

SECTION 7. The provisions of this Article V are hereby made expressly subject to each and all of the remedies of the Trustees or the Bondholders as set forth in Article XVI and the operation of the provisions of this Article V shall be suspended during the continuance of either of the Events of Default specified in clause (f) or clause (g) of Section 2 of Article XVI.

ARTICLE VI CAPITAL FUND

SECTION 1. The Company covenants that it will create and maintain a fund to be known as the "Capital Fund," that on or before April 1, 1948, it will pay into the Capital Fund the sum of \$3,000,000 in cash and that on or before April 1 of each year, beginning with the year 1949, and continuing as long as any Bonds are outstanding under the Mortgage, but subject to the provisions of Section 8 of this Article VI, it will pay into the Capital Fund in cash:

(a) Such amounts as the Company shall charge to operating expenses in respect of the next preceding calendar year for depreciation and retirement of roadway and structures, which shall be not less than the amounts required therefor by the Interstate Commerce Commission or other public regulatory body having jurisdiction or, if no specific amount or rate of depreciation or retirement is so required, then such reasonable amount therefor as shall be established by the Board of Directors within the maximum amount or rate permitted by such Commission or other public regulatory body;

(b) In any year in which the amounts payable into the Fund under the foregoing subsection (a) shall be less than \$3,000,000, such additional amounts as shall be necessary to increase the amounts payable into the Fund in such year to an amount equal to 2% of the railway operating revenues of the Company for such next preceding calendar year, determined in accordance with the Uniform System of Accounts, or \$3,000,000, whichever is less, but only to the extent that the Available Net Income for such next preceding calendar year applicable therefor in accordance with the provisions of subsection (a) of Section 1 of Article V is adequate for such purpose;

(c) In any year in which the aggregate amounts payable into the Fund under the foregoing subsections (a)

and (b) shall be less than \$3,000,000, such additional amounts as the Board of Directors shall determine and authorize in order to increase the aggregate amounts payable into the Fund in such year to \$3,000,000, but only to the extent that the Available Net Income for such next preceding calendar year applicable therefor in accordance with the provisions of subsection (a) of Section 1 of Article V is adequate for such purpose; and

(d) Such additional amounts as the Company shall charge to investment accounts in such next preceding calendar year as the cost of property renewals which should have been charged to railway operating expenses under the Uniform System of Accounts in effect on January 1, 1941;

provided, however, that if the aggregate amounts so payable into the Capital Fund in the year 1949 shall be less than \$3,000,000, the deficit shall accumulate and be payable into the Fund from the same sources in the next succeeding year or years, after having first made provision for the current payments required to be made into the Fund in such succeeding year or years, until such accumulation has been paid into the Fund.

Payments into the Capital Fund pursuant to this Section 1 may be made on a monthly basis or otherwise, provided that all required payments into the Fund relating to any calendar year shall have been completed on or before April 1 of the succeeding calendar year.

SECTION 2. All amounts that are paid into the Capital Fund shall be segregated from the general funds of the Company, shall be held by the Company in a separate bank account or invested in direct or guaranteed obligations of the United States of America, and, subject to the provisions of Sections 3, 4, 5 and 6 of this Article VI, shall be expended:

(a) To pay, or to reimburse the treasury of the Company for, all or any part of the Cost payable in cash of such Additions and Betterments as have not been Bonded;

(b) In any calendar year, to pay the principal of Equipment Obligations as they severally mature and the current annual installments required to be paid into any Equipment Sinking Funds and into any sinking funds established for the retirement of First Mortgage Bonds upon the issuance of such bonds on the basis of the acquisition of Equipment pursuant to the provisions of the First Mortgage;

(c) To purchase or redeem, at not exceeding the then current redemption price thereof, any obligations of the Company bearing Fixed Interest, or, if no such obligations are then outstanding, any obligations of the Company bearing Contingent Interest; and

(d) To pay the Fixed Interest, sinking fund obligations of the Company on any of its Fixed Interest obligations, or short term indebtedness of the Company, other than those provided in the foregoing subsection (b) of this Section 2.

Any balance remaining in the Capital Fund on December 31 of any year in excess of \$3,000,000 shall be transferred to the treasury of the Company on or before April 1 of the succeeding year.

SECTION 3. No expenditures shall be made from the Capital Fund for the purpose provided in subsection (a) of Section 2 of this Article VI if the Company shall not have expended all of the funds which it has covenanted to apply only to the Cost of Additions and Betterments under the provisions of Section 24 of Article VIII, or if the Board of Directors shall have adopted a resolution declaring it to be impracticable to pay, or reimburse the treasury of the Company for, such Cost of Additions and Betterments out of the proceeds of the issuance and sale of preferred or common stocks of the Company.