereafter create any mortgage, deed of trust or other lien upon any property subject to the lien hereof, such mortgage, deed of trust or other lien, except as

otherwise herein expressly permitted, shall be, and shall be expressed to be, subject to the prior lien of this Indenture.

SECTION 7.11. Subject to the provisions of Article Fourteen hereof, the Company will at all times continue and maintain its corporate existence.

SECTION 7.12. 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 nonassessable.

The Company will not permit any wholly owned subsidiary, as that term is defined herein, 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 is made that such bonds, obligations or other indebtedness and such mortgage or other lien shall immediately upon the issue or creation thereof be acquired by the Company and 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 equipment trust agreement, lease, conditional sale agreement, 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 66 $\frac{2}{3}$ % of the cost of such property,

(4) 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 66 $\frac{2}{3}$ % of the cost of such additional lines of railroad, or additions, betterments, improvements or extensions, *provided*, such additional lines of railroad, or physical additions, betterments, improvements or extensions shall be of a character on account of which Bonds could be authenticated and delivered by the Company if constructed or acquired by it, and *provided, further*, that such wholly owned subsidiary shall not create or issue bonds, obligations or other indebtedness in respect thereof on a basis more favorable to it than would be imposed upon the Company by the terms of this Indenture if it had constructed or acquired such property and had financed such construction or acquisition, or reimbursed itself therefor, with Bonds or deposited cash,

(5) bonds, obligations or other indebtedness created or issued pursuant to Section 8.11 hereof,

(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 at least an equal proportionate interest. The Trustee shall give such consent upon compliance by the Company with the provisions of Section 8.11 hereof and upon being furnished with (1) Certified Resolutions 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 7.13. The Company will at all times keep insured against loss by fire or otherwise 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.

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 \$100,000 in the aggregate in respect of any one loss, shall, subject to the requirements of any prior lien on such property, be deposited with the Trustee and shall be held in trust by it and applied, at the written Request of the Company (but if any of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, 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 mak-

ing 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 or to the making of or reimbursement for additions and betterments to 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, or the Company reimbursed for its expenditures therefor, by the Trustee out of such proceeds. The Request of the Company 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.

Notwithstanding any prior provisions of this Section 7.13, upon the written Request of the Company, 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 series specified by the Company in such Request, in the manner provided for the purchase or redemption thereof by operation of the sinking fund provided for such series.

If such proceeds be \$100,000 or less, they shall be paid to the Company and applied by it to or for any one or more of the purposes specified in this Section 7.13, and the Trustee shall be under no responsibility in connection therewith.

Section 7.14. The Company will not pledge any Bonds to secure any indebtedness created, assumed or guaranteed, directly or indirectly, by the Company if upon the making of such pledge the excess of the aggregate principal amount of all Bonds pledged by the Com-



THE WESTERN PACIFIC RAILROAD COMPANY

Article Seven  
Sections 7.15, 7.16

85

pany over the aggregate principal amount of all indebtedness secured thereby would exceed 10% of the aggregate principal amount of all Bonds then outstanding, including pledged Bonds.

The Company will not pledge any Bonds if upon the making of such pledge the aggregate principal amount of all such Bonds pledged by it would exceed 150% of the aggregate principal amount of all indebtedness secured by such pledges.

SECTION 7.15. The Company will, upon the consummation of the reorganization or recapitalization of Sacramento Northern Railway, a California corporation, pledge with the Trustee and subject to the lien of this Indenture all shares of stock and any other securities which shall be received by the Company as a result of said reorganization or recapitalization, together with any shares of stock and other securities of said Sacramento Northern Railway now held by the Company (all of which are expressly excepted from the lien hereof) which shall not be cancelled as a result of such reorganization or recapitalization, and the Company will assign and deliver all of said shares of stock and other securities, if any, to the Trustee and will comply with all other requirements necessary to subject the same to the lien of this Indenture.

SECTION 7.16. The Company will, with all convenient speed, duly record, register, file, re-record, re-register and re-file this Indenture, and also every indenture supplemental hereto which may hereafter be executed as may be required 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, registration or filing tax or fee legally due upon the recording, registering or filing of this Indenture or of any indenture supplemental hereto, or legally due at any time upon or in connection with the issuance of Bonds hereunder, and will make such statements and do such acts now or hereafter as are or shall be required to be made or done by it under any law affecting the recording, registering or filing hereof or of any such supplemental indenture or upon such issuance.

ARTICLE EIGHT.  
CONTROL OF PLEDGED SECURITIES.

SECTION 8.01. All stock certificates, bonds and other obligations which the Company now owns or which it may hereafter acquire which are subject to the lien hereof, or which are required by any of the provisions of this Indenture to be pledged with the Trustee hereunder, shall forthwith or upon their receipt by the Company be delivered to the Trustee in bearer form or accompanied by proper instruments of assignment and transfer, and shall be held by and in the custody of the Trustee subject to the terms and conditions of this Indenture; *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.

Whenever 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 (if there shall then be no other prior lien thereon requiring the same to be otherwise held) shall be entitled to receive and to take possession of and to hold such securities as part of the trust estate; and the Company will execute and deliver to the Trustee all such assignments, transfers, powers of attorney and other instruments, and take all such other action, as the Trustee may reasonably require, to the end that the Trustee shall obtain possession of all said stock certificates, bonds and other obligations.

SECTION 8.02. 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 WESTERN PACIFIC RAILROAD COMPANY

Article Eight  
Section 8.02

87

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 9.02 hereof, shall have happened and be continuing, there shall not be transferred into the name of the Trustee, or its nominee, shares of stock of carrier or other 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 any case 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 of 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 corporation, shares of stock of which shall be subject to the lien hereof, and for such purpose, from time to time, may assign, transfer and deliver so many shares of the stock of any such corporation as may be necessary to qualify persons to act as directors of, or in any other official relation to, such corporation. 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 corporation which issued such shares; *provided, however*, that no transfer of the stock of any subsidiary company shall be made under this provision which shall reduce the amount of stock



in such 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 the lien of this Indenture, 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, shall be received by the Trustee and held as part of the trust estate.

SECTION 8.03. 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; or

(B) Some one of the events of default enumerated in Section 9.02 hereof shall have happened and be continuing;

(1) the Trustee shall not (except with the consent of the Company) collect or enforce the collection of the principal of or interest upon any of the pledged bonds, obligations, claims or indebtedness subject to the lien hereof, whether before, at or after maturity, and shall not enforce any of the 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;

(2) the Company shall be entitled to receive all interest paid and all cash dividends (except as hereinafter in this Section 8.03 otherwise provided) in respect of such pledged bonds, obligations, claims, indebtedness or shares of stock subject to the lien hereof, whether or not they have been transferred into the name of the Trustee or its nominee; and

(3) from time to time upon the written Request of the Company the Trustee shall deliver to the Company any coupons for such interest on pledged bonds then in its possession there-

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eight  
Section 8.03

89

tofore matured or maturing within fifteen (15) days after such Request, and on like Request shall deliver to the Company suitable orders in favor of the Company, or its nominee, for the payment of such interest and dividends, and the Company may collect such coupons and interest and dividends as under clause (2) of this Section 8.03 the Company is entitled to receive; and the Trustee shall forthwith pay over to the Company any such interest or dividends which may be collected or received by it. In every such case the Company shall be entitled for its own use to demand and receive and collect, release and discharge the interest on any such claim against or indebtedness of any other corporation subject to the lien hereof; and upon the Request of the Company the Trustee shall execute any reassignments or releases which may be required for that purpose. If any such coupon or order for payment of interest or dividends delivered to the Company as aforesaid shall not, as aforesaid, be forthwith paid and cancelled or released and discharged, the Company shall return the same to the Trustee;

*provided, however, and it is hereby 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 it, any 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 such bond, obligation, claim or indebtedness subject to the lien hereof which shall have been collected or paid out of the proceeds of any sale, condemnation or expropriation of any property covered by a mortgage or lien securing such bond, obligation, claim or indebtedness, or out of the proceeds of a sale or condemnation of any other property of the corporation liable upon such bond, obligation, claim or indebtedness or as the result of a dissolution, liquidation or winding up of such corporation, unless the principal amount of any such bond, obligation, claim or indebtedness shall have been paid in full;

(2) the Company shall not be entitled to receive, and the Trustee shall not pay over to it, any dividend 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 out of the proceeds of a sale or condemnation of any property of the corporation which issued such stock, or upon or in the course of dissolution, liquidation or winding up of any such corporation, or which in any way shall be chargeable to or be 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 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.

The Trustee shall be entitled to assume that any interest received by the Trustee or the Company on any bond, obligation, claim or indebtedness is not paid out of the proceeds of any sale, condemnation or expropriation of any property covered by a mortgage or lien securing such bond, obligation, claim or indebtedness, or out of the proceeds of a sale or condemnation of any other property of the corporation liable upon such bond, obligation, claim or indebtedness, or as the result of a dissolution, liquidation or winding up of such corporation, and that any cash dividend received on any shares of stock is not paid out of the proceeds of a sale or condemnation of any property of the corporation which issued such stock, or upon or in the course of dissolution, liquidation or winding up of any such corporation, 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; and, in the absence of any such written notification, it shall be conclusively presumed as between the Trustee and the holders of the Bonds that in making or per-



THE WESTERN PACIFIC RAILROAD COMPANY

Article Eight  
Sections 8.04, 8.05

91

mitting any payments thereof to the Company the Trustee acted in good faith.

SECTION 8.04. Any moneys which shall be paid on account of the principal of any bond, obligation, claim or indebtedness or in redemption or retirement of any shares of stock subject to the lien hereof, or as interest or dividends, which under the provisions of Section 8.03 the Company is not entitled to receive (unless required to be paid to the trustee under some mortgage or other instrument constituting a lien thereon prior to the lien hereof, or unless applied on account of the price of property purchased pursuant to Section 8.06 hereof), shall be received by the Trustee and held as part of the trust estate, and from time to time, so long as none of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, shall, at the election of the Company, be applied, in whole or in part, by the Trustee

(a) to pay, or to reimburse the Company for, all or any part of the Cost or Net Cost, as the case may be, of Additions of a character which could otherwise be made the basis for the authentication of Bonds under Section 3.03 hereof; or

(b) to the purchase or redemption of outstanding Bonds of any series in the manner provided for the purchase or redemption thereof by operation of the sinking fund provided for such series.

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

(1) Certified Resolutions 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 8.04, such of the documents required by paragraphs (b), (c), (d) and (e) of said Section 3.03 as shall be applicable.

SECTION 8.05. Unless some one or more of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, the Company shall have the right to

vote upon, or to give any approval or consent in respect of all shares of stock subject to the lien hereof, for all purposes not inconsistent with the provisions hereof. From time to time, upon the written Request of the Company, the Trustee forthwith shall execute and deliver, or cause to be executed and delivered, to the Company or its nominees, suitable powers of attorney, proxies or consents for such purposes in respect of any such shares of stock which shall have been transferred to the Trustee or its nominee. 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 the purpose or purposes thereof is or are not inconsistent with any of the provisions of this Indenture.

SECTION 8.06. 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) and (B) of Section 8.03 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 corporation, shares of the stock of which shall be subject to the lien hereof, shall be dissolved or liquidated; or

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eight  
Section 8.06

93

(b) all or substantially all of the property of any such corporation 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 and in any such case, if the property of such dissolved or liquidated corporation, 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 the balance of the price of such property in cash, the Trustee shall, irrespective of the percentage of the price of such property to be paid in cash, on the written Request of the Company (if none of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing), and upon being provided with the amount of cash necessary therefor and indemnified on account of its expenses in connection therewith, 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; and if any one or more of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, without the Request of the Company, the Trustee may, in its discretion, take such action if such property can be acquired by paying not more than 10% of the price thereof in cash and may, in its discretion, irrespective of the percentage of the price of such property to be paid in cash, take such action if requested in writing so to do by the holders of a majority in principal amount of the Bonds then outstanding, but shall not be obligated to do so.

In case of any such purchase, the Trustee shall take appropriate steps to cause such property to be vested 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 at the option of the Company 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 corporation 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 8.06, 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 8.06; 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, the Trustee shall have a lien 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 8.07. The Trustee, with the written consent of the Company (and without such consent if one or more of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing), may join in or permit or author-

ize 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 corporation shares of the stock, bonds, obligations, claims or indebtedness of which shall be subject to the lien hereof, 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 8.08. In case the Trustee shall not purchase or cause to be purchased the property of any such dissolved or liquidated corporation, or the property sold, pursuant to Section 8.06 hereof, or shall not join in any plan of readjustment, recapitalization or reorganization pursuant to Section 8.07 hereof, or shall join in such plan of readjustment, recapitalization or reorganization and cash shall be distributable under said plan, applicable to the shares of stock, bonds, obligations, claims or indebtedness subject to the lien 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 shares of stock, bonds, obligations, claims or indebtedness 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 from time to time, so long as none of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, such moneys shall, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof, and subject to the provisions of said Section 8.04.

SECTION 8.09. The Trustee at any time in its discretion, with the written consent of the Company (and without such consent if one or more of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing), 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, deed of trust or trust agreements, 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 corporation 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 8.10. The Trustee at any time in its discretion, with the written consent of the Company (and without such consent if one or more of the events specified in paragraphs (A) and (B) of Section 8.03 shall have happened and be continuing), may (a) consent to the cancellation of any of the shares of stock, bonds, obligations, claims or other indebtedness which, owing to foreclosure, readjustment, recapitalization, reorganization, consolidation or sale, as herein provided, of any of the corporations which issued the same, or for any other reason, shall have become no longer of any value as security for the Bonds hereby secured, and such shares of stock, bonds, obligations, claims or other indebtedness shall thereupon be cancelled and delivered to the Company; and (b) consent to a reduction in amount of the capitalization of any corporation shares of the capital stock



of which shall be subject to the lien hereof provided the proportionate amount so pledged is not thereby reduced. The Trustee may accept an Opinion of Counsel as conclusive evidence that the rights of the holders of the Bonds hereunder will not be prejudiced or impaired by such cancellation of any of such shares of stock, bonds, obligations, claims or other indebtedness proposed to be made under any of the provisions of this Section 8.10.

SECTION 8.11. 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 its consolidation with or merger into the Company, or of the sale, conveyance, transfer or lease of its property to the Company, this Indenture shall become and be a lien upon the properties of the corporation resulting from such consolidation or merger and upon all the estate, right, title and interest of the Company in any property or leasehold so acquired by the Company to the extent provided in, and subject to the provisions of, Article Fourteen hereof.

Subject to the provisions of Section 7.12 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 become subject to the lien hereof and 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) be delivered to the Trustee, and shall be held as part of the trust estate. Any cash included in such consideration shall, from time to time, so long as none of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof and subject to the provisions of said Section 8.04.

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 8.11.

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 8.11, 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 8.11, and in order to facilitate any consolidation, merger, sale, conveyance, transfer or lease contemplated by this Section 8.11 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.

## ARTICLE NINE.

## REMEDIES OF TRUSTEE AND BONDHOLDERS IN EVENT OF DEFAULT.

SECTION 9.01. The Company will not, directly or indirectly, extend or assent to the extension of the time for payment of any coupon or claim for interest on any of the Bonds hereby secured, and it will not, directly or indirectly, be a party to or approve any such arrangement by purchasing or refunding said coupons or claims for interest or in any other manner. If the time for payment of any such coupon or claim for interest shall be so extended, whether or not by or with the consent of the Company, such coupon or claim for interest shall not be entitled, in case of default hereunder, to the benefit of the security of this Indenture, except subject to the prior payment in full of the principal of all Bonds hereby secured and then outstanding and all coupons and interest on such Bonds the payment of which shall not have been extended; *provided, however*, that the foregoing provisions of this Section 9.01 shall not be applicable to any coupon or claim for interest the time for the payment of which shall have been extended, if such extension be pursuant to a plan proposed by the Company to all holders of any one or more series of Bonds secured hereby and then outstanding.

Neither any coupon appertaining to any Bond hereby secured, nor any claim for interest on any registered Bond, which in any way at or after maturity shall have been transferred or pledged separate and apart from the Bond to which it relates, shall, unless accompanied by such Bond, be entitled, in case of default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of the Bonds hereby secured, and of all coupons and interest obligations not so transferred or pledged.

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 forthwith.



SECTION 9.02. 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 installment of interest on any of the Bonds when and as the same shall become due and payable, as therein and herein 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 installment 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 installment 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

(d) Default shall be made in the observance or performance of any other of the 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 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 twenty-five per cent. 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, insolvency, reorganization, readjustment or debtor relief proceeding, any such court shall have taken jurisdiction

THE WESTERN PACIFIC RAILROAD COMPANY

Article Nine  
Section 9.02

101

of the property of the Company and such proceeding shall not have been dismissed within sixty days; or

(f) The Company shall apply for or consent to the appointment of a receiver or trustee for itself or all or the major part of the trust estate, or shall file a petition seeking reorganization or readjustment or similar relief under any Federal 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, while such event of default shall continue, 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

BOOK 59 PAGE 569

624 RV-2

shall deem best. And the Trustee shall be entitled to collect and receive all revenues, rents, earnings, issues, tolls, profits and other income of the same and every part thereof, and also the income from all bonds, obligations, claims, indebtedness and 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) In case the principal of none of the Bonds shall have become due, by declaration or otherwise, and be unpaid, to the payment of the interest in default on the Bonds in the order of the maturity of the installments of such interest, such payments to be made ratably to the persons entitled thereto, without discrimination or preference;

(ii) In case the principal of all or any part of the Bonds shall have become due, by declaration or otherwise, and shall be unpaid, *first*, to the payment of interest accrued on the outstanding Bonds prior to the date upon which the principal of all or any part of the Bonds became due and payable, in the order of the maturity of the installments of such interest, and *second*, to the payment of interest accrued on the outstanding Bonds after said date upon which the principal of all or any part of the Bonds became due and payable, in the order of the maturity of the installments of such interest, at the legal rate on overdue principal and at the rate expressed in the Bonds which shall not have become due, by declaration or otherwise, and *third* (subject to the provisions of Section 9.04), to the payment of the principal of all of said Bonds, whether due or not; in every instance such payments to be made ratably to the persons entitled thereto without discrimination or preference; and



THE WESTERN PACIFIC RAILROAD COMPANY

Article Nine  
Sections 9.03, 9.04

103

(iii) In case no Bond interest is in default and 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 9.01 hereof, and are subject thereto.

SECTION 9.03. If any one or more of the events specified in paragraphs (A) and (B) of Section 8.03 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 bonds, obligations, claims or other indebtedness that shall then be subject to the lien hereof, and to apply the net moneys so received as hereinbefore in Section 9.02 hereof provided; and, as holder of any such shares of stock and of any such bonds, obligations, claims or other 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 9.03; 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 9.04. 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 twenty-five per cent. in principal amount 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.

standing. 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 substantial part thereof shall have been made in enforcement of this Indenture, all arrears of interest upon all outstanding 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 (except a default in the payment of the principal of the Bonds so declared due and payable) under the Bonds, or under this Indenture, shall be made good or adequate provision made therefor, to the satisfaction of the Trustee, then and in such case upon the written request of the holders of a majority in principal amount of the Bonds then outstanding, the Trustee shall, by written notice to the Company, waive such default and its consequences and rescind and annul such declaration in its entirety; but no such action shall extend to or affect any subsequent default or impair any rights consequent thereon.

SECTION 9.05. 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) if and to the extent permitted by law, sell, subject to any then existing prior liens thereon, to the highest and best bidder, all and singular the trust estate, including shares of stock, bonds, other securities and claims, 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, at such place and at such time and upon such terms as the Trustee may fix; or

(b) proceed to protect and to enforce its rights and the rights of the holders of the outstanding Bonds 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 hereunder of the holders of the outstanding Bonds.

SECTION 9.06. Upon the written request of the holders of not less than twenty-five per cent. in principal amount 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 hereinafter provided, to take all steps needful for the protection and enforcement of its rights and the rights of the holders of the Bonds hereunder, 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.

Anything in this Indenture to the contrary notwithstanding, the holders of a majority in principal amount of the Bonds then outstanding shall have the right, at any time and from time to time, by an instrument in writing executed and delivered to the Trustee, to direct and control the action of the Trustee in any proceedings under this Article Nine; *provided* that such direction shall not be in conflict with the provisions of law or of this Indenture.

SECTION 9.07. 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 lot or 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* (1) such sale as an entirety is impracticable by reason of some statute, or impracticable in the opinion of the Trustee for some other cause; or (2) 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 shall be made in such parcels and in such order as shall 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 trust 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.

The personal property and chattels conveyed, or intended to be conveyed, by or pursuant to this Indenture, other than stocks and bonds and other obligations or securities or claims, shall be real property for all the purposes of this Indenture, and shall be held and taken to be fixtures and appurtenances of the Company's lines of railroad and a part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

SECTION 9.08. Notice of any sale by the Trustee 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 at least 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. If other and different notice requirements are imposed by law which would not be met by compliance with the provisions of this Section 9.08, such requirements of law shall also be complied with.

SECTION 9.09. 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 9.10. Upon the completion of any sale or sales by it 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 or its successors 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 shall, if so requested by the Trustee, 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 9.11. The receipt of the Trustee for the purchase money paid at any such sale made by it shall be a sufficient discharge therefor to any purchaser of the property, or any part there-

of, sold as aforesaid; and no such purchaser or representatives, grantees or assigns of such purchaser, 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 9.12. In case of a sale of the trust estate substantially as a whole under any of the foregoing provisions of this Article Nine, 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 9.13. 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, except sums held in trust for the benefit of the holders of particular Bonds or coupons, 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 on the property sold, 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 outstanding Bonds for principal and interest, including interest on the overdue principal; and in case such proceeds shall be insufficient to pay in full the whole



THE WESTERN PACIFIC RAILROAD COMPANY

Article Nine  
Sections 9.14, 9.15

109

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 any series over any other series, or of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, subject, however, to the provisions of Section 9.01 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 9.14. Upon any such sale under any of the foregoing provisions of this Article Nine, whether made under the power of sale herein granted or pursuant to judicial proceedings, any purchaser, for or in settlement or payment of the purchase price of the property purchased, shall be entitled to use and apply any Bonds and any matured and unpaid coupons and interest obligations hereby secured, subject to the provisions of Section 9.01 hereof, by presenting such Bonds and coupons in order that there may be credited as paid thereon the sums payable 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 purchase price payable by him, with the sums payable out of such net proceeds which shall be applicable to the payment of, and which shall have been credited upon, the Bonds and coupons so presented. At any such sale, any holder or holders of Bonds may bid for and purchase such property, and may make payment therefor as aforesaid, and upon compliance with the terms of said sale, may hold, retain and dispose of such property without further accountability.

SECTION 9.15. The Company covenants that

(1) if default shall be made in the payment of any installment of interest on any of the outstanding Bonds when and

BOOK 59 PAGE 577

624 RV-2

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 outstanding Bonds, or the premium thereon payable on redemption thereof, when the same shall become due and payable, whether upon stated maturity, or upon call for redemption, or upon declaration as provided in Section 9.04 hereof, or upon a sale as provided in Section 9.12 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 such Bonds and coupons, the whole amount then due and payable upon the Bonds and coupons for principal (and premium, if any) and interest, or both, as the case may be, with interest on the overdue principal; 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, if under applicable law such action is permitted without first exhausting the security hereunder and if the commencement or prosecution of such action or entry of judgment in such action does not result in the surrender, impairment, waiver or loss of the lien of this Indenture on the trust estate or any portion thereof.

Any moneys collected by the Trustee in any such action 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 then due and unpaid upon the outstanding Bonds and coupons in respect of which such moneys shall have been collected, for principal and interest, with interest on the overdue principal, ratably to the aggregate of such principal and interest, without preference or priority of any kind, but subject to the provisions of Section 9.01 hereof,

THE WESTERN PACIFIC RAILROAD COMPANY

Article Nine  
Sections 9.16, 9.17, 9.18

111

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 9.16. 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 or rule of law, now or hereafter in force, wherever enacted or established, 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 or rule of law, now or hereafter in force, wherever enacted or established, 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 provision 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 rule of law, 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 rule of law had been enacted or established.

SECTION 9.17. Upon filing a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the holders of Bonds hereunder, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver of the trust estate, and of the revenues, rents, earnings, issues, tolls, profits and other income thereof, with such powers as the court making such appointment shall confer.

SECTION 9.18. In case the Company shall make default in any of the respects specified in Section 9.02 hereof 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

59

BOOK \_\_\_\_\_ PAGE 579



on appeal, or (b) in any judicial proceeding by any party other than the Trustee, 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 its inability to make good such default within the period of grace in Section 9.02 hereof provided, if any, the Trustee, in any such case, shall thereupon, without waiting the period of grace, if any, provided in said Section 9.02 in respect of such default, be entitled in its discretion forthwith to exercise the right of entry conferred by this Article Nine, and also any and all other rights and powers conferred by this Article Nine 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 9.19. 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

59

BOOK \_\_\_\_\_ PAGE 580

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 9.02 hereof.

Upon application of the Trustee to any court of competent jurisdiction, and with the consent of the Company, even though none of the events of default shall have happened and be continuing, and without such consent if one or more of the events of default shall have happened and be continuing, 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, wherever the same may be situated.

SECTION 9.20. In every case when a receiver or trustee of the trust estate, or any part thereof, shall be appointed, whether under Sections 9.17, 9.18 or 9.19 hereof, or otherwise, the net income and revenues 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 9.02 hereof. Notwithstanding the appointment of any such receiver or trustee, the Trustee shall be entitled, as pledgee, to continue to retain possession and control of any moneys or securities held by it as security hereunder, and all payments and distributions made in respect thereof.

SECTION 9.21. 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 (a) such holder shall previously have delivered to the Trustee written notice that some event of default specified in such notice has happened and is continuing, and (b) the holders of not less than twenty-five per cent. in principal amount 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 pro-

ceed to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name, and (c) one or more holders of Bonds shall have offered to the Trustee reasonably adequate security and indemnity, satisfactory to it, against the costs, expenses and liabilities to be incurred therein or thereby and (d) the Trustee shall have refused or neglected to act on such notification, request and offer of indemnity for at least thirty days. 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 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 contained in this Article Nine or elsewhere herein or in the Bonds or coupons shall affect or impair the obligation of the Company to pay the principal of, premium if any, and interest on the Bonds to the respective holders of the Bonds and coupons, in accordance with the terms of such Bonds and coupons, nor affect or impair whatever right of action at law is given to such holders by applicable law to collect such payment if the exercise of such right of action at law without first exhausting the security does not result in the surrender, impairment, waiver or loss of the lien of this Indenture on the trust estate or any portion thereof as to either such holders' Bonds and coupons or other holders' Bonds and coupons.

All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee



THE WESTERN PACIFIC RAILROAD COMPANY

Article Nine

Sections 9.22, 9.23, 9.24, 9.25

115

shall be brought in its name; and any recovery of judgment shall be for the ratable benefit of the holders of the Bonds and coupons.

SECTION 9.22. 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 and 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 9.23. 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 Nine 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 holders of the Bonds, respectively.

SECTION 9.24. In case the Trustee shall have proceeded to enforce any right hereunder by foreclosure, entry or otherwise, and such proceeding 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 Company and of the Trustee shall continue as though no such proceeding had been taken.

SECTION 9.25. The Trustee shall have power, but shall be under no duty, 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

59

BOOK PAGE 583

hereunder or be prejudicial to the Trustee or to the holders of the Bonds.

SECTION 9.26. All parties to the Indenture agree, and each holder of any Bond by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 9.26 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Bondholder or group of Bondholders holding more than 10% in aggregate principal amount of the outstanding Bonds, or to any suit instituted by any Bondholder for the enforcement of the payment of the principal of or interest on any Bond, on or after the due date expressed in such Bond or coupon.

SECTION 9.27. To the extent that any provision of this Article Nine may be invalid or unenforceable under any applicable law or rule of law with respect to any of the mortgaged property, or otherwise with respect to the powers, rights or remedies of the Trustee or of the holders of the Bonds or coupons, any such provision shall be deemed inoperative and unenforceable.

Nothing in this Article Nine or elsewhere herein contained shall be deemed to be a waiver of the statutory provisions of the States of California, Nevada and Utah which provide that there shall be but one form of action for the recovery of any debt or the enforcement of any right secured by mortgage upon real or personal property.

ARTICLE TEN.

EVIDENCE OF RIGHTS OF BONDHOLDERS AND OWNERSHIP OF BONDS.

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 shall be conclusive in favor of the Trustee or of the Company, 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 place of such execution 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 shall be deemed to continue until the Trustee 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 depository, wherever situated, satisfactory to the Trustee, showing that on the date therein mentioned, such person had on deposit with such depository or exhibited to it the Bonds or coupons described in such certificate, or (c) 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, consent or vote of the holder of any Bond shall bind all future holders of such Bond and any Bonds issued in exchange therefor or in lieu thereof, in respect of anything done, permitted or omitted by the Trustee or by the Company in pursuance of such request, consent or vote.

#### ARTICLE ELEVEN.

##### RELEASES OF MORTGAGED 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 Sections 11.03 and 11.04 hereof, shall release such property from the lien hereof, *provided*:

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

(2) Either (a) in the judgment of the Board of Directors, similarly evidenced, the Company will not thereby be prevented from maintaining and operating 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 evidenced, the release so requested will not materially impair or prejudice the security for the Bonds or the interests of the holders of the Bonds.

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.02

119

For the purposes of this Article Eleven the term "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 11.09 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, evidenced 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,

BOOK 59 PAGE 587

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 or proper to effect such purposes.

**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 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; or 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;

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

(e) 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; and



THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.03

121

(f) 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;

(3) If the fair value to the Company of the property to be released, as stated in subdivision (e) of paragraph (2) of this Section 11.03, exceeds \$100,000, a further certificate complying with the requirements of said subdivision (e) by an independent engineer (in the case of lines of railroad) or by an independent appraiser (in the case of other properties), satisfactory to the Trustee;

(4) An Opinion of Counsel stating that the action so requested is authorized by the provisions of this Article Eleven, and that the Certified Resolutions and certificate or certificates furnished to the Trustee in connection therewith are in compliance with the provisions of this Section 11.03; and

(5) 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 (f) 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 one or more of the following:

(1) Cash;

(2) Obligations secured by purchase money mortgage on the property to be released; *provided, however*, that the aggregate principal amount of any obligations secured by purchase money mortgage to be received in exchange for such property plus the aggregate unpaid 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 ten per cent. 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 3.03 hereof (excluding, however, any part of the cost of such Addi-

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.04

123

tions theretofore made the basis for the authentication of Bonds 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 acquired through the use of insurance proceeds or for which the Company had been theretofore reimbursed from other moneys in, or property released from, the trust estate); 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 3.03 hereof.

Subject to the provisions of 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 and shall be held by it as part of the trust estate, and shall, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof and subject to the provisions of said Section 8.04.

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 unpaid 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 ten per cent. of the aggregate principal amount of Bonds at the time outstanding, (ii) an assignment or other instrument of transfer of such purchase money mortgage to the Trustee, and (iii) 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, sub-



ject to no prior lien except any existing prior lien subject to which said property is to be sold, and 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 purchase money mortgage to the lien of this Indenture, subject to no prior lien except any existing prior lien subject to which said property was sold.

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 such of the documents required by paragraphs (b), (c), (d) and (e) of said Section 3.03 as shall be applicable to such property.

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 franchise 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, County, municipality or other political subdivision of a State or any governmental agency or (3) pursuant to some legal requirement, and, in case such abandonment or surrender is voluntary on the part of the Company, if in the judgment of the Board of Directors, evidenced by resolution thereof, such abandonment or surrender will not materially impair or prejudice the security for the Bonds or the interests of the holders of the Bonds.

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 or in case such abandonment or surrender is voluntary on the part of the Company, (c) Certified Resolutions setting out the determinations hereinabove in this Section 11.05 required. Upon receipt of said

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.05

125

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 Company shall apply the net cash proceeds, if any, from the sale of any such dismantled property to one or more of the purposes specified in Section 8.04 hereof. 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 and 11.04, or Section 11.07 hereof, as the case may be, 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

BOOK 59 PAGE 593

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. The Company may, from time to time and without receiving any consideration therefor, execute and deliver roadway and other easements, free from the lien hereof, to the Federal Government, or to a State, or to a County, municipality or other political subdivision of a State, or to any governmental agency, if, in the judgment of the Board of Directors, evidenced by resolution thereof, the release of any such easement from the lien of this Indenture will not impair or prejudice the security for the Bonds or the interests of the holders of the Bonds; and the Trustee, from time to time, at the Request of the Company and upon receiving an Officers' Certificate specifying the easement to be released and stating that the release thereof from the lien hereof will not materially impair or prejudice the security for the Bonds or the interests of the holders of the Bonds, shall execute and deliver confirmatory release that any such easement is free from the lien hereof.

SECTION 11.07. 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 after receipt thereof it will expend the proceeds of any such sale, or an amount equal to the fair value of any property not disposed of 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 a value at least equal to the value of the property which was subject to the lien hereof at the time of its sale, exchange or other disposal) shall forth-



THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.08

127

with 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 11.07, 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 11.07 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 1952, an Officers' Certificate setting forth in reasonable detail all property and the value thereof sold, exchanged or otherwise disposed of under this Section 11.07 within the preceding calendar year, and all replacements thereof made during such calendar year 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 11.08. 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 prop-

erty 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, free from the lien hereof, 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 for cash, to the net proceeds received therefor by the Company, or (b) pay over to the Trustee such net proceeds; and shall 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 11.09 shall forthwith become subject to the lien hereof. Any cash received by the Trustee pursuant to this Section 11.09 shall be held by it as part of the trust estate, and shall, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof and subject to the provisions of said Section 8.04.

SECTION 11.09. The Company shall have full power, in its discretion, and without notice to the Trustee, from time to time:

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Section 11.10

129

(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, any such changed, amended or supplemental lease or joint facility, terminal or trackage right, easement, agreement or contract to forthwith become subject to the lien hereof;

*provided*, that the security hereunder is not thereby impaired, and that the Company is 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 11.10. If any of the trust estate shall be involved in any action or proceedings, in eminent domain or otherwise, in which it shall be sought to require the Company to part with the ownership, possession or operation of some portion of the trust estate, the Trustee may be represented by counsel in such action or proceedings and shall, either before or after final judgment, decree or order of any court (or of any governmental body or agency) having jurisdiction in said action or proceedings and whether or not a party to said action or proceedings, upon Request of the Company release from the lien of this Indenture the property or any part thereof involved in said action or proceedings, *provided*

(a) if such release is made after final judgment, decree or order, an Opinion of Counsel of the Company shall be delivered to it stating that the Company has been duly required to part



with the ownership, possession or operation of the property, the release of which is requested, and stating the amount of cash, if any, to be received by the Company on account of the value of such property; and

(b) if such release is made before final judgment, decree or order, an Officers' Certificate shall be delivered to it stating that in their opinion the value of the consideration to be received by the Company, if any, is at least equal to the value of the property to the Company less the probable cost to the Company of the litigation, or, if no consideration is to be received, stating that in their opinion no consideration would be received by the Company if the action or proceedings in question were continued to final judgment, decree or order.

If any governmental body or agency shall exercise any right to purchase any portion of the trust estate, the portion so purchased shall, notwithstanding the foregoing provisions of this Article Eleven, be released by the Trustee from the lien of this Indenture upon the delivery to it by the Company of the documents required by Sections 11.01 and 11.03 or by Section 11.07 hereof, as the case may be.

All cash received as compensation for any property taken by exercise of the power of eminent domain, or otherwise, as aforesaid, shall be deposited with the Trustee. All cash received as compensation for any property purchased by a governmental body or agency by the exercise of right, as aforesaid, shall be deposited with the Trustee pursuant to Section 11.04 hereof, or expended by the Company as provided in Section 11.07 hereof, as the case may be. All cash deposited with the Trustee pursuant to this Section 11.10 shall be held by it as part of the trust estate, and shall, at the election of the Company, be paid out and disposed of in the manner provided in Section 8.04 hereof and subject to the provisions of said Section 8.04. Any property other than cash received as such compensation shall forthwith become subject to the lien hereof.

Section 11.11. Any property or rights received by the Company in exchange or substitution for any property or rights released from

THE WESTERN PACIFIC RAILROAD COMPANY

Article Eleven  
Sections 11.12, 11.13

131

the lien hereof or which are made the basis for the withdrawal of cash deposited 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 11.12. 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 11.13. In case there shall be subjected to the lien hereof all or substantially all of the property, both real and personal, of any other corporation, the Trustee, upon the Request of the Company, evidenced by Certified Resolutions, shall release from the lien hereof any stock of such corporation 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 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 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 affect adversely the security for the Bonds or the interests of the holders thereof.

SECTION 11.14. 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 11.15. 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) and (B) of Section 8.03 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 provision of this Article Eleven.

SECTION 11.16. Notwithstanding any of the provisions of this Indenture, the Trustee shall release, either before or after any of the events specified in paragraphs (A) and (B) of Section 8.03 hereof shall have happened and be continuing, the lien of the Indenture as to any property or properties or part or parts thereof at any time subject thereto, and cause such property or properties to revert to the Company free and clear of such lien; *provided, however*, that, prior to the release of any such property under this Section 11.16, there shall have been delivered to the Trustee in each case:

(a) a request (evidenced as provided in Section 10.01 of this Indenture) of the holders of not less than 66 $\frac{2}{3}$ % in aggre-



THE WESTERN PACIFIC RAILROAD COMPANY

Article Twelve  
Section 12.01

133

gate principal amount of all outstanding Bonds, to release the property in question and the selection and designation by such holders of the independent railroad expert referred to in subsection (c) below; or

(b) the record showing that the holders of not less than 85% in aggregate principal amount of all outstanding Bonds represented at a Bondholders' meeting, called and conducted pursuant to Section 4.02 of this Indenture, at which not less than 50% in aggregate principal amount of all outstanding Bonds were represented, requested the release of the property in question and selected and designated the independent railroad expert referred to in subsection (c) below; and

(c) in either case, a report of the independent railroad expert selected and designated pursuant to either subsection (a) or subsection (b) above, to the effect that such property is no longer of value to the holders of outstanding Bonds and that, in his opinion, a proper allocation of revenues and expenses thereto then shows, and in the future may reasonably be expected to show, a loss.

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 title of the Company thereto, 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 from 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 or renew the same. The Trustee shall be under no duty to procure any supplemental indenture or any further, other or additional instruments of further assurance; or, while not in possession of the mortgaged property, to see to the payment of taxes, assessments and governmental charges on the trust estate. The Trustee shall be under no responsibility or duty with respect to the disposition of the Bonds authenticated 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, which it may be required to pay 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 prior to the lien 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 employees; and the Trustee shall not be answerable or accountable for any act, default, neglect, negligence or misconduct

THE WESTERN PACIFIC RAILROAD COMPANY

Article Twelve  
Section 12.01

135

of any such attorney, agent or employee, provided reasonable care has been exercised in the selection and in the continued employment of such attorney, agent or employee; nor shall the Trustee be otherwise answerable or accountable under any circumstances whatsoever, except for its own 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 reasonably adequate security and indemnity against the costs, expenses and liabilities 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 thereafter if addressed to such other address) as follows: The Western Pacific Railroad Company, 526 Mission Street, San Francisco 5, 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 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 required, and the title thereto established to the satisfaction of the Trustee, if disputed;



(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 ten per cent. in principal 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

THE WESTERN PACIFIC RAILROAD COMPANY

Article Twelve  
Section 12.01

137

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. If after said investigation or other inquiry the Trustee shall determine to grant the application, it shall not be liable for any action taken in good faith. 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, and until such repayment shall be secured by a lien on the trust estate 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 employees, 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 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, 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 or question of fact be proved or determined prior to the taking, permitting or omitting any action hereunder by it, said fact or 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, in lieu thereof, make independent investigation and/or accept other evidence of the matter or may require such further or additional evidence as to it may seem reasonable, and in any such case may rely thereon;

(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, or may engage in or be interested in any financial or other transaction with the Company or any corporation in which the Company may be interested, and the Trustee may act as depository, 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, with the same rights as if the Trustee were not Trustee hereunder;

(m) Except as provided in Article Six hereof, the Trustee shall be under no duty to invest any moneys paid to or deposited with it or to its credit pursuant to any of the provisions of this Indenture, and shall not be liable for interest on any moneys during the period such moneys remain on deposit with it except such interest as the Trustee pays on similar deposits or which it may agree with the Company to pay;

(n) Any action at any time taken by the Trustee pursuant to or with respect to this Indenture at the request or with the consent or approval (expressed or implied) of any person who at the time is the holder of any Bond secured hereby shall be conclusive and binding upon all future holders of such Bond and any Bonds issued in exchange therefor or in lieu thereof;



THE WESTERN PACIFIC RAILROAD COMPANY

Article Twelve  
Section 12.02

139

(o) 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 with any paying agent for the purpose of paying any of the Bonds which shall become due and payable either at maturity thereof or upon call for redemption, or otherwise, or for the purpose of paying the interest due and payable on the Bonds issued hereunder, 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 the said moneys shall have been deposited. Any moneys so held by any paying agent shall 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. In the event of the appointment of a receiver or of a trustee in bankruptcy, readjustment or reorganization proceedings of the Company or of its property, neither such receiver, nor such trustee, nor any other person, shall have any right, title or interest in said moneys so deposited, or in any part thereof.

Any moneys so deposited with the Trustee remaining unclaimed for six years after the date when such Bonds and coupons shall be payable shall then be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such moneys shall thereupon cease and the holders of such Bonds and coupons shall thereafter be entitled to look only to the Company for the payment thereof. In no event shall the holders of such Bonds and coupons be entitled to interest upon such money, whether held by the Trustee or so repaid by it to the Company.

All Bonds and coupons paid hereunder shall be cancelled by the Trustee and thereafter, upon the written Request of the Company, delivered to it.

Any other moneys which at any time shall be deposited under this Indenture with the Trustee by or for the account of the Company shall be held in trust by the Trustee 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.

SECTION 12.03. Any corporation 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 corporation resulting from any merger, conversion or consolidation to which the Trustee or any such successor shall be a party, provided such corporation 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 California and shall have an office in the City and County of San Francisco, California, 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 any 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 Crocker First National Bank of San Francisco, 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 either in the name of any predecessor Trustee or 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 by the Company or holders of the Bonds,

as hereinafter provided, of a successor trustee, whichever shall be earlier. Notice of such resignation shall be published by the Trustee once 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 City and County of San Francisco, California, and one daily newspaper similarly printed, and published and of general circulation in the Borough of Manhattan, City and State of New York.

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.

Upon resignation or removal the Trustee shall be entitled to its reasonable compensation then accrued and unpaid, and the reimbursement of proper expenses theretofore incurred and not previously reimbursed, upon compliance with all provisions of Section 12.05 of this Article Twelve.

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, a successor or successors may be appointed 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, and delivered to such successor trustee hereunder, notification of such appointment being concurrently given to the Company and the predecessor trustee; but until a new trustee shall be appointed by the holders of the Bonds as herein provided, the Company, by an instrument executed by authority of its Board of Directors, may appoint a successor trustee to fill such vacancy. After any



such appointment by the Company, it shall publish notice of such appointment once each week for two successive weeks in one daily newspaper printed in the English language and published and of general circulation in the City and County of San Francisco, California, and one daily newspaper similarly printed, and published and of general circulation in the Borough of Manhattan, City and State of New York.

Any new trustee so appointed by the Company shall immediately and without further act be superseded by a new trustee appointed in the manner above provided by the holders of a majority in principal amount of the Bonds, *provided, however*, that no such appointment may be made (1) more than one year after the first publication of 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.

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 shall 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 California, having an office 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 also 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 WESTERN PACIFIC RAILROAD COMPANY

Article Twelve  
Section 12.06

143

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 shall, nevertheless, on the written request of the Company or of the successor trustee and upon payment of its unpaid compensation and expenses, if any, 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 which it succeeds in and to the trust estate and said rights, powers, trusts, duties and obligations; and the retiring 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 to it 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 one or more persons or corporations 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, and in either case with such powers and authority, not inconsistent herewith, as may be 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.

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 in 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 in 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; and any receiver, assignee or trustee in any such proceedings is hereby authorized by each of the Bondholders to make such payments to the Trustee. 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, plan of adjustment or similar plan, proposed or approved in any such proceeding.

#### ARTICLE THIRTEEN.

##### POSSESSION UNTIL DEFAULT; DISCHARGE OF INDENTURE.

SECTION 13.01. Unless and until (1), the Trustee, under the powers granted in this Indenture, or a receiver or a trustee,



THE WESTERN PACIFIC RAILROAD COMPANY

Article Thirteen  
Section 13.02

145

shall have entered into possession of the trust estate or part thereof or (2) some one or more of the events of default enumerated in Section 9.02 hereof shall have happened and be continuing, the Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all of the trust estate (other than bonds, obligations and shares of stock pledged hereunder and cash deposited 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, issues, tolls, profits and other income thereof (as well as, except as otherwise provided in Articles Eight and Nine hereof, of such bonds, obligations 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 otherwise, 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, including 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 Five hereof, or make arrangements satisfactory to the Trustee that such notice will be so given as soon as practicable, or (c) the Company shall deliver to the Trustee for cancellation all Bonds and coupons appertaining thereto, then outstanding—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, and at the Company's cost and expense, shall cancel and discharge the lien of this Indenture and enter satisfaction thereof upon the records, and shall execute and deliver to or on the Order of the Company such deeds and other instruments as shall be requisite to reconvey to the Company all the estate and interest derived to the Trustee under this Indenture, and shall assign and transfer or cause to be assigned and transferred, and shall deliver or cause to be delivered to or on the Order of the Company 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 property then held by the Trustee hereunder; 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 by it to the payment of the Bonds, the premium, if any, and the interest thereon in respect of which such moneys shall have been deposited.

Any moneys so deposited with the Trustee remaining unclaimed for six years after the date when such Bonds shall be payable shall then be repaid by the Trustee to the Company, and all liability of the Trustee with respect to such moneys shall thereupon cease and the holders of such Bonds and of the coupons appertaining thereto shall thereafter be entitled to look only to the Company for the payment thereof. In no event shall the holders of such Bonds or coupons appertaining thereto be entitled to interest upon such money, whether held by the Trustee or so repaid by it to the Company.

All Bonds and coupons appertaining thereto paid hereunder shall be cancelled by the Trustee and thereafter delivered to the Company.

#### ARTICLE FOURTEEN.

CONSOLIDATION, MERGER, CONVEYANCE, ACQUISITION AND LEASE.

SECTION 14.01. Nothing contained in this Indenture or in any Bond issued or to be issued hereunder shall prevent the consolida-

Article Fourteen  
Section 14.02

147

tion 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 the merger into the Company or the acquisition or lease by the Company of the property as a whole, or substantially as a whole, of any other corporation, or shall prevent successive consolidations, mergers, conveyances, acquisitions 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, acquisition or lease shall be on such terms as shall fully preserve and in no respect impair the lien and security of this Indenture or any of the rights and powers of the Trustee or 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 any successor corporation or lessee corporation, as the case may be, shall, by an indenture supplemental hereto, expressly assume the due and punctual payment of the principal of and interest on all of the Bonds issued and to be issued hereunder according to their tenor and purport, and the due and punctual performance of all of the covenants, terms and conditions of this Indenture, and of any indentures supplemental hereto, to be kept, observed and performed by the Company.

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.

SECTION 14.02. In the absence of an express grant by the successor corporation or by the Company, as the case may be, this Indenture shall not by reason of any such consolidation, merger or conveyance of the trust estate or any such acquisition by or lease to the Company,



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 any corporation with or into which the Company may be consolidated or merged or which may be merged into the Company or to which the Company may make any such conveyance, which prior to such consolidation, merger or conveyance was not subject to the lien of this Indenture;

(2) Any property or franchise which may be purchased, constructed or otherwise acquired by the successor corporation or by the Company 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 mentioned and referred to in clauses (a) and (b) hereinafter contained in this Section, which, as and when purchased, constructed or otherwise acquired by such successor corporation or by the Company, shall be and become subject to the lien of this Indenture, notwithstanding any such consolidation, merger or conveyance; or

(3) Any securities of any corporation (other than Sacramento Northern Railway and Tidewater Southern Railway Company, or any successor of either of them) constituting a Class 1 carrier as defined by the rules of the Commission at the time in force, acquired by the Company, or the properties of any such corporation acquired or leased as a whole or substantially as a whole by the Company, or any betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions or alterations of, to, upon or for said properties purchased, constructed or acquired by the Company after the date of any such acquisition or lease, unless such securities or such properties shall have been made the basis in whole or in part for the authentication and delivery of Bonds hereunder, or the payment of cash, or the release of property hereunder, or acquired with proceeds of the insurance on property subject to the lien hereof.

THE WESTERN PACIFIC RAILROAD COMPANY

Article Fourteen  
Section 14.02

149

In order to confirm of record the lien of this Indenture and to preserve and protect the rights of the holders of the Bonds hereunder, the supplemental indenture or indentures provided for in Section 14.01 of this Article Fourteen shall be recorded as in Section 7.16 of Article Seven hereof provided, and if any such supplemental indenture 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, or as a lien subject only to liens affecting the property and franchises of the Company prior to such consolidation, merger or conveyance: (1) all property theretofore or thereafter acquired, in whole or in part, 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, of the withdrawal of cash or the issuance of Bonds hereunder, 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 to or incident to properties subject to the lien of this Indenture; and

(b) An undertaking on the part of such successor corporation that all property and franchises thereafter acquired by it and

necessary to the full and complete performance of any covenant herein contained relating to the maintenance and upkeep of the trust estate, to the making of all needful and proper repairs, renewals, replacements, substitutions and alterations and to the preservation and keeping in full effect of all rights, franchises and privileges subject to the lien hereof, and 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 prior lien of this Indenture; and

(c) An undertaking 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 the 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 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 possess and may exercise, subject to the terms and conditions of this Indenture and any indentures supplemental hereto, each and every power, authority and right herein reserved to or conferred upon the Company; and thereupon 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, and under the corporate seal of either the party of the first part or the successor corporation, any and all Bonds which shall not theretofore have been signed by the party of the first part and delivered to the Trustee; and the Trustee, upon the request of such successor corporation, and subject to all the terms, conditions and limitations in this Indenture and in any



and all indentures supplemental hereto prescribed, shall authenticate any and all Bonds which previously shall have been signed by the party of the first part 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 such successor corporation shall in all respects have the same legal rank and security as the Bonds theretofore issued in accordance with the terms of this Indenture 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 to be 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, but also any such successor corporation upon compliance with the provisions of this Article Fourteen. Any act or proceeding by any provision of this Indenture authorized, required or permitted to be done or performed by any board or officer of the Company, shall and may be done and performed, with like force and effect, by the like board or officer of any successor corporation, subject, however, to the provisions of Section 14.03 of this Article Fourteen.

**SECTION 14.06.** Every supplemental indenture provided for in this Article Fourteen shall be in form approved in and by an Opinion of Counsel and the Trustee may accept such Opinion of Counsel that the provisions and conditions of this Article Fourteen have been complied with as conclusive evidence of such compliance.

**SECTION 14.07.** 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 of this Indenture, the lien of this Indenture upon such capital stock shall terminate upon such consolidation, merger or

Article Fourteen  
Section 14.08  
Article Fifteen  
Section 15.01

152

conveyance becoming effective, and such capital stock, if then in the possession of the Trustee, shall be surrendered to the Company 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 Section 4.01 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.

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 Company if the railroads and other property theretofore owned by the corporation whose bonds or other obligations were so subject shall have been subjected to the lien of this Indenture as a first lien thereon by a supplemental indenture executed as provided in Section 4.01 hereof, 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 14.08. 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 by the Company or the successor corporation, as the case may be.

#### ARTICLE FIFTEEN.

##### NO RIGHTS IN STRANGERS; NO INDIVIDUAL LIABILITY.

SECTION 15.01. Nothing in this Indenture or in the Bonds issued hereunder, expressed or implied, is intended, or shall be construed, to confer upon or to give any person 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 In-

BOOK 59 PAGE 620

THE WESTERN PACIFIC RAILROAD COMPANY

Article Fifteen  
Section 15.02  
Article Sixteen  
Section 16.01

153

denture, or under any covenant, condition or provision herein contained; all the covenants, stipulations, promises and agreements contained herein being and 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 hereby secured.

SECTION 15.02. No recourse shall be had for the payment of the principal or interest of the Bonds, or any part thereof, or for any claim based thereon, or otherwise in respect thereof, or of the indebtedness represented thereby, or in respect of this Indenture, or under or upon any obligation, covenant or agreement contained herein, against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company, or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, 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 being 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 corporation, 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 in this Indenture, 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 SIXTEEN.

MISCELLANEOUS PROVISIONS.

SECTION 16.01. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company, shall bind its successors and assigns, whether so expressed or not.



SECTION 16.02. For the purpose of any action to be taken by the holders of Bonds 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 4.02 hereof, would not be entitled to vote at a meeting of bondholders convened pursuant to Section 4.02 hereof at the time of such determination, shall be disregarded.

SECTION 16.03. Interest payable to the Trustee under any provision of this Indenture on advances made by it shall be at the following rate or rates per annum: So long as there shall be a rediscount rate of the Federal Reserve Bank in the New York District, such interest shall be at the current rediscount rate of such Federal Reserve Bank, plus  $1\frac{1}{2}\%$ , *provided, however*, that such interest shall be not less than  $3\frac{1}{2}\%$  nor more than 6% per annum; if for any reason there shall cease to be a rediscount rate of the Federal Reserve Bank in the New York District, such interest shall be at the rate of 4%.

SECTION 16.04. This Indenture is dated, for convenience only, as of January 1, 1951, and shall be valid and effective for all purposes upon the execution and delivery hereof.

SECTION 16.05. In order to facilitate the recording of this Indenture, it 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 but 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 Crocker First National Bank of San Francisco, the party hereto of the second part, has caused this Indenture to be signed and acknowl-

THE WESTERN PACIFIC RAILROAD COMPANY

155

edged by its President or one of its Vice Presidents, and its corporate seal to be hereunto affixed and the same to be attested by one of its Trust Officers or one of its Assistant Trust Officers, all as of the day and year first above written.

THE WESTERN PACIFIC RAILROAD COMPANY,  
By F. B. WHITMAN  
President

Attest:

C. L. DROIT  
Secretary

(Seal)

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

E. W. ENGLEBRIGHT  
SIDNEY HENRICKSEN

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO,  
By R. V. WALSH

Vice President

Attest:

F. P. GRAY  
Trust Officer

(Seal)

Signed, sealed and delivered as to Crocker  
First National Bank of San Francisco  
in the presence of:

E. J. TOOKER  
A. F. CROCKET

State of California,  
City and County of San Francisco } ss.

On this 16th day of January, 1951, before me, BERTHA M. PETERSEN, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared F. B. WHITMAN, 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 in behalf of said corporation by authority of a 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 executed 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.

(Seal)

BERTHA M. PETERSEN  
Notary Public  
in and for the City and County of  
San Francisco, State of California.

My Commission expires January 20, 1953.



157

State of California, }  
City and County of San Francisco } ss.

On this 16th day of January, 1951, before me, MARIE G. RICE, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared R. V. WALSH, known to me to be a Vice President of CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, 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 in behalf of said corporation by authority of a 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 executed 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.

(Seal)

MARIE G. RICE  
Notary Public

in and for the City and County of  
San Francisco, State of California.

My Commission expires March 19, 1954.

63157

RECORDED AT THE REQUEST OF Title Insurance Trust Co  
on June 21, 1977 at 30 mins. past 10 A. M. In  
Book 59 of OFFICIAL RECORDS, page 381-625, RECORDS OF  
EUREKA COUNTY, NEVADA. WILLIS A. DePAOLI Recorder  
File No. 63157 Fee \$ 2.45

BOOK 59 PAGE 625