

November 30, 1946, shall be determined in accordance with sound accounting practice; provided, however, that (i) all direct charges to earned surplus, except charges occasioned by dividends on preferred or common stock of the Company (other than dividends payable solely in common stock of the Company) or by other distributions on or purchases of shares of common stock of the Company, shall be deemed to be charges against earned surplus existing at November 30, 1946, to the extent thereof, and to such extent shall not diminish earned surplus accumulated subsequent to that date, and (ii) profits or losses resulting from the sale or abandonment of capital assets, or taxes on or in respect of any such profits, shall not be credited to or charged against earned surplus of the Company available for dividends on its common stock accumulated subsequent to November 30, 1946.

The provisions of this Section 1 shall not apply to the acquisition of shares of common stock of the Company effected through the exchange of other shares of common stock of the Company or otherwise acquired without expenditure of assets of the Company.

SECTION 2. The Company covenants that, so long as any Bonds of Ninth Series are outstanding, it will file with the Trustee within four months after the close of each calendar year beginning after December 31, 1967, an accountant's certificate stating as of the end of such calendar year (i) the earned surplus of the Company available for dividends on its common stock accumulated subsequent to November 30, 1946, (ii) the aggregate amount of all dividends (other than dividends payable solely in shares of common stock of the Company) and other distributions on or purchases for value of shares of common stock of the Company subsequent to November 30, 1946, (iii) the cumulative maintenance and replacement requirement (determined as provided in Section 1 of Article IV of the First Supplemental Indenture) for the period December 1, 1946, to May 31, 1948, (iv) the aggregate of the amounts charged or provided by the Company for maintenance of and repairs to, and for depreciation of, the mortgaged property, from December 1, 1946, to May 31, 1948, (v) the cumulative replacement requirement (determined as provided in Section 1 of Article IV of the Second, Third, Fourth and Fifth Supplemental Indentures and Section 1 of Article III of the Sixth, Seventh, Eighth and Ninth Supplemental Indentures) from June 1, 1948, to the end of such calendar year, and (vi) the aggregate of the amounts provided by the Company for depreciation of the mortgaged

property from June 1, 1948, to the end of such calendar year; provided that any such accountant's certificate filed pursuant to the provisions of Section 2 of Article V of the Second, Third, Fourth or Fifth Supplemental Indenture or pursuant to the provisions of Section 2 of Article IV of the Sixth, Seventh or Eighth Supplemental Indenture containing the same information as of the same dates as required herein, shall be deemed to have been filed pursuant to the provisions of this Section 2 and compliance with the provisions of Section 2 of Article V of the Second, Third, Fourth or Fifth Supplemental Indenture or the provisions of Section 2 of Article IV of the Sixth, Seventh or Eighth Supplemental Indenture shall constitute compliance with the provisions of this Section 2.

#### ARTICLE V.

##### ADDITIONAL COVENANT.

SECTION 1. The Company covenants that, so long as any Bonds of Ninth Series are outstanding, it will not, in any case wherein an earnings certificate conforming to the provisions of subdivision 3(f) of Section 3.03 of the Indenture is required, issue any additional bonds unless the accountant's certificate (or independent accountant's certificate, as the case may be) required by said subdivision 3(f) shall show, in addition to the matters required to be shown by the provisions of said subdivision 3(f), that the net earnings of the Company available for interest for the twelve months' period covered by said certificate (calculated as prescribed by said subdivision 3(f)) less the amount, if any, by which the provisions made by the Company for depreciation of the mortgaged property during such twelve months' period shall be less than two and four-tenths per cent (2.4%) of the amount of the gross property account of the Company (determined in accordance with the provisions of Section 1 of Article III of this Ninth Supplemental Indenture) at the beginning of such period, is at least two times the amount of the aggregate annual interest charges on the bonds and prior lien bonds specified in subparagraphs (i), (ii) and (iii) of subdivision 3(f) of Section 3.03 of the Indenture.

#### ARTICLE VI.

##### THE TRUSTEES.

SECTION 1. The Trustees shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Ninth Supplemental Indenture or the due execution hereof by the Company, or for or in respect of the recitals and statements contained herein, all of which recitals and statements are made solely by the Company.