days of the week) immediately subsequent to such payment, in a newspaper printed in the English language, published and having a general circulation in the Borough of Manhattan, City, County and State of New York, notice of the fact that it will, up to a date therein fixed by it, receive proposals to sell Bonds of Series A to the Trustee; and, in case of such publication for offers to sell Bonds, the Trustee shall accept for purchase, at not exceeding the redemption price (principal and premium) and interest accrued the next succeeding interest payment date, such of the Bonds of Series A as can in the opinion of the Trustee be most cheaply purchased under the offers to sell received by the Trustee, and shall apply to the purchase of such Bonds sinking fund moneys in its hands.

If the Trustee purchases, or accepts proposals for the sale to it of, Bonds of Series A sufficient in amount to reduce the sinking fund balance to an amount not exceeding five thousand dollars (\$5,000), such balance need not be applied by the Trustee forthwith to the redemption of Bonds of Series A, but may be applied by the Trustee from time to time in its discretion to the purchase, in the open market or by private contract, of the Bonds of Series A at the lowest prices obtainable in the opinion of the Trustee, not exceeding the redemption prices (principal and premium) hereinbefore specified, and interest to the date of purchase; but if such balance exceeds the sum of five thousand dollars (\$5,000), the balance of any moneys in the sinking fund thirty-five (35) days before each interest payment date shall be applied by the Trustee in redeem ing Bonds of Series A. on the next succeeding interest payment date, at said redemption prices, with interest to the date fixed for redemption and in the manner hereinbefore specified. The Trustee, having selected the Bonds of Series A to be redeemed, shall give notice to the Company to that effect, specifying the numbers thereof, and the Company covenants forthwith to give notice and to take any other action required so to redeem such Bonds; or the Trustee may, at its option and at the expense and on behalf of the Company, give such notice and take such action.

All Bonds of Series A purchased or redeemed by the application of the sinking fund, or delivered by the Company to the Trustee on account of any sinking fund payment, together with all unmatured coupons appertaining thereto, shall immediately be cancelled and, upon its written request, delivered to the Company, and no Bond shall be issued hereunder in place thereof.

Any money at any time held by the Trustee in the sinking fund for Bonds of Series A as above provided shall be held by the Trustee as a special deposit, subject to the provisions of subsection H of section 1 of Article VII hereof, as security for the Bonds of Series A unless and until it shall be applied by the Trustee to the payment of the principal, premium, if any, and interest of the outstanding Bonds of Series A under any of the provisions of this Indenture; and any interest allowed by the Trustee upon such money shall be credited to the sinking fund.

## ARTICLE XI.

Special Maintenance Provisions.

The Company will in each year, commencing with June 1, 1927, expend not less than twelve and one-half per cent. (121/2%) of its gross operating revenue (as herein defined) for one or more of the following purposes:

- (1) the maintenance, replacement and renewal of its property;
- (2) the retirement, through the operation of any sinking fund or otherwise, but not at a price exceeding the redemption price applicable at the beginning of said year (or, in the case of Bonds of a series not subject to redemption, not exceeding 105% of the face value with accrued interest), of Bonds issued under this Indenture:
- (3) the retirement through the operation of any sinking fund or otherwise of the Company's Five Year Secured 61/2% Sinking Fund Gold Notes dated as of June 1, 1927, and/or any other funded debt of the Company; or
- (4) the acquisition or construction of additional property (as herein defined) which shall not theretofore have been made and shall not thereafter be made a basis for the issue of Bonds, the release of property, the withdrawal of money, or for any other purpose of this Indenture.

The Company will file with the Trustee, on or before September 1, 1928, a sworn certificate of the treasurer of the Company, verified by the sworn certificate of an accountant (who may be regularly employed by the Company) appointed and paid by the Company and approved by the Trustee, covering the year ending May 31, 1928, and on the first day of September in each year thereafter a sworn certificate of its treasurer, similarly verified, covering the preceding year ending May 31, each of which certificates shall set forth in reasonable detail satisfactory to the Trustee (a) the gross operating revenues of the Company as herein defined during said year, showing how the same have been calculated in such manner as to show expressly conformity to such definition of gross operating revenues and other requirements hereof; (b) the amount which the Company has actually expended for maintenance during the period stated, and the provisions made by the Company during the same period for nts, replacements and renewals of its property; (c) the amount of Bonds issued hereunder retired during said year through the operation of any sinking fund or otherwise; (d) the amount of said Five Year Secured 61/2% Sinking Fund Gold Notes retired during said year; (e) the additional property (as herein defined) so acquired or constructed during said year, showing the actual cash cost and the value and other particulars thereof in such manner and detail as to show expressly conformity with the requirements and definitions hereof in all pertinent particulars, and that the same have not been made the basis for obtaining, or of any pending application for obtaining, the issue of Bonds, the release of property, the withdrawal of money, or for any other purpose of this Indenture; and (f) the facts as to any credits claimed by the Company under the next succeeding paragraph and under the next to the last paragraph of this Article.

The Company may in any year be credited for the purposes of this section with any amounts expended by it, subsequent to June 1, 1927, and within five (5) years of the credit, in excess of the sums hereby covenanted to be expended and not previously credited under the provisions hereof, against a deficiency in some year subsequent to that in which such excess was expended. In case the expenditures and credits shown by such certificates in any year shall show that in said year the Company has expended less in the aggregate than the foregoing percentage, then the Company shall forthwith pay to the Trustee in cash a sum equal to such deficiency. All sums so paid to the Trustee shall be subject to withdrawal by the Company in reimbursement for expenditures by it for any of the aforesaid purposes (other than expenditures included in any certificate theretofore made under this Article), upon filing with the Trustee a certificate, signed by the president and the treasurer of the Company, setting forth the expenditures that have been made and for which reimbursement is desired.

The Company will at any time, when requested by the Trustee (which shall make such request upon the application of holders of not less than ten per cent. (10%) in principal amount of the Bonds then outstanding hereunder), but not oftener than once in each year, cause an examination of its property to be made by an engineer or other competent person (who may be in the employ of the Company unless the Trustee shall in a particular instance require otherwise) experienced in the operation and maintenance of such properties, to be appointed and paid by the Company and approved by the Trustee, or, in the event that they fail to agree within ten (10) days after such request by the Trustee, appointed by the Trustee at the expense of the Company; and the Company will cause such engineer or other person, within a reasonable time from the date of his appointment, to report to the Trustee whether or not such property is being properly maintained, that is, whether or not the property owned by the Company on June 1, 1927, and property subsequently acquired, whether as replacements or renewals or as entirely new property, has been properly maintained, and whether or not the standard of operating conditions has been impaired since June 1, 1927, or the date of the last preceding such report, if any. Such engineer or other person shall also report whether or not since June 1, 1927, there has been charged to operating expenses or current income account, or provided through reserve accounts exclusive of sinking fund payments, sufficient amounts to cover all repairs, retirements, replacements and renewals necessary to maintain the properties at such standard. If such engineer or other person shall report that the property has not been properly maintained pursuant to the Company's covenants herein contained, or that sufficient charges have not so been made to operating expenses or current income account, he shall further report the amount by which such charges from June 1, 1927, or from the date of the last preceding such report, if any such report has theretofore been made, fall short of the amount which should have been expended since June 1, 1927, or from the date of the last preceding such report, to maintain properly the standard of operating efficiency. In making said report, he shall take into consideration and give credit for all capital expenditures made upon the Trust Property out of said reserve accounts. The expense of all examinations and reports of engineers under the provisions hereof shall be borne by the Company.

The Company will, within thirty (30) days from the date of the receipt by the Trustee of such report, deposit with the Trustee a sun equal to the amount of the deficiency shown by such report, and shall be entitled to be credited, to the extent of the sum so deposited, upon its next succeeding annual expenditure required by the provisions of this Article, and the Company shall within a period of twelve (12) months from the date of the receipt by the Trustee of such report, charge to its surplus income accumulated since its incorporation, the amount of such deficiency. The Money so paid to the Trustee shall be paid over to the Company from time to time to reimburse it for amounts subsequently actually accumulated and the formal of the trustee of the trustee shall be paid over to the Company from time to time to reimburse it for amounts subsequently actually actua ally expended by it for repairs, renewals or replacements to make good any deficiency so reported, upon receipt by the Trustee of certificates signed by the president and by the engineer of the Complany (or other engineer satisfactory to the Trustee if required by the Trustee) stating the amount so expended and that it has been expended for repairs, renewals or replacements to make good the deficiency so reported. Until so applied, all sums paid to the Trustee shall be held by it as part of the security hereunder, subject to the provisions of subsection H of section 1 of Article with the security hereunder, subject to the provisions of subsection H of section 1 of Article VII hereof. For the purpose of subsequent certificates and reports under this section, money so deposited with the Trustee shall be deemed to have been expended for repairs, renewals or replacements during the period within which the deficiency made good by the deposit of such money or the deduction from surplus occurred.

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Said certificates and reports shall be placed on file by the Trustee and shall be open to the inspection of any Bondholder at any time. If from any such report it shall appear that there has probably been default in the performance of the covenants herein contained, the Trustee shall, upon request of holders of ten per cent. (10%) in principal amount of the Bonds then outstanding, give the Company written notice to that effect, and may proceed to apply the remedies provided in Article V hereof after the expiration of the time therein provided, if any.

## ARTICLE VII

Possession Before Default; Sales and Reconveyances; Taking by Eminent Domain; Alterations; and Disposition of Certain Moneys in the Trustee's Hande.

Section 1. Subsection A. Unless one or more of the events of default specified in section 1 of Article V hereof shall have occurred, the Company shall be suffered and permitted to possess, enjoy, use, consume and deal with, in the ordinary course of its business, but not inconsistently with the security hereby created or with the specific provisions of this Indenture and the rights of the Trustee and Bondholders hereunder, the property, rights and privileges of every kind, transferred, assigned or conveyed by this Indenture, and to take and use any and all income, rents, issues and profits thereof.

Section 2. Subsection A. So long as the Trustee shall not have notice that the Company is in default hereunder the Company may, with the approval of the Trustee, cancel, terminate, alter, modify or amend any contracts, agreements, leases, permits or similar rights of the Company covered by this Indenture, whenever the best interests of the Company shall, in the judgment of its board of directors expressed by resolution, a certified copy of which, under the corporate seal of the Company, shall be filed with the Trustee, require such cancellation, term alteration, modification or amendment. The Trustee shall not give its approval under the provisions of this subsection until it (a) shall have been advised by counsel (who may be of counsel to the Company), appointed and paid by the Company and approved by the Trustee, to the effect that the interests and security of the Bondholders hereunder will not be diminished or impaired by any such cancellation, termination, alteration, modification or amendment, and (b) shall obtain the certificate of an engineer or other person believed by the Trustee to be competent, who may be in the employ of the Company, selected and paid by the Company and approved by the Trustee, that any such cancellation, termination alteration, modification, or amendment is advantageous and in no wise depreciates the value of the Trust Property or impairs the substantial efficiency thereof. Any such amended, modified or altered contract shall forthwith become bound by and be subject to the terms of this Indenture to the same extent and in the same manner as the contract, agreement, lease, permit or similar right previously existing.

Subsection B. The Trustee may, in its discretion, subject to the provisions of sections 7 and 8 of this Article and upon the conditions hereinafter referred to, reconvey to the Company all its right, title and interest in and to any part of the Trust Property, if the Company shall have sold or exchanged, or contracted to sell or exchange, for cash, for obligations secured by purchase money mortgages on the property released, or for additional property (the words "additional property", whenever used in this Article, having the meaning designated in section 4 of Article I hereof), or for a combination of any two or more such considerations the property to be reconveyed and if the same shall not be required or useful for or in connection with the operation of the Trust Property.

Before executing or consenting to any reconveyance under this section, the Trustee shall in every case receive:

- A. A written application of the president or treasurer of the Company, accompanied by a certified copy of a resolution or vote of the board of directors of the Company authorizing such application.
- B. The sworn certificate of the president and the treasurer of the Company stating whether the Company is to the knowledge of the signers in default in the observance or performance of any provision hereof, and stating that in the judgment of such officers the property to be reconveyed (which shall be described in reasonable detail satisfactory to the Trustee) is no longer required or useful for or in connection with the operation of the Trust Property: that the Company has sold or has contracted to sell, for cash, or for obligations secured by purchase money mortgages upon the property to be reconveyed, or for additional property, or for a combination of any two or more such considerations, the property the reconveyance of which is requested; and that the price which the Company is to receive for the property to be reconveyed (which price and/or the obligations secured by purchase money mortgages, as the case may be, shall be stated in such certificate) is a fair price therefor, and/or that the additional property which the Company is to receive for the property to be reconveyed (which additional property shall be stated in such certificate) is (together with such, if any, cash paid and/or purchase money obligations received) of a value to the Company equal to the value of the property to be reconveyed; and, if any additional property is included in the consideration for such reconveyance, such certificate shall set forth the further matters relating to additional property called for by the provisions of subsection D of section 3 of Article III hereof.
- C. The sworn certificate of a firm of engineers (who may be in the employ of the Company) appointed and paid by the Company, and approved by the Trustee, stating that in their opinion the Company has duly complied with its maintenance covenant contained in section 8 of Article IV and in Article XI hereof, and that they have personally examined such officers' certificate and also, either personally or through a competent assistant, the property described therein and the reconveyance of which is applied for, and that in their judgment all statements contained in such officers' certificate (except statements relating to default) are correct; and, if any additional property is included in the consideration for such reconveyance, such certificate shall set forth the further matters relating to additional property called for by the provisions of subsection E
- D. The full consideration in cash, and/or the purchase money obligations, duly endorsed or assigned to the Trustee, or in blank, and/or the proper instruments of conveyance, if any, referred to in subsection H of section 3 of Article III hereof, as the case may be, payable or deliverable to the Company for the property so to be released.
- E. An opinion of counsel (who may be of counsel to the Company), satisfactory to the Trustee and paid by the Company, to the effect, in the opinion of such counsel, that all necessary action on the part of the Company has been taken in compliance with the provisions hereof and all applicable legal requirements, that any obligations included in the consideration for such release are valid obligations, that any purchase money mortgages securing the same are sufficient to afford a first lien upon the property to be reconveyed, and that such obligations and mortgages have been, or contemporaneously upon such reconveyance will be, duly assigned and transferred to the Trustee upon the trusts hereof; and, if any additional property is included in the consideration for such release, such opinion shall set forth the matters relating to additional property called for by the provisions of subsection H of section 3 of Article III hereof;

The Trustee shall be under no liability or accountability whatever for the collection or enforcement of such obligations or mortgages, and may pay to the Company any interest received thereon so long as it shall not have notice that the Company is in default hereunder. All sums received by the Trustee for property reconveyed by it pursuant to this section shall be held and applied pursuant to the provisions of section 6

All property acquired by the Company by exchange or purchase, to take the place of any property reconveyed under any of the provisions nture, shall forthwith and without further transfer, assignment or conveyance become and be subject to and be covered by this Indenture; but the Company, at the request of the Trustee from time to time, or without such request to the extent necessary to comply with any applicable legal requirements, will transfer, assign and convey any and all such property to the Trustee, by proper deeds or other instruments, which the Company will duly record wherever required for the protection of the Bondholders and of the Trustee upon the trusts and for the purposes of this Indenture.

Section 3. The Company, subject to the provisions of sections 7 and 8 of this Article, may, without the consent of the Trustee, at any time sell or otherwise dispose of, for full value, any part of its machinery, equipment, livestock, tools or implements which may have become obsolete, worn out or unnecessary for the purposes of the Company. The Company covenants in each such event to replace such property substantially contemporaneously with new property of at least equal value, which new property shall forthwith become subject to this Indenture, and the Trustee shall execute quitelaims of such property if so requested by the purchaser thereof; provided, however, that the Company shall not, within any period of six (6) consecutive months, sell or dispose of parts of the Trust Property pursuant to this section exceeding in their aggregate value fifty

Section 4. In case any of the Trust Property shall be taken by exercise of the power of eminent domain, or in case of any sale or conveyance in lieu and in reasonable anticipation of such taking, the Trustee may quitclaim the property so taken or sold, subject to the provisions of sections 7 and 8 of this Article and upon being furnished with an opinion of counsel (who may be of counsel for the Company), satisfactory to fect that such property has been lawfully taken or sold as aforesaid and, in case of any such sale, upon being furnished also with a resolution of the board of directors of the Company to the effect that such sale was in lieu and in res anticipation of such taking and, in the opinion of said board, was for the best interest of the Company, and also upon the deposit with the Trustee in any such case of the net proceeds of any such sale or taking. Such proceeds shall be applied in accordance with the provisions of section 6