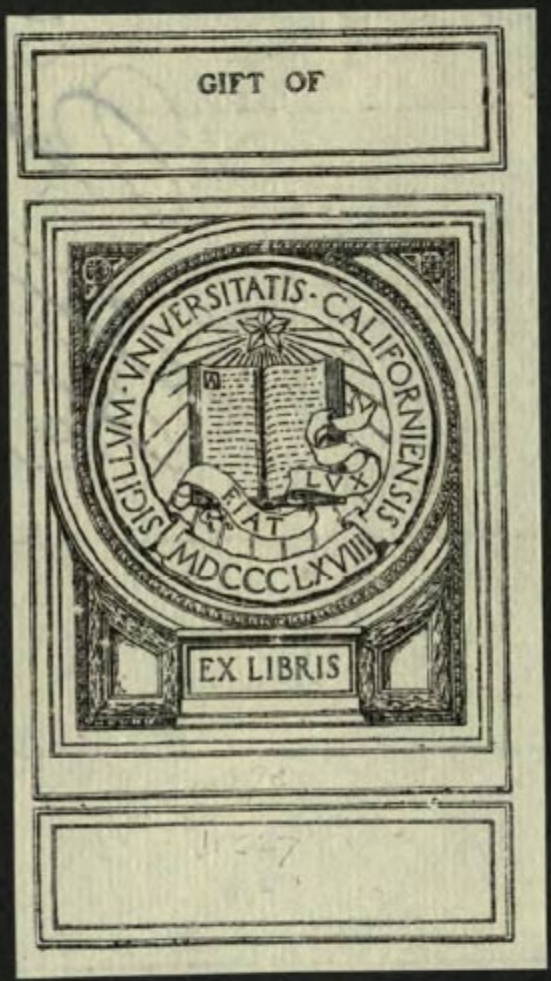
Plan and agreement for reorganization, dated December 15, 1915.

Western Pacific Railway Company.
[New York?] : Western Pacific Railway Company, 1915.



WESTERN PACIFIC RAILWAY COMPANY

Plan and Agreement for Reorganization

DATED DECEMBER 15, 1915

Reorganization Committee

ALVIN W. KRECH, CHAIRMAN
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JAMES D. PHELAN,
GEORGE WHITTELL,
DAVID R. FORGAN,
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DEPOSITARY, THE EQUITABLE TRUST COMPANY OF NEW YORK,
37 WALL STREET, NEW YORK CITY.

AGENTS OF DEPOSITARY: { FIRST FEDERAL TRUST COMPANY, SAN FRANCISCO, CALIFORNIA
ILLINOIS TRUST AND SAVINGS BANK, CHICAGO, ILLINOIS.
OLD COLONY TRUST COMPANY, BOSTON, MASSACHUSETTS.

Western Pacific Railway Company

PLAN AND AGREEMENT FOR REORGANIZATION

INTRODUCTORY STATEMENT.

(Not part of Plan or Agreement.)

In order to enable the holders of certificates of deposit issued under the Western Pacific Railway Company First Mortgage Five Per Cent. Thirty Year Gold Bonds Protective Agreement, dated May 1, 1915, and holders of Western Pacific Railway Company First Mortgage Five Per Cent. Thirty Year Gold Bonds not deposited under said agreement, to judge of the propriety and expediency of the annexed Plan of Reorganization of Western Pacific Railway Company, the Protective Committee acting under said Protective Agreement has thought it best, in explanation of the Plan, to review in this introductory statement, the history of that Company and of the relations between it and The Denver and Rio Grande Railroad Company.

The Existing Road, Its History, Location and Cost.

The Western Pacific Railway Company, a California corporation, was organized in the year 1903. In the year 1911, it completed the construction of a single track line of railway extending from Salt Lake City, Utah, to San Francisco, California, the total length of the road being 926* miles. The road is well located and is constructed on a grade which in no place exceeds one per cent. The character of the construction and the location and alignment of the road are such that the railway is a first-class instrument of transportation.

The actual cash cost of constructing the road, including no expenditure not discharged by payment of cash and allowed by the rules of the Inter-State Commerce Commission, amounted to approximately $77,800,000.

Sources From Which Funds for Construction Were Derived.

The monies with which the Western Pacific Railway Company was constructed were obtained from the following sources:

Proceeds of sale of First Mortgage Bonds	$46,243,120.00
Proceeds of sale of Second Mortgage Bonds	18,750,000.00
Proceeds of sale of capital stock	163,000.00
Interest on trust funds deposited during construction	1,870,146.00
Accrued interest on Second Mortgage Bonds	52,905.00
Monies borrowed	16,408,650.00
Income from operation pending construction used for construction	754,353.00
Total	†$84,242,174.00

*This is the length of the main line. The Western Pacific Company owns in addition lines of about 20 miles in length.

†The difference between this sum and the amount of the monies spent for construction was expended in paying interest on First Mortgage Bonds accruing after the period of construction.

Substantially all monies expended by the Western Pacific, except those derived from the sale of First Mortgage Bonds, interest on mortgage funds deposited in trust and operating income were derived from The Denver & Rio Grande Railroad Company (the owner of five-sixths of the stock of the Western Pacific Company), either through the purchase by the Denver Company of Western Pacific Second Mortgage Bonds or through loans made directly to the Western Pacific Railway Company by the Denver Company or its subsidiaries.

Status of Accounts Between the Western Pacific Company and the Denver Company.

In round figures the indebtedness now owing by the Western Pacific Company to The Denver and Rio Grande Railroad Company and its subsidiaries computing interest to February 28th, 1916, is as follows:

Debt due Denver Company by Western Pacific Railway Company:	
Second Mortgage Bonds (all being owned by Denver Company)	
Principal amount	$25,000,000
Interest accrued and unpaid	8,200,000
Monies advanced by Denver Company upon promissory notes or open account	
Principal amount	17,500,000
Interest accrued and unpaid on notes and balances	4,800,000
Total	$55,500,000

The monies owed the Denver Company exceed the monies advanced not only because interest has accumulated but for the reason that the Second Mortgage Bonds were purchased at a discount.

Condition of Denver Company After Completion of Western Pacific Line.

When the Western Pacific Railway was completed in the year 1911, the credit of The Denver and Rio Grande Railroad Company, the principal stockholder of the Western Pacific Company, was practically exhausted and neither corporation was able to finance the construction of feeders or extensions, although it was recognized that in the absence of advantageous traffic arrangements with other railroads in California such feeders and extensions were essential to make the Western Pacific self-supporting. Prior to the completion of the Western Pacific line such conditions with respect to transcontinental traffic had become established in California that the Western Pacific has never been able to obtain a division of interline-charges yielding an adequate return for the service performed in transporting freight originating upon other transcontinental lines from the Pacific Coast to Salt Lake.

Obligations Assumed by Denver Company to Western Pacific Company and Its First Mortgage Bondholders.

The Western Pacific Railway was constructed at the instance of the Denver Company, which lent its credit to the enterprise, not only in advancing monies as above outlined but also in guaranteeing (in effect) payment of the interest on the First Mortgage Bonds of the Western Pacific. In order to facilitate the sale of the First Mortgage Bonds of the Western Pacific Company, The Denver and Rio Grande Railroad Company (of

Colorado) and the Rio Grande Western Railway Company, parties of the first part, (since consolidated into the existing The Denver and Rio Grande Railroad Company, of Colorado and Utah), the Western Pacific Railway Company, party of the second part, and the Bowling Green Trust Company, Trustee under the Western Pacific First Mortgage, party of the third part, entered into an agreement dated June 23, 1905 (commonly known and herein referred to as "Contract B") by the provisions of which The Denver and Rio Grande Railroad Company and the Rio Grande Western Railway Company, parties of the first part, undertook and agreed to loan to the Western Pacific Railway Company sums which, together with the earnings of that corporation, would be sufficient to enable it to meet its operating expenses and taxes and to make the payments of interest and sinking fund monies called for by the First Mortgage Bonds of the Western Pacific Railway Company and the Mortgage securing the same. This contract contained provisions by which The Denver and Rio Grande Railroad Company and the Rio Grande Western Railway Company undertook to pay to the Trustee of the mortgage securing the First Mortgage Bonds of the Western Pacific Railway Company a sum which, together with the amount actually appropriated and paid over by the Western Pacific Railway Company for that purpose, would be sufficient to discharge as the same accrued the interest payable upon the First Mortgage Bonds of the Western Pacific Railway Company. The Denver and Rio Grande Railroad Company in 1908 assumed the obligations of its predecessors under Contract B and also guaranteed the payment of interest upon many of the then outstanding Western Pacific First Mortgage Bonds by endorsement on the bonds themselves. Bonds in the principal amount of about thirty-seven million dollars are thus endorsed. The Committee, however, is advised by counsel that this endorsement does not add materially to the obligation assumed by Contract B.

Defaults in Payment of Interest.

On March 1, 1915, the Western Pacific Company defaulted in the payment of the interest then due on its First Mortgage Bonds and the Denver Company failed to perform its obligations with respect thereto. Shortly thereafter The Equitable Trust Company of New York, as substituted Trustee under the mortgage securing Western Pacific First Mortgage Bonds, commenced proceedings for the foreclosure of the First Mortgage in the United States District Court for the Northern District of California and Mr. Frank G. Drum and Mr. Warren Olney, Jr., were appointed Receivers of the Western Pacific Railway Company. On September 1, 1915, default again occurred in the payment of the interest which on that day became due upon Western Pacific First Mortgage Bonds. Another like default must occur on March 1, 1916. The principal of the $50,000,000 of bonds has been declared due and payable forthwith. The total amount of interest which will be due and unpaid March 1, 1916, is $3,750,000.

Effect of Foreclosure Upon Rights Arising Under Contract B.

The effect of the sale of the properties of the Western Pacific Company on foreclosure will be to free the Western Pacific property in the hands of the purchaser from obligations of the Western Pacific Company to the Denver Company. In other words, foreclosure will result (unless the Denver Company purchase the Western Pacific property at foreclosure sale or some other person or corporation purchase it for more than the amount due upon the Western Pacific First Mortgage bonds) in a direct loss to the Denver Company of its entire investment in the property, an investment which is now represented by a debt of about $55,500,000. On the other hand, the Committee is

advised that the foreclosure sale will not operate to discharge the obligations of the Denver Company to the Western Pacific bondholders except to the extent that monies realized from the sale are applied to the payment of the bonds or bonds are used to pay the purchase price.

Situation of Western Pacific Bondholders.

The situation, therefore, of the Western Pacific Bondholder is peculiar. He has a claim against the Western Pacific Company and has the right to have the property of that Company sold and the proceeds applied, so far as the same will go, in discharge of his claim. He has also a claim against the Denver Company for unpaid interest and will have a claim for interest to accrue on the portion of his debt not discharged by application of the proceeds of the sale of the properties of the Western Pacific Company. Probably, moreover, the Trustee under the Western Pacific First Mortgage, if it elect to adopt that alternative, may recover judgment against the Denver Company for all of the damages suffered by the First Mortgage bondholders by reason of the Denver Company's breach of its obligation under Contract B, considered as an entirety. This makes the question of the financial responsibility of the Denver Company a matter of interest and importance to the Western Pacific bondholders.

Indebtedness and Earnings of The Denver & Rio Grande Railroad Company.

The secured debt of the Denver Company as the same now exists (it has substantially no floating debt) is substantially the following:

Bonds secured by the First Consolidated Mortgage of The Denver and Rio Grande Railroad Company (of Colorado) dated, June 15, 1886	$40,507,000
Bonds secured by the Improvement Mortgage of The Denver and Rio Grande Railroad Company (of Colorado), dated June 1, 1888	8,335,000
Bonds secured by First Trust Mortgage of The Rio Grande Western Railway Company, dated July 1, 1889	15,190,000
Bonds secured by First Consolidated Mortgage of Rio Grande Western Railway Company, dated April 1, 1889	15,080,000
Bonds secured by First Mortgage of Utah Central Railroad Company, dated January 1, 1898	390,000
Bonds secured by First and Refunding Mortgage of The Denver and Rio Grande Railroad Company (of Colorado and Utah), dated Aug. 1, 1908	*33,292,000
Bonds secured by Adjustment Mortgage of The Denver and Rio Grande Railroad Company (of Colorado and Utah), dated May 1, 1912	10,000,000
Equipment Trust Obligations secured by Equipment Trust Mortgage, dated September 1, 1907	300,000
Total	$123,094,000

The net income of the Denver Company for the past four years (after deducting its bond interest and taxes) is shown by the following table compiled from the records of that Company:

* This amount does not include $7,005,000 bonds of this issue which are pledged under the Denver Company's Adjustment Mortgage.

For year ended June 30th,	1912	1913	1914	1915
Net Income	$1,144,763.33	$2,094,179.66	$1,400,375.29	$1,418,730.58
Appropriations from Income,				
For Sinking & Renewal Funds	137,843.81	247,807.92	263,888.82	273,044.89
For Additions & Betterments		389,000.00	80,927.52	211,045.46
Total Appropriations	137,843.81	636,807.92	344,816.34	484,090.35
Balance of Income transferred to credit of Profit & Loss	$1,006,919.52	$1,457,371.74	$1,055,558.95	$934,640.23

The net earnings of the Denver Company during the five months of the current year—July to November inclusive—have substantially increased as compared with the earnings of the corresponding months of 1914. The Company's business during these months has, however, been favorably affected, to some extent, by special and temporary conditions.

Present Condition and Prospects of the Western Pacific Railway Company.

The assets of the Western Pacific Railway Company now in the hands of receivers consist, principally, of physical properties, the reproduction value of which your Committee believes to be at least $75,000,000. It is estimated that the receivers will have on hand at the date of sale at least $600,000 in cash or its equivalent for the purposes of the proposed reorganization. Since the completion of the line in 1911 the Western Pacific Railway Company has reported earnings over and above the cost of operation, maintenance and taxes as follows:

June 30, 1912	$ 564,214.06
June 30, 1913	1,040,330.07
June 30, 1914	321,506.95

The Receivers' report for the year ending June 30, 1915, showed a net income of $617,258.44.

The earnings of the Western Pacific for the past five months are considerably larger than those for the corresponding period of 1914, but cannot be considered an absolutely fair criterion of the present earning power of the corporation. During those months conditions, the character of which are temporary (such as travel incident to the Panama-Pacific Exposition) have contributed to the earnings of the Company.

The Protective Committee has taken the advice of expert engineers and railroad operators with respect to the problem of rendering the Western Pacific enterprise self-supporting. It has consulted, particularly, Mr. Joseph H. Young, now President of the Norfolk Southern Railroad, who is thoroughly familiar with operating and traffic conditions in Western Pacific territory. It has also had the benefit of two reports dealing with the earnings and properties of the Western Pacific Company and the proper development of those properties, both of which were prepared prior to the organization of the Protective Committee—one (by Mr. B. F. Bush and Mr. E. L. Brown) having been prepared at the instance of the Denver Company and the other (by Mr. John F. Stevens) at

the instance of the bankers who originally marketed the Western Pacific First Mortgage Bonds. The conclusions of the Committee with respect to needed improvement, equipment and extension of Western Pacific lines and the results that reasonably may be expected therefrom are based almost wholly upon views in which all of the gentlemen named seem to be in substantial agreement. This is particularly true with respect to the advisability of constructing lines or otherwise acquiring facilities in the San Joaquin Valley and Delta and in the Santa Clara Valley in California, also with respect to the larger items of betterments of the existing line and of additional property, particularly equipment, to be acquired for use in connection therewith. Upon the basis of traffic now carried by the Western Pacific (that is to say, without allowance for any additional business), the proposed expenditures for new equipment and for betterments of existing facilities should so increase the net earnings of the Company that they will amply provide for the interest to accrue upon the $20,000,000 principal amount of New Bonds to be issued as provided in the Plan.

Purposes and General Considerations.

The Protective Committee purposes, if it be practicable to do so at a proper price, that the Reorganization Committee, directly or through a nominee or nominees, shall acquire the properties of the Western Pacific Company on behalf of the holders of such of the First Mortgage bonds as shall be subject to the Plan and Agreement of Reorganization, using the bonds under its control, so far as permissible, in payment of the purchase price, that the properties so acquired shall thereupon be transferred to a new corporation (the proposed Operating Company) and securities issued and disposed of by that company and the proposed Holding Company, as set forth in the annexed Plan.

The Protective Committee has at all times kept in view the value attaching to the claims against the Denver Company to be acquired as contemplated by the Plan and therefore has designed in the Plan and Agreement to provide the Reorganization Committee and later the Holding Company with powers and means to pursue the claims against the Denver Company that shall become subject to the Plan and Agreement in order that as much as possible may be realized (whether by negotiation or suit or both) on the obligations of that Company under Contract B and under its endorsed guaranties. Since the formation of the Protective Committee no negotiations with the Denver Company have taken place and no understanding of any kind with respect to any settlement or adjustment of its obligation exists in any form. The financial condition of the Denver Company is such that it has seemed possible that it may become necessary for the Holding Company to take measures to protect its claim against the Denver Company, and for that reason provision is made in the plan for the raising of funds, if necessary to prevent the extinguishment by means of the possible foreclosure of mortgages upon the Denver Company's property of the claims to be acquired by the Holding Company. The Adjustment Mortgage of the Denver Company, under which there are outstanding $10,000,000, principal amount, of Adjustment Mortgage Bonds, is now in default (although the interest on these bonds has been regularly paid) by reason of the failure to pay interest upon Western Pacific First Mortgage Bonds, and, should this Adjustment Mortgage be foreclosed, the Refunding Mortgage of the Denver Company securing bonds in the principal amount of more than $33,000,000.00 (exclusive of about $7,000,000 thereof pledged under the Adjustment Mortgage) may come into default. For the same reason and because of the position that the Western Pacific property occupies in relation to other railway properties and the resulting necessity of protecting its traffic relations, the Protective Committee has deemed it extremely important that power shall exist also to

make use of a portion of the proceeds of the $20,000,000 of New Bonds in such manner as may seem to the Reorganization Committee prior to the completion of the reorganization and thereafter to the Board of Directors of the Holding Company most advantageous in the interest of the reorganization. Accordingly in clause (b) of Article V of the Plan reasonable latitude in the application of a portion of the moneys to be raised has been provided for.

The necessity of providing for a common agency for the enforcement and protection of the claims against the Denver Company and of raising funds if needed for this purpose is one of the reasons for the formation of the Holding Company. This arrangement is supported also by other reasons, such as: the possibility that after more careful consideration it may be thought necessary or wise to organize separate corporations for the operation of the railway in the states of California, Nevada and Utah respectively, in which event a common ownership of their stocks will be necessary; the fact that a very burdensome stockholders' liability attaches to stock in any California corporation, a liability which might seriously interfere with the saleability and consequently impair the market value of the stock of the Operating Company, if in the hands of the public; and the further fact that under the laws of California a majority of the directors of the Operating Company must reside in that State, although more than three-quarters of the new stockholders will, at least at the time of the completion of the reorganization, be residents of other sections of the country and be entitled to insist upon direct representation in the determination of the general policies and the management of the financial affairs of the reorganized company. It is possible, nevertheless, that the conditions which call for the creation of a holding company will not be of indefinite duration and that the stock of the Operating Company may within a reasonably short time be distributed among the stockholders of the Holding Company.

Statements Not to be Taken as Representations, and Mistakes and Errors Not to Form Ground for Complaint.

The statements contained in this Introductory Statement, whether of fact or opinion, have been based upon such information and advice as have been available and are believed to be substantially correct, but no such statement is intended or is to be taken to be a representation of fact or law or an inducement to any action or omission to act. This Introductory Statement does not constitute in any sense a part of the Plan or of the Agreement hereto annexed. No error or misstatement herein of any description shall constitute ground for the withdrawal of any Depositor from the Plan and Agreement or for any complaint with respect to the Plan and Agreement or to any consequences arising from having become a party thereto.

PLAN OF REORGANIZATION

I.

TERMINOLOGY USED IN THE PLAN AND AGREEMENT.

In the following Plan and Agreement certain convenient terms are employed to obviate the repetition of awkward forms of reference. The terms and their respective meanings, except where a different meaning is plainly indicated by the context, are the following:

The "Old Company" signifies the existing Western Pacific Railway Company.

The "Denver Company" signifies the existing The Denver and Rio Grande Railroad Company, a consolidated corporation of Colorado and Utah.

The term "Operating Company" refers to a proposed new corporation to be organized (probably under the laws of the State of California) for the purpose of owning and operating the existing lines of Western Pacific Railway Company and proposed extensions thereof. In the discretion of the Reorganization Committee two or more corporations may be organized for this purpose, as may seem most advantageous having regard to laws of the states of California, Nevada and Utah, respectively. The term "Operating Company" wherever used in this Plan is to be understood to comprehend whatever corporation or corporations may be employed for the purposes stated, as finally determined by the Reorganization Committee.

The term "Holding Company" refers to a proposed new corporation, to be organized under the laws of such state as may be selected by the Reorganization Committee, for the purpose of owning and holding all of the capital stock of the Operating Company (except directors' qualifying shares) and of holding and enforcing or otherwise realizing upon claims against the Denver Company acquired from Depositors as provided in the Plan and Agreement and existing or to arise either under the contract, known as "Contract B" (an agreement dated June 23, 1905, between (a) the former The Denver and Rio Grande Railroad Company and Rio Grande Western Railway Company, predecessors of the Denver Company, and (b) the Old Company and (c) the Trustee under its First Mortgage), which in effect guarantees the payment of interest upon the Old Company's existing First Mortgage Bonds or under formal guaranties stamped upon certain of the Old Company's First Mortgage Bonds.

The term "Contract B" refers to the above-mentioned agreement dated June 23, 1905.

The term "Old Bonds" refers to the existing First Mortgage Five Per Cent. Thirty-Year Gold Bonds of the present Western Pacific Railway Company.

The term "New Bonds" refers to new First Mortgage Five Per Cent. Bonds which it is proposed shall be issued by the Operating Company.

The term "New Mortgage" refers to the mortgage which is to be created to secure the New Bonds.

The term "Protective Committee" refers to the Committee mentioned in the annexed agreement, representing holders of Western Pacific Railway Company First Mortgage

Five Per Cent. Thirty-Year Gold Bonds, which is acting under an agreement dated May 1, 1915.

The term "Protective Agreement" refers to the last-mentioned agreement of May 1, 1915.

The term "Plan and Agreement" refers to this Plan of Reorganization and the annexed Agreement, the same being taken together as a single instrument.

The term "Reorganization Committee" refers to the Committee constituted by the Plan and Agreement, as the same may be constituted at the time referred to.

The term "Depositary" refers to the depositary that shall be acting hereunder at the time referred to.

The term "Depositors" signifies holders at the time referred to of certificates of deposit issued under the Protective Agreement or under the Plan and Agreement and all holders of Old Bonds which shall be subject to the Plan and Agreement and the term shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary capacity, and those represenetd by or claiming under them, and partnerships, associations, joint-stock companies and corporations as well as individuals.

The term "Deposited Bonds" refers to all Old Bonds that shall at the time referred to be subject to the Plan and Agreement.

The phrase "claims against the Denver Company" or any expression of like import, unless inconsistent with the context, shall be deemed to refer to and comprehend all claims, demands and choses in action and all rights of every description, susceptible of transfer (whether in law or in equity) as contemplated by the Plan and Agreement, against or enforceable against or with respect to The Denver and Rio Grande Railroad Company or any predecessor or successor corporation or any of the property or estate of said Company or of any such predecessor or successor corporation, which have arisen or exist or may arise or exist in favor of or be enforceable by or on behalf or for the benefit of holders, past, present or future, of Deposited Bonds or coupons, whether under or by virtue of Contract B or any guaranty or guaranties of payment of interest endorsed upon any of such Deposited Bonds or under or by virtue of any provision of the Mortgage securing the Old Bonds or otherwise by virtue of ownership of or any interest in the Deposited Bonds or coupons.

The term "Underwriting Syndicate" refers to a Syndicate which has been organized to purchase such of the New Bonds as shall not be purchased by Depositors, together with shares of stock in the Holding Company, as provided in subdivision (B) of Article IX of this Plan.

II.

THE REORGANIZATION COMMITTEE—DEPOSITARY.

Inasmuch as the Protective Committee already represents a very large majority of the Old Bonds—the only securities of the Old Company which are expected to participate in the benefits or execution of the Plan—that Committee is to be continued with

its present membership as the Reorganization Committee which will be charged with the supervision and direction of the proceedings for the execution of the Plan and Agreement, with the powers more specifically set forth in the annexed Agreement. Pending the completion of the reorganization, if in its judgment occasion shall require, it may exercise, but only upon the affirmative vote of three-fourths of all of its members, any of the powers which the Plan contemplates shall be exercised by the Holding Company or by the Operating Company; but any compromise or settlement of claims against the Denver Company made by the Reorganization Committee under the power last conferred, shall be made, and shall be, subject to the condition that such compromise or settlement shall be submitted to the Depositors as provided in the annexed Agreement and shall not be disapproved in the manner therein provided by more than one-third in amount thereof.

The Reorganization Committee is to be composed of the following persons:

A. M. Hunt	Frederick H. Ecker
James D. Phelan	Alvin W. Krech
George Whittell	Starr J. Murphy
David R. Forgan	William A. Read
I. de Bruyn	William Salomon
C. Ledyard Blair	Richard B. Young

Members may be added to this Committee and substitutes for any of the members of the Committee who may die, resign or become incapacitated to act may be appointed—all as provided in the annexed Agreement.

The Reorganization Committee is empowered to delegate the execution of the Plan to a sub-committee or Board of Managers, which in its discretion may be appointed by the Reorganization Committee.

Subject to the power of the Reorganization Committee to make a different arrangement, The Equitable Trust Company of New York will act as Depositary under the Plan and Agreement.

III.

NEW CORPORATIONS—FORECLOSURE AND PURCHASE OF PROPERTY.

The reorganization of the old Company is to be effected, subject to the power of the Reorganization Committee, in its absolute discretion, to vary details of method, through the agency of:

(a) A new corporation or several corporations (called hereafter, whether eventually one or more, the "Operating Company") which when the reorganization is complete will be vested with the title to and will operate the Western Pacific property, (providing the Reorganization Committee shall be able to purchase or arrange for the purchase of the same at a proper price), and as well all additions thereto and extensions thereof. It is expected that the Operating Company will receive and expend

the new moneys provided for in this plan except such as are required for expenses of foreclosure and reorganization and for the payment of the distributive shares of non-assenting bondholders. It will issue the New Bonds provided for in the plan and create the New Mortgage securing them.

(b) A corporation (called herein the "Holding Company") which upon completion of the reorganization will own (1) all of the stock of the Operating Company, except directors' qualifying shares, (2) the interest in any deficiency judgment against the Old Company apportionable to Deposited Bonds and (3) the claims against the Denver Company arising under Contract B with respect to interest upon Deposited Bonds or under any guaranties endorsed on Deposited Bonds. It will issue to the Reorganization Committee or its nominees its preferred and common stock to be exchanged for Deposited Bonds or sold with new bonds to an Underwriting Syndicate or disposed of otherwise as hereinafter provided.

The instrumentalities and methods to be employed to effect the reorganization are to be determined by the Reorganization Committee in its absolute discretion, provided that in substance the results contemplated by the Plan and Agreement shall be accomplished.

In effecting the purchase of the property of the old Company the Reorganization Committee will use, to such extent and in such manner as may be necessary and practicable, the Deposited Bonds and money to be provided by calls upon purchasers of new bonds, whether Depositors or members of the Underwriting Syndicate.

IV.

SECURITIES AND OBLIGATIONS OF OLD COMPANY.

The stock, bonds and other obligations of the Old Company are substantially the following and are to be refunded, paid and eliminated by foreclosure as indicated:

To be Refunded:

First Mortgage 5% Gold Bonds	$50,000,000.00
Coupons appertaining to the same in default (as of March 1, 1916)	3,750,000.00

Paid or to be paid in cash as audited by the Receivers:

Unsecured obligations of Old Company as heretofore ascertained by the Receivers (other than obligations owing to the Denver Company), to be paid by the Receivers pursuant to order of court, about (net)	163,625.54
Equipment obligations of Receivers of Old Company (authorized but not yet issued)	600,000.00

To be eliminated by Foreclosure:

Second Mortgage 5% Bonds (owned by Denver Company and pledged under its Refunding and Adjustment Mortgages)	25,000,000.00
Claims for interest on Second Mortgage Bonds in default (owned by Denver Company and pledged under its Adjustment Mortgage) and unsecured debt (owned by Denver Company—and in small part by its subsidiary, the Utah Fuel Company—and in part pledged under the Denver Company's Adjustment Mortgage), as of date of appointment of Receivers, about	26,800,000.00
Capital stock (5/6 owned by Denver Company and pledged under its Refunding and Adjustment Mortgages)	75,000,000.00

In addition to the foregoing there are certain unliquidated tort claims against the Old Company of relatively small amounts which are the subject of pending actions. There may also be claims as yet unknown. Probably none of the claims remaining in existence (other than the $163,625.54 of claims above provided for) is entitled to preference in the receivership proceedings. It is expected that all remaining claims will be eliminated by foreclosure. These claims are in substance those owned by the Denver Company as stated above. The Reorganization Committee will have power, to be exercised, if at all, in its absolute discretion to consent to or arrange for the payment, settlement or purchase of any such claims, other than claims belonging to the Denver Company or its subsidiaries.

V.

CASH REQUIREMENTS.

The estimated cash requirements of the Plan are the following:

Total amount estimated to be required		$18,600,000
It is expected that this amount will be applied as follows:		
(a) To the purposes indicated below in this clause (a), in the amounts so estimated or in different proportions as the Reorganization Committee, prior to the completion of the reorganization, or the Board of Directors of the Holding Company, thereafter, may determine or approve; the unexpended balance if any to be employed as specified below in clause (b)		8,093,750
To the distributive shares of non-assenting bondholders, underwriting commission, expenses of foreclosure and reorganization, including court costs, compensation and allowances of the Receivers and their counsel, the Mortgage Trustee and its counsel, taxes on creation and issuance of new securities, compensation and expenses of the Protective and Reorganization committees, their depositaries and counsel, fees of engineering, accounting and other experts, engraving, printing and miscellaneous requirements	$2,000,000	
To betterments of existing road	2,579,750	
To acquisition of new passenger and freight equipment for Operating Company	3,514,000	
	$8,093,750	
(b) To the acquisition by purchase, construction or otherwise of extensions and feeders, including payment of interest during construction; the acquisition of additional new property other than extensions, including floating equipment; payment of the Receivers' car trust obligations; provision of working capital for the Operating Company; and supplying for any of the purposes mentioned in clause (a) any amount required therefor in excess of the amount there specified; (moneys to be applied in such amounts severally as the Reorganization Committee, prior to the completion of the reorganization, or the Board of Directors of the Holding Company, thereafter, may determine or approve); and, if the Board of Directors of the Holding Company and the Board of Directors of the Operating Company—or the Reorganization Committee prior to the completion of the reorganization—shall so determine, (in every case by vote of three-fourths of all members and subject to the approval and upon such conditions, if any, as may be imposed by the Railroad Commission of the State of California), to the protection of the claims against the Denver Company to be acquired as contemplated by the Plan and of the Operating Company's situation with respect to its traffic relations		$10,506,250
Total		$18,600,000*

* See Note, p. 7.

VI.

PROVISION FOR CASH REQUIREMENTS.

Provision for meeting the cash requirements of the Plan has been made as follows:

It is estimated that on March 1, 1916, the Receivers should have on hand available for use by the Operating Company, in cash or its equivalent for the purposes of the Plan, not less than $600,000

New Bonds of the Operating Company are to be sold either to Depositors or to an Underwriting Syndicate which has been formed and has underwritten the sale of $20,000,000 of New Bonds together with certain stock of the Holding Company, as set forth in Article IX of this Plan, realizing 18,000,000

Total to be provided $18,600,000*

*The above statements of Cash Requirements and of the Provision made therefor are merely estimates and not to be deemed to limit the amount that may be raised or expended to effect the reorganization. The Reorganization Committee shall have power to accomplish the purposes proposed, if necessary, by somewhat increasing or diminishing the amount of bonds to be sold (but without varying the consideration or terms of sale) or by disposing of stock of the Holding Company freed for use by reason of the failure of holders of Old Bonds to become Depositors (see page 9).

VII.

SECURITIES TO BE ISSUED BY THE NEW COMPANIES.

Securities are to be issued by the Operating Company and the Holding Company, respectively, as follows:

By the Operating Company:

(Subject to the approval of the Railroad Commission of the State of California and any other public officials having jurisdiction.)

First Mortgage Gold Bonds (the New Bonds), authorized issue, $50,000,000

To be secured by first mortgage upon all of the existing railway properties of the Old Company and all property hereafter acquired by the Operating Company integrally connected therewith and all property acquired by means of the use of proceeds of the New Bonds or against which New Bonds shall be issued.

To be sold forthwith to the Depositors or to members of the Underwriting Syndicate, of said authorized issue, bonds of the principal amount of 20,000,000

To be dated March 1, 1916 (or otherwise as the Reorganization Committee may determine); to bear interest at the rate of 5% per annum, payable March 1 and September 1; to mature March 1, 1946, and to be redeemable, in whole or in part, at principal amount and accrued interest, after published notice, upon any interest payment date.

To be issued thereafter 30,000,000

for or against betterments, additions and extensions, under safeguards to be prescribed in the New Mortgage, at not exceeding the rate of $1,000, principal amount of bonds, for $1,000 of money actually invested in additional physical property subject to the New Mortgage or in securities subject to the New Mortgage representing the entire interest in physical property; to bear interest at a rate or rates not in any instance exceeding 6%; by their terms to be redeemable;—rates of interest, dates of maturity and redemption prices to be fixed by the Board of Directors of the Operating Company with the approval of the Board of Directors of the Holding Company, from time to time as bonds shall be issued.

Capital Stock (to be issued forthwith):

Preferred, 6% non-cumulative; preferred both as to dividends and in liquidation; to be redeemable at 105 and accrued dividends, if any, for the then current year and to be convertible into Common Stock at any time prior to any date fixed for redemption at the rate of dollar for dollar 27,500,000

Common 47,500,000

In its discretion and with the approval of the Railroad Commission of the State of California, the Reorganization Committee may cause the

Operating Company to issue its obligations bearing interest at the rate of at least six per cent. per annum in place of the Preferred Stock of the Operating Company provided for in the Plan and, in its discretion and with the approval of said Commission, may cause obligations, junior to said obligations last mentioned, to be issued in place of such part as it may specify of the Common Stock of the Operating Company provided for in the Plan, and either of said issues or any part of either thereof may be fixed obligations or income obligations and may or may not have fixed dates of maturity and said obligations may be of such character otherwise as the Reorganization Committee may determine consistently herewith.

All of the shares of such stock, preferred and common, or such substituted obligations, will upon completion of the reorganization pass into the ownership of and be held by the Holding Company.

By the Holding Company:

Capital Stock (to be issued forthwith):

Preferred, 6% non-cumulative; preferred both as to dividends and in liquidation; to be redeemable at 105 and accrued dividends, if any, for the then current year and to be convertible into Common Stock at any time prior to any date fixed for redemption at the rate of dollar for dollar	27,500,000
Common	47,500,000

VIII.

SECURITIES TO BE OUTSTANDING IN HANDS OF THE PUBLIC.

It is expected that after the completion of the Reorganization, securities will be outstanding in the hands of Depositors and purchasers of New Bonds as follows:

First Mortgage bonds of the Operating Company (the New Bonds)	$20,000,000
Preferred Stock of the Holding Company	27,500,000
Common Stock of the Holding Company	47,500,000

except that Preferred Stock to the extent of $500 for every $1,000 of such Old Bonds as shall not become subject to the Plan and Agreement and Common Stock to the extent of $750 for every $1,000 of such Old Bonds, unless otherwise employed by the Reorganization Committee for the purposes of the reorganization, will be returned to the Treasury of the Holding Company.

IX.

DISPOSITION OF NEW SECURITIES.

(A) Exchange of Old Bonds for Stock of the Holding Company and Purchase of New Bonds by Depositors.

Depositors, including transferees of certificates of deposit, will be entitled to receive in exchange for their Old Bonds and their claims against the Denver Company (all whereof by virtue of becoming subject to the Plan and Agreement will pass to the Reorganization Committee to be used for the purposes of the reorganization as authorized by the Plan and Agreement), stock (preferred and common) in the Holding Company, either in connection with or without the purchase by them of First Mortgage Bonds of the Operating Company upon the following basis:

A Depositor will be entitled to purchase at 90 and accrued interest New Bonds equal in principal amount to 40 per cent. of the principal amount of his Deposited Bonds and if any Depositor shall so purchase New Bonds he will be entitled to receive, in addition to the New Bonds so purchased and in exchange for his Deposited Bonds, Preferred Stock of the Holding Company to an amount, par value, equal to 55% of the principal amount of his Deposited Bonds and Common Stock thereof to an amount, par value, equal to 95% of the principal amount of such Deposited Bonds.

If a Depositor shall not exercise his said privilege to purchase New Bonds he will be entitled to receive, in exchange for his Deposited Bonds, Preferred Stock of the Holding Company of an amount, par value, equal to 50% of the principal amount of his Deposited Bonds and Common Stock thereof to an amount, par value, equal to 75% of the principal amount of such Deposited Bonds.

TABLE EXHIBITING PRIVILEGES AVAILABLE TO DEPOSITORS.

ASSUMES AS BASIS A DEPOSIT OF $1,000 PRINCIPAL AMOUNT OF OLD BONDS.

In Event of	Consideration to be given by Depositor	Per Cent. of Holding of Old Bonds	Securities to be Received					
			New Bonds Principal Amount	Per Cent. of Holding of Old Bonds	Preferred Stock of Holding Company, Par Value	Per Cent. of Holding of Old Bonds	Common Stock of Holding Company, Par Value	Per Cent. of Holding of Old Bonds
Purchase of New Bonds	(a) Cash $360, and accrued interest upon $400 of New Bonds.....	36	$400	40	$550	55	$950	95
	(b) $1,000 principal amount of Old Bonds and coupon of March 1, 1915, and subsequent coupons							
	(c) Transfer of claims against Denver Company							
Exchange of Old Bonds for stock *without* purchase of New Bonds	(a) $1,000 principal amount of Old Bonds and coupon of March 1, 1915, and subsequent coupons	No cash to be paid.	None		$500	50	$750	75
	(b) Transfer of claims against Denver Company							

Any Depositor desiring to avail himself of the privilege of purchasing New Bonds must signify his election so to do by executing and delivering to the Reorganization Committee or its nominees a contract of purchase in form prescribed by the Committee, on or prior to the 15th day of February, 1916, unless the time therefor shall be extended by the Reorganization Committee. In the event that a later date be fixed, Depositors will be notified as promptly as practicable, as provided in the annexed Agreement, of the action of the Reorganization Committee.

The cash payable on account of the purchase price of bonds so purchased is to be paid in instalments as follows:

An amount not exceeding 50% of such cash purchase price, after February 15, 1916, and prior to the completion of the reorganization, upon call by the Reorganization Committee.

The uncalled balance of such 50% (i. e., such part of such first 50% as shall not have been called by the Reorganization Committee) to the Operating Company, at any time upon call by its Board of Directors.

An amount not exceeding an additional 25% to the Operating Company, at any time after January 1st, 1917, upon call by its Board of Directors.

The entire balance of the cash purchase price to the Operating Company, at any time after June 1st, 1917, upon call by its Board of Directors.

In final adjustment of the purchase-price, accrued interest upon bonds purchased will be charged and interest will be allowed upon instalments previously paid at the coupon-rate.

Any Depositor, upon any instalment-payment-date may anticipate payment of all, but not part, of the instalments of the purchase price of the New Bonds purchased by him then remaining unpaid.

Upon payment by any Depositor of the first instalment payable upon his contract to purchase New Bonds and the surrender of his certificate of deposit, duly endorsed, he will be entitled to receive a new certificate evidencing such payment and also his rights with respect to the New Bonds and the stock which he is to receive hereunder. Payment of further instalments will be receipted for by endorsement upon such certificate upon presentation thereof for the purpose. The bonds and certificates for stock to which a Depositor may be entitled will be delivered only upon payment in full of the amount payable upon his contract of purchase.

Every Depositor who shall elect, as herein provided, to purchase New Bonds and at the date fixed for the payment of the first instalment of the purchase price, shall pay the entire purchase price of the Bonds to be taken by him, will be entitled to borrow from the Underwriting Syndicate or lenders to be provided by said Syndicate (through the agency of the Depositary, The Equitable Trust Company of New York, 37 Wall Street, New York City) any amount not exceeding 90 per cent. of the purchase price of the New Bonds to be taken by him (exclusive of accrued interest upon Bonds purchased); such loan to be repaid, with interest at the rate of six per cent. per annum, on or before one year from the date so fixed for the payment of such first instalment of the purchase price and to be secured by all of the Bonds and Certificates of Stock to which the Depositor shall be entitled hereunder upon the making of such payment in full—the Underwriting Syndicate or its representatives to possess upon default such power of sale, for account of the borrower, as is customary in cases of collateral loans by banks in New York City.

Any Depositor who shall elect to purchase New Bonds as provided herein and shall default in making any payment as required by the Plan and Agreement will, unless the Reorganization Committee shall otherwise determine, forfeit any and all payments that he may have already made and all right to which he would otherwise have been entitled to acquire securities, receive benefits or enforce rights hereunder; and in such event the Reorganization Committee in its discretion may cause all of the bonds, claims, shares of stock and benefits to which such Depositor otherwise would have been entitled hereunder to be sold for his account to satisfy the amount remaining due from such de-

faulting Depositor and all amounts chargeable hereunder against the securities, rights and benefits so sold. But the Reorganization Committee may, in general or in particular instances, enlarge or extend the time for making any of the payments required by the Plan and impose conditions in respect of any payments the time wherefor shall be so extended.

Unpaid coupons (appertaining to Old Bonds) which became due September 1, 1914, and theretofore will be paid in cash by the Trustee under the Mortgage securing the Old Bonds, The Equitable Trust Company of New York.

(B) Sale of New Bonds and Stock to Underwriting Syndicate.

Such of the New Bonds as shall not be purchased by Depositors are to be taken by an Underwriting Syndicate which has been formed for the purpose and has underwritten the sale, at 90 and accrued interest, of all of the $20,000,000 principal amount of New Bonds to be issued forthwith, and is to receive $1,000 principal amount of New Bonds, $125 par value of Preferred Stock and $500 par value of Common Stock of the Holding Company for each $900 of cash (and accrued interest upon $1,000 principal amount of New Bonds) paid by it. The securities received by an Underwriter in consideration of any given payment are to be the same in character and amount as those that will be forfeited by Depositors who fail to exercise their privilege of purchasing New Bonds by payment of an equal amount.

TABLE EXHIBITING CONSIDERATION TO BE PAID BY UNDERWRITERS AND SECURITIES TO BE RECEIVED THEREFOR.

Assuming Purchase of $400, Principal Amount, of New Bonds.			
	Securities to be Received.		
Cash to be paid.	New Bonds, principal amount.	Preferred Stock in Holding Company, par value.	Common Stock in Holding Company, par value.
$360 and accrued interest upon $400, principal amount, of New Bonds.....	$400	$50	$200
Assuming Purchase of $1,000, Principal Amount, of New Bonds.			
$900 and accrued interest upon $1,000, principal amount, of New Bonds.....	$1,000	$125	$500

The Underwriting Syndicate, if the Plan shall be declared operative, is to be paid for its agreement to underwrite the sale of the entire $20,000,000, principal amount, of New Bonds and to loan monies to Depositors as above provided, a cash commission of two per cent. thereof (i. e., $400,000). The Equitable Trust Company of New York and Messrs. Blair & Co., William Salomon & Co., and E. H. Rollins & Sons, at the request of the Protective Committee having undertaken, by firm commitment, to form the syndicate above referred to (the subscribers and the amounts of their subscriptions severally to be satisfactory to the Protective Committee) and having discharged such engagement, are to be paid therefor, if the Plan shall be declared operative, a compensation of one-half of one per cent. of the principal amount of bonds the sale whereof has been underwritten (i. e., $100,000).

The amounts payable by the Underwriting Syndicate will be subject to call upon ten days' notice at any time after February 15, 1916, by the Reorganization Committee and such amounts as are not so called prior to completion of the reorganization will be subject to call upon like notice by the Board of Directors of the Operating Company.

Upon delivery of bonds to the Underwriting Syndicate, accrued interest upon the bonds so delivered will be charged and interest will be allowed at the coupon-rate upon payments, if any, previously made upon account of the purchase price.

The Underwriting Syndicate may, on the date fixed for the making of the first payment to be made by it, or at any time thereafter, anticipate payment of all or any part of the purchase price of the securities to be taken by it.

X.

COMPARATIVE TABLE OF CAPITALIZATION AND FIXED CHARGES OF OLD COMPANY AND OF THE COMBINED NEW COMPANIES AT COMPLETION OF REORGANIZATION.

The following table exhibits the indebtedness, stock and interest charges of the Old Company on the one hand and of the Operating Company and Holding Company (consolidated) on the other:

Obligations and Stock Outstanding.	Old Company.	New Company.
First Mortgage Bonds	$50,000,000	*$20,000,000
Second Mortgage Bonds	25,000,000	None
Unsecured debt (including notes, open accounts, traffic and car service balances and claims for interest in default, owing to the Denver Company as of date of appointment of Receivers), about	26,800,000	None
Miscellaneous claims as ascertained by Receivers (not including claims of considerable amount paid just prior to Receivership)	163,625.54	None
Capital Stock	75,000,000	75,000,000† Preferred, 27,500,000† Common, 47,500,000†
Interest Charges:		
First Mortgage Bond Interest	2,500,000	$1,000,000
Other interest (as of date of appointment of Receivers), about	$2,200,000†† (accruing, but in principal part never paid.)	None

* The Operating Company, when the proceeds of the New Bonds have been expended should possess physical property, securities and cash resources approximately of the value of $17,500,000, in addition to the property possessed by the Old Company prior to the Receivership, which should add materially to its earning capacity as compared with that of the Old Company.

† These amounts may be somewhat diminished as explained on p. 9.

†† Does not include interest on several million dollars of indebtedness to the Denver Company and Utah Fuel Company upon which payment of interest was not regularly accrued upon the Western Pacific books prior to the Receivership.

XI.

CLAIMS AGAINST THE DENVER COMPANY TO BE TRANSFERRED TO THE HOLDING COMPANY.

The Articles of Incorporation of the Holding Company shall provide that the Board of Directors of the Holding Company shall have power to enforce against the Denver Company the claims against the latter Company to be acquired by the Holding Company as herein provided or to compromise such claims or to enter into any arrangement in satisfaction thereof, but only upon the condition that their action shall be authorized or ratified by the vote of the holders of two-thirds of such shares of the capital stock of the Holding Company (preferred and common stock voting together) as shall be represented in person or by proxy at a special meeting of the stockholders to be called upon not less than thirty days' notice for the purpose of considering such settlement, compromise or other adjustment, which vote shall represent not less than a majority in amount of the outstanding capital stock of the Holding Company.

It shall be provided by some effectual means that the net proceeds realized by the Holding Company from the enforcement or compromise of claims against the Denver Company and all avails thereof in the form of securities or property shall be paid over or transferred to the Operating Company, and the Holding Company, in the discretion of its Board of Directors, may transfer said claims to the Operating Company, which may if it shall so determine, cause the same to be subjected to the New Mortgage; provided that if such transfer be made no settlement, compromise or other adjustment of said claims shall be effective without the assent of the stockholders of the Holding Company as above required, or if the Holding Company be dissolved, then a like assent of the stockholders of the Operating Company; and provided further that if any expense or liability shall have been incurred by the Holding Company in realizing upon or protecting such claims, the payment or transfer shall be made only after such expense has been reimbursed and such liability discharged out of such proceeds or avails or discharged or assumed by the Operating Company.

XII.

RESTRICTIONS UPON THE SALE OR PLEDGE OF PROPERTY AND THE CREATION OF INDEBTEDNESS.

The Articles of Incorporation of the Holding Company shall provide that the Holding Company shall not (a) sell, pledge, or in any manner dispose of any part of the stock of the Operating Company, or (b) create any indebtedness of the Holding Company other than such as the Board of Directors shall deem to be essential to the ordinary conduct of the business of the Company, unless such sale, pledge or other disposition of the stock of the Operating Company or the creation of such indebtedness, as the case may be, shall be approved by the affirmative vote of the holders of two-thirds of such shares of the capital stock of the Holding Company as shall be represented in person or by proxy at a stockholders' meeting of that Company called upon not less than thirty days' notice for the purpose of passing upon the matter in question—which affirmative

vote shall in no case be less than a majority in amount of all of the outstanding capital stock of the Holding Company.

The Articles of Incorporation of the Holding Company shall, however, provide that the Board of Directors may, pursuant to the affirmative vote of the holders of two-thirds of such shares of the capital stock of the Company as shall be represented in person or by proxy at a stockholders' meeting called upon not less than thirty days' notice, for the purpose of passing upon the question, (which affirmative vote shall be not less than a majority in amount of all of the outstanding capital stock of the Holding Company), but not otherwise, pledge the assets of the Company, or any thereof, for the purpose of raising money in order to protect the claims against the Denver Company to be acquired by the Holding Company as provided in the Plan from loss or impairment of value by reason of the foreclosure of any of the mortgages upon the property of the Denver Company or otherwise.

The Articles of Incorporation of the Holding Company and of the Operating Company shall be so formulated as to permit a sale of the property and assets of the Operating Company as an entirety either for cash or partly for cash and partly upon credit, or in exchange for bonds or stock or both of any other corporation or corporations, provided (but not otherwise) such sale or disposition and the consideration to be received therefor, shall be approved both by the affirmative vote of holders of two-thirds in amount of the outstanding capital stock of the Operating Company and by the affirmative vote of holders of two-thirds of such shares of the capital stock of the Holding Company as shall be represented in person or by proxy at a stockholders' meeting called, upon not less than thirty days' notice, for the purpose of passing upon the question (which affirmative vote shall be not less than a majority in amount of all of the outstanding capital stock of the Holding Company).

XIII.

DISTRIBUTION OF THE ASSETS OF THE HOLDING COMPANY IN CASE OF DISSOLUTION.

The Articles of Incorporation of the Holding Company shall provide that in the event of the dissolution or other liquidation of the Holding Company, no stockholder shall be entitled to have the assets of the Company converted into cash, or to share in the same generally, but that if proper proceedings shall be taken for the purpose of dissolving or liquidating the Holding Company and if the Board of Directors of the Company shall determine that the assets of the Company shall be distributed in kind and such decision shall be approved by the affirmative vote of a majority in amount of the stockholders of the Company at a meeting thereof duly called for the purpose of considering said matter or of considering the dissolution or liquidation of the Holding Company, the preferred stockholders of the Holding Company shall be entitled and required to receive amounts of Preferred Stock (or obligations issued in lieu of Preferred Stock as permitted hereby) of the Operating Company equal at par value to their respective holdings of the Preferred Stock of the Holding Company, and the common stockholders of the

Holding Company shall be entitled and required to receive *pro rata* Common Stock of the Operating Company and such other securities and cash, if any, as may properly be apportionable to Common Stock of the Holding Company.

The Articles of Incorporation of the Operating Company shall provide that, in the event of the dissolution or other liquidation of the Operating Company, (subsequently to the dissolution or liquidation of the Holding Company), if the Board of Directors of the company shall provide by resolution approved by the affirmative vote of eighty per cent. in amount of the outstanding Preferred Stock and eighty per cent. in amount of the outstanding Common Stock of the Operating Company that the assets of the company shall be distributed in kind and for the apportionment of said assets, for the purposes of such distribution, as between the Preferred Stock and the Common Stock of the company, the provision for the distribution and apportionment of assets made by any resolution so adopted and approved shall be effective and binding upon all of the stockholders of the Operating Company.

XIV.

BOARDS OF DIRECTORS OF THE HOLDING COMPANY AND OPERATING COMPANY.

The first Board of Directors of the Holding Company shall be:

A. M. Hunt,
James D. Phelan,
George Whittell,
David R. Forgan,
I. deBruyn,
C. Ledyard Blair,
Frederick H. Ecker,
Alvin W. Krech,
Starr J. Murphy,
William A. Read,
William Salomon,
Richard B. Young.

Their successors shall be elected at the annual meeting of the Stockholders of the Holding Company to occur during the year 1917, in accordance with the provisions regulating the holding of stockholders' meetings to be contained in the Articles of Association.

The first Board of Directors of the Operating Company shall be named by the Reorganization Committee, but members of said Board will at all times be subject to removal and their successors will be elected by the Holding Company, which will be substantially the sole stockholder of the Operating Company.

XV.

HOLDERS OF SECOND MORTGAGE BONDS, UNSECURED CREDITORS AND STOCKHOLDERS OF THE OLD COMPANY.

No provision is made in the Plan for the allotment of any property or any of the securities or money provided by the Plan to holders of Second Mortgage Bonds, to unsecured creditors, or to stockholders of the Old Company.

XVI.

NON-ASSENTING HOLDERS OF OLD BONDS.

Bondholders who shall have withdrawn their bonds from the operation of the Protective Agreement and the holders of Old Bonds who shall not have deposited their bonds under the Protective Agreement or hereunder will not be entitled to participate in the Plan or the benefits thereof to any extent, and will receive only their distributive shares of any balance of the proceeds derived from the sale of the mortgaged property of the Old Company that may remain after the discharge of obligations and liabilities entitled to prior payment under the terms of the foreclosure decree and orders of Court.

XVII.

TERMS AND EFFECT OF PARTICIPATION.

The Plan and Agreement having been prepared by, and adopted by the unanimous vote or concurrent action of the members of, the Protective Committee and filed with the depositary named in the Protective Agreement, the Plan and Agreement, after the Protective Committee shall have published notice of its preparation, adoption and filing as required by the Protective Agreement, will be binding upon all holders of certificates of deposit issued pursuant to provisions of the Protective Agreement by The Equitable Trust Company of New York, depositary thereunder, or any of its agents who, within the time limited in the Protective Agreement, do not surrender their certificates of deposit, withdraw the amount of deposited bonds represented thereby and pay their *pro rata* shares of the indebtedness, compensation, expenses and liabilities of the Protective Committee as fixed by that Committee, all in compliance with the conditions and provisions of the Protective Agreement. All holders of certificates of deposit issued under the Protective Agreement who shall fail so to surrender their certificates of deposit, withdraw their bonds and pay their *pro rata* share of the indebtedness, compensation, expenses and liabilities of the Protective Committee, as provided in the Protective Agreement, shall be conclusively and finally deemed for all purposes to have assented to the Plan and Agreement and all the terms thereof, and, immediately upon the Plan and Agreement's being declared operative by the Reorganization Committee, such holders of certificates of deposit shall be irrevocably bound and concluded thereby.

Holders of Old Bonds who have not already deposited their bonds under the Protective Agreement and who desire to participate in the benefits of the Plan and Agreement must deposit their bonds, accompanied by all coupons maturing on or after March 1, 1915, with The Equitable Trust Company of New York (or some duly authorized agent thereof), as Depositary of the Reorganization Committee on or before February 7th, 1916, receiving therefor certificates of deposit in such form as shall be prescribed by the Reorganization Committee; and the holders of Old Bonds so depositing the same and all holders of certificates of deposit issued to evidence deposits thereof shall be conclusively deemed to be subject to and irrevocably bound by the Plan and Agreement.

Every holder of any of the certificates of deposit issued under the Protective Agreement who, by failure so to withdraw his bonds from the operation of the Protective

Agreement as permitted thereby, and every holder of Old Bonds, who by deposit of his bonds or coupons with the Reorganization Committee or otherwise as herein provided, shall become bound by the Plan and Agreement and every successor in interest of any such certificate holder or bondholder shall be deemed, if the Plan and Agreement shall be declared operative by the Reorganization Committee, irrevocably to have assigned and transferred to the Reorganization Committee all of the said bonds and coupons so deposited or left upon deposit and all of the claims against the Denver Company susceptible of assignment or transfer (whether in law or in equity) by such Depositor that shall have arisen or exist or that shall arise or exist in favor of such certificate-holder or bondholder or any predecessor or successor in interest of either thereof; and the Reorganization Committee is hereby irrevocably authorized by every such certificate-holder and bondholder and every successor in interest of either thereof to transfer, whether directly or through the medium of mesne transfers, all such bonds and claims to any corporation or corporations utilized by it for the purpose, or in the course, of the reorganization, or to transfer a part of the same or an interest therein to one such corporation and another part or interest to another or others, and thereby to vest every such transferee with the full legal title to the bonds or claims or interest so transferred to it and the entire beneficial interest therein.

The Reorganization Committee, if it deem it desirable or convenient so to do, may require holders of certificates of deposit issued by the Protective Committee who shall not withdraw their bonds as aforesaid to present their said certificates of deposit to the Depositary hereunder or some agent thereof in order that there may be noted thereon the assent of the holders thereof to the Plan and Agreement and the said holders of such certificates of deposit may be further required to execute and deliver assignments, either to the Reorganization Committee or to its nominee or nominees, of all their claims against the Denver Company, but neither any such notation of assent nor any such assignment shall be necessary to give binding effect to any of the foregoing provisions of this Article or to the Plan and Agreement in any particular.

XVIII.

FAILURE TO DECLARE PLAN OPERATIVE—ABANDONMENT THEREOF.

If the Plan and Agreement either in its original form, or as it may be modified pursuant to the provisions of the annexed Agreement, shall not be declared operative prior to March 15, 1916, or in the event that the Reorganization Committee shall wholly abandon the plan of reorganization, the Old Bonds deposited, or the avails thereof then under the control of the Reorganization Committee, shall be delivered to the Depositors in amounts representing either respective interests, upon surrender of their several certificates of deposit properly endorsed and payment of their respective shares of the compensation, disbursements, expenses, and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee. In such case any moneys paid by a Depositor pursuant to any of the provisions of the Plan or the proceeds thereof remaining after deducting therefrom his share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and Protective Committee payable by said Depositor and not already reimbursed, shall be returned, but without interest, to the Depositor entitled thereto.

XIX.

STATEMENTS CONTAINED IN PLAN.

This Plan has been adopted by the Protective Committee, acting under the Protective Agreement. The statements contained in the Plan have been compiled from sources believed to be reliable and accurate, but certain of them are necessarily approximate and none is to be construed as a representation or as an inducement to any action or to any omission to act upon the part of anyone. No error or misstatement of any description in the Plan shall constitute ground for the withdrawal of any Depositor from the Plan and Agreement nor for any complaint with respect to the same or with respect to any consequences arising from having become a party thereto.

XX.

AGREEMENT OF REORGANIZATION.

In order to enable the Plan to be carried out and to give effect to the same the annexed Agreement of Reorganization has been prepared. Whenever the word "Plan" is used herein it shall be deemed to include said Agreement and the provisions thereof, and every depositor who shall assent to the Plan in any manner thereby will become a party to the Agreement, the provisions of which shall govern in any case of conflict between the Plan and the Agreement.

Dated, December 15, 1915.

AGREEMENT.

AGREEMENT made as of December 15, 1915, between

(*a*) A. M. HUNT, JAMES D. PHELAN, GEORGE WHITTELL, DAVID R. FORGAN, I. DE BRUYN, C. LEDYARD BLAIR, FREDERICK H. ECKER, ALVIN W. KRECH, STARR J. MURPHY, WILLIAM A. READ, WILLIAM SALOMON and RICHARD B. YOUNG, as the Reorganization Committee provided for and named in the foregoing Plan of Reorganization, parties of the first part;

(*b*) Holders of Certificates of Deposit issued under a Protective Agreement, dated May 1, 1915, which represent First Mortgage Five Per Cent. Thirty Year Gold Bonds of Western Pacific Railway Company issued under the First Mortgage of said Railway Company dated September 1, 1903, who shall become parties hereto in the manner set forth in the Plan of Reorganization to which this Agreement is annexed or as prescribed herein;

(*c*) Holders of such First Mortgage Five Per Cent. Thirty Year Gold Bonds who shall become parties hereto in the manner so set forth or prescribed;

Such holders of said certificates of deposit and said bonds constituting the parties of the second part; and

(*d*) ALVIN W. KRECH, C. LEDYARD BLAIR, I. DE BRUYN, FREDERICK H. ECKER, DAVID R. FORGAN, A. M. HUNT, STARR J. MURPHY, JAMES D. PHELAN, WILLIAM A. READ, WILLIAM SALOMON, GEORGE WHITTELL and RICHARD B. YOUNG, as the Committee acting under said Western Pacific Railway Company First Mortgage Bondholders' Protective Agreement dated May 1, 1915, parties of the third part:

WITNESSETH:

The parties hereto for and in consideration of the conditions and promises hereinafter set forth and for the purpose of mutually assuring the carrying out the foregoing Plan of Reorganization (herein referred to as the "Plan") have mutually agreed and hereby do severally agree, each of the Depositors and the Protective Committee agreeing with the Reorganization Committee and the Depositors agreeing with one another, but each of them agreeing for himself and not for any of the others, as follows:

First.—The terminology adopted in the Plan, as set forth in Article I thereof, is adopted also for the purposes of this Agreement.

Second.—The Plan is hereby adopted and approved and is to be taken as a part of this Agreement with the same effect as though it were embodied herein and the Plan and this Agreement shall be read as parts of one and the same instrument, but in case of conflict between the Plan and this Agreement the provisions of this Agreement shall control. No statement, recital, explanation, estimate, opinion, suggestion or anything else contained in the Plan or Agreement or in the Introductory Statement prefixed to the Plan or in any circular issued or which may hereafter be issued, whether by advertisement or otherwise by or on behalf of the Reorganization Committee, the Protective Committee, or by any of the members of said Committees or by any depositary, sub-depositary or agent of a depositary under the Plan and Agreement or the Protective Agreement or by the Western Pacific Railway Company (the Old Company) or by either or both of the Receivers

of the Old Company, or by any other corporation, body or person, is intended or is to be taken as a representation or warranty or as a condition of or inducement to any deposit under or assent to the Plan and Agreement and no omission, defect, error or misstatement therein shall constitute cause for any complaint or shall release any deposit under the Plan and Agreement or affect or release any assent thereto or anything done thereunder or in connection therewith, except by virtue of the written consent to such release of the Reorganization Committee.

Third.—Participation in the Plan in any respect whatsoever is dependent upon the holders of the certificates of deposit and bonds hereinbefore mentioned becoming parties to the Plan and Agreement in manner as follows:

The Plan and Agreement having been prepared by and adopted by the unanimous vote of the members of the Protective Committee and filed with the depositary named in the Protective Agreement, shall, after the Protective Committee shall have published notice of its preparation, adoption and filing as required by the Protective Agreement, be binding upon all holders of certificates of deposit issued pursuant to provisions of the Protective Agreement and all parties whose Old Bonds shall have become subject thereto, who, within the time limited in the Protective Agreement, shall not surrender their certificates of deposit, withdraw the amount of deposited bonds represented thereby and pay their *pro rata* shares of the indebtedness, compensation, expenses and liabilities of the Protective Committee as fixed by said Committee, complying in all respects with the conditions and provisions of the Protective Agreement in that behalf; and all holders of certificates of deposit issued under the Protective Agreement and all parties whose Old Bonds shall have become subject thereto, who shall fail so to surrender their certificates of deposit, withdraw their bonds and pay their *pro rata* share of the indebtedness, compensation, expenses and liabilities of the Protective Committee and all of their successors in interest shall be conclusively and finally deemed for all purposes to have assented and become parties to the Plan and Agreement, and immediately upon the Plan and Agreement's being declared operative by the Reorganization Committee, such holders of certificates of deposit and parties whose Old Bonds shall have become subject to the Protective Agreement shall be irrevocably bound and concluded thereby.

Holders of Old Bonds who have not already deposited their bonds under the Protective Agreement and who desire to participate in the benefits of the Plan and Agreement shall deposit their bonds, accompanied by all coupons maturing on or after March 1, 1915, with The Equitable Trust Company of New York (or some duly authorized agent thereof), as the Depositary under the Plan and Agreement, on or before February 7th, 1916, receiving therefor certificates of deposit in such form as shall be prescribed by the Reorganization Committee; and the holders of Old Bonds so depositing the same and all holders of certificates of deposit issued to evidence such deposits shall be conclusively deemed to be subject to and irrevocably bound by and to have become parties to the Plan and Agreement.

The Reorganization Committee may in its discretion, permit the holders of Deposited Bonds to become parties to the Plan and Agreement without the actual deposit of their bonds, and all bondholders so becoming parties shall be embraced within the term "Depositors" whenever used in the Plan or in this Agreement. The Reorganization Committee may authorize the acceptance for deposit under the Plan and Agreement of Old Bonds without such of the interest coupons appertaining thereto as the Committee may specify, and also may authorize the acceptance for deposit under the Plan and Agreement, upon such terms and conditions as the Reorganization Committee in its absolute

discretion may prescribe, of interest coupons without the bonds to which they appertain.

Every holder of any of the certificates of deposit issued under the Protective Agreement and every party whose Old Bonds or coupons shall have become subject thereto, who by failure to withdraw his bonds or coupons from the operation of the Protective Agreement as permitted thereby, and every holder of Old Bonds or coupons, who by deposit of his bonds or coupons or otherwise as herein provided, shall become a party to the Plan and Agreement and every successor in interest of any such Depositor shall be deemed, if the Plan and Agreement shall be declared operative by the Reorganization Committee, irrevocably to have assigned and transferred to the Reorganization Committee all of the bonds and coupons so deposited or left upon deposit and all of the claims against the Denver Company susceptible of assignment or transfer (whether in law or in equity) by such Depositor that shall have arisen or exist or shall arise or exist in favor of or be enforceable by or on behalf or for the benefit of such Depositor or any predecessor or successor in interest thereof; and in such event the Reorganization Committee are hereby vested as trustees of an express trust with the legal title to all of the Deposited Bonds and coupons and all claims against the Denver Company deemed to be transferred as aforesaid; and the Reorganization Committee is hereby irrevocably authorized by every such Depositor to utilize all or any of such bonds and of the coupons appertaining thereto and other deposited coupons and any part of any amount payable upon any thereof in satisfying the purchase price to be paid for any of the property of the Old Company purchased by or at the instance of the Reorganization Committee for the purposes of the reorganization and to transfer, whether directly or through the medium of any mesne transfers, all such bonds and coupons (or any interest therein or claims based thereon remaining after the same shall have been utilized in payment of such purchase price) and all such claims against the Denver Company to any corporation or corporations used by the Reorganization Committee for the purpose or in the course of the reorganization provided for in the Plan, or to transfer the same in part to one such corporation and in part to another or others, and thereby to vest every such transferee with the full legal title to the bonds or claims or interest in bonds or claims so transferred to it and the beneficial interest therein.

Certificates of Deposit issued under the Protective Agreement and representing Old Bonds which shall become subject to the Plan and Agreement as herein provided, shall entitle the holders thereof to the same rights and render them subject to the same obligations as if the Old Bonds represented thereby had been deposited under the Plan and Agreement and certificates of deposit had been issued therefor hereunder. The Reorganization Committee, if it deem it desirable or convenient so to do, may require holders of certificates of deposit issued under the Protective Agreement who shall not withdraw their bonds as aforesaid to present their said certificates of deposit to the Depositary hereunder in order that there may be noted thereon the assent of the holders thereof to the Plan and Agreement and the said holders of such certificates of deposit may be further required to execute and deliver to said Depositary assignments, either to the Reorganization Committee or to its nominee or nominees, of all claims against the Denver Company arising or to arise as aforesaid.

Certificates of deposit issued for Deposited Bonds under the Protective Agreement or hereunder and all interests and rights represented thereby, shall be transferable, but only subject to the terms and conditions of the Plan and Agreement and in such manner as the Reorganization Committee shall prescribe or approve. Upon any such transfer all rights of the transferor evidenced by such certificates, and as well all amounts

paid upon the purchase price of New Bonds purchased by virtue of the interest in Deposited Bonds represented by such certificate of deposit, shall pass to the transferee and the transferees and subsequent holders of any such certificate of deposit shall for all purposes be substituted in place of prior holders subject to this Agreement and the acts of the original Depositor shall be binding upon and be deemed the acts of every such transferee. By accepting or holding any certificate of deposit, every recipient or holder thereof (whether the same be issued in his name or otherwise) shall become thereby a party to the Plan and Agreement with the same force and effect as though an actual subscriber thereof and shall thereby authorize the Reorganization Committee to affix his signature thereto.

The certificates of deposit and any *interim,* or other certificates or receipts issued by or for the Reorganization Committee or the Protective Committee or any depositary of either may be treated by the Reorganization Committee and the Depositary as negotiable instruments, and the bearer or, if registered, the registered holder for the time being, may be deemed by the Reorganization Committee and the Depositary to be the absolute owner thereof and of all of the rights of the original depositor and of every holder, and neither the Reorganization Committee nor the Depositary shall be affected by any notice to the contrary.

All Depositors agree to execute from time to time on demand of the Reorganization Committee any and all such powers of attorney as said Committee in its discretion shall deem necessary or advisable, and also to execute from time to time on demand of the Reorganization Committee any and all such transfers and assignments or writings required for vesting or evidencing the complete ownership of the Old Bonds represented by certificates of deposit and the claims against the Denver Company as the Reorganization Committee may determine.

Fourth.—February 7, 1916, shall be the limit of time within which bondholders shall have the right to deposit their Old Bonds and within which they may become parties to the Plan and Agreement, but the Reorganization Committee in its discretion, either generally or in special instances, may extend such time or renew the period or periods fixed or limited for such deposit, such extension of time to be upon such terms and conditions, if any, as the Reorganization Committee may see fit to prescribe. Holders of Old Bonds who do not deposit the same or become parties hereto in the manner herein provided within the periods respectively limited or fixed therefor, as aforesaid, and holders of certificates of deposit issued under the Protective Agreement who shall exercise their right of withdrawal as provided in the Protective Agreement, will not be entitled to deposit their bonds or to become parties to this Agreement or to share in the benefits of the Plan and Agreement and shall acquire no rights hereunder, except upon obtaining the express consent in writing to such deposit and participation of the Reorganization Committee, which may, in its absolute discretion, and upon such terms and conditions as it may see fit, withhold or give such consent.

Fifth.—The Reorganization Committee shall be the sole and final judge as to when and whether sufficient Old Bonds shall have become subject to the Plan and Agreement to and whether other conditions do warrant it in declaring the Plan operative and in attempting to carry the same into effect, and it shall have power whenever it shall deem proper (notwithstanding anything that may have been done), to abandon the Plan or any part thereof. The Reorganization Committee by the affirmative vote of three-fourths of its members may modify the Plan in whole or in part (and even if such modification shall amount to the substitution of a new Plan therefor) and any such modification or any modi-

fied plan may deal with and provide for any or all matters that under the Protective Agreement might have been dealt with or provided for in the Plan and Agreement. After any modification by a like vote the Reorganization Committee may restore to the Plan any abandoned part or parts thereof or discard any such modification and the Committee thereafter may seek to carry the Plan into effect as fully as if such part or parts had not been abandoned or such modification made. It may attempt to carry the Plan into effect rather than abandon or modify the same, even though it be manifest that in attempting to carry out the Plan it must depart from the original Plan or some part thereof. Any modification, when made by the Reorganization Committee as above provided, shall thereupon become and be part of the Plan and Agreement, but in case of any intentional modification of the Plan a statement of such modification shall be filed with the Depositary; and in case of any such intentional modification which shall alter the Plan in any substantial respect, a statement of such modification shall be filed with the Depositary and notice of the fact of such filing shall be given as hereinafter provided in Article *Fifteenth* and within four weeks after the first publication of such notice, all Depositors may surrender their respective certificates of deposit, in negotiable form, to the Depositary and may withdraw their Deposited Bonds or the avails thereof then under the control of the Reorganization Committee, to the amounts properly apportionable to such certificates, respectively; provided, however, in every case of such withdrawal the Depositor shall make payment of his share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and the Protective Committee, as fixed by the Reorganization Committee. Every such Depositor so withdrawing shall thereupon, without any further act, be released from the Plan and Agreement and shall cease to have any rights hereunder, and the Deposited Bonds represented by the certificates of deposit so surrendered, or the avails thereof then under the control of the Reorganization Committee, as the case may be, shall thereupon be released herefrom, and the exercise of such right of withdrawal shall release and discharge the Reorganization Committee and the Depositary from all liability of every character to every such withdrawing Depositor, except so far as provision is hereinafter made in regard to cases where money has been paid in under the Plan. Every Depositor not so withdrawing within such four weeks after the first publication of said notice shall be deemed to have assented to the proposed modification and whether or not otherwise objecting shall be bound thereby as fully and effectively as if he had actually assented thereto. Any modifications made as herein provided shall be part of the Plan and Agreement, and all provisions hereof concerning and references herein to the Plan shall apply to the Plan as so changed and modified. If, nevertheless, the Plan shall be modified and in consequence thereof Deposited Bonds shall be withdrawn as permitted hereby and thereafter the Plan shall again be modified so as to restore it to the form or so that it shall have substantially the effect of the Plan as it existed immediately prior to such first modification, the Reorganization Committee shall provide that all bonds that have been so withdrawn may again be deposited hereunder within some reasonable period to be prescribed by the Committee.

The Reorganization Committee may construe the Plan and Agreement and its construction thereof or action thereunder in good faith shall be final and conclusive. It may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be deemed by it expedient to carry out the Plan properly and effectively, and it shall be the sole judge of such expediency. This agreement is in all respects to be liberally construed to enable the Reorganization Committee to carry into effect the Plan, whether in the form hereto attached or as changed or modified pursuant

to the provisions hereof. The Reorganization Committee may at any time, and from time to time, file with the Depositary a statement or statements specifying the amount of securities which any company utilized in the reorganization may or shall issue for the purpose of carrying out the Plan and Agreement or specifying in detail the terms upon which any holders of claims against the Old Company not provided for in the Plan may become parties to the Plan and Agreement or specifying the amount of cash or securities which which shall be deliverable to any person or corporation for the purpose of carrying out the Plan and Agreement, the amount of which is not now expressly specified therein, and any other statement expressing authority to do anything which in its opinion is expressly or impliedly authorized by the Plan; and such statement or statements shall, when filed and without further notice, be a part of the Plan and Agreement as if contained in the original Plan or in this Agreement.

In case the Reorganization Committee shall not prior to March 15, 1916, declare the Plan operative (either as originally filed or as the same shall be modified pursuant to the provisions hereof), or in case the Reorganization Committee shall abandon the entire plan of reorganization, the Deposited Bonds or the avails thereof then under the control of the Reorganization Committee shall be delivered to the several Depositors in amounts representing their respective interests hereunder, upon surrender of their several certificates of deposit in negotiable form, and payment of their respective shares of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee.

The Reorganization Committee may, whenever and upon such terms as it shall deem proper, accept from any Depositor the surrender of any certificate of deposit and, upon receipt thereof and payment of such Depositor's share of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, as fixed by the Reorganization Committee, it may surrender and deliver Deposited Bonds of the amount in such certificate stated (or the avails thereof then under its control) which thereupon shall be deemed to be released and discharged from and no longer to be entitled to any of the benefits of the Plan and Agreement.

In every case of withdrawal or release from the Plan and Agreement of Old Bonds or their avails, or of final abandonment of the entire plan, the Reorganization Committee shall apportion to the Deposited Bonds the shares of the compensation, disbursements, expenses and liabilities of the Reorganization Committee and of the Protective Committee, in the opinion of the Reorganization Committee fairly chargeable thereto, and any such apportionment made by the Reorganization Committee shall be binding upon all Depositors and shall be a charge upon the Deposited Bonds and the avails thereof. The word "liabilities" when used in this Agreement shall be deemed to include any sums due to any Syndicate or Syndicates organized as contemplated by the Plan and Agreement in repayment of sums theretofore paid or advanced by it or them for the purposes of the reorganization, and also all sums of money, securities or other property borrowed or owed or advanced by the Reorganization Committee and all sums as security for the payment of which the Reorganization Committee shall have pledged or charged securities or property under its control as authorized hereby. In case a Depositor, as a condition of the withdrawal of securities, shall be required to contribute toward any advances made or the repayment of any amounts invested in property or securities, he shall be entitled to receive from the Reorganization Committee a certificate evidencing his interest in such advances or investment. In any case of such withdrawal, release or abandonment of the entire plan moneys paid by any withdrawing

Depositor pursuant to the provisions of the Plan and Agreement or the proceeds thereof remaining after deducting therefrom the share of compensation, disbursements, expenses and liabilities incurred by the Reorganization Committee and of the Protective Committee payable by such Depositor and not already reimbursed, shall be returned, but without interest, to the Depositor entitled thereto. In every such case, any moneys actually collected by the Reorganization Committee on account of Deposited Bonds or coupons or claims against the Denver Company shall be accounted for by the Reorganization Committee. The Reorganization Committee shall not, however, be held responsible for loss of any money disbursed or expended by it for the purposes of the Plan and Agreement nor for any depreciation in value of any Old Bonds, property or securities, and Depositors shall have no claim for the return of any Old Bonds or any moneys except to the extent of their equitable shares of such bonds or moneys or the avails thereof at the time remaining in the hands of, or under the control of, the Reorganization Committee. Notwithstanding any provisions of this agreement to the contrary, the pecuniary liability of the Depositors shall in every case (except with respect to payment for New Bonds purchased by them) be confined to a charge upon the Deposited Bonds or their avails and the claims and other property and securities, if any, under the control of the Reorganization Committee and no liability in excess thereof shall be assessed against the Depositors, but the Reorganization Committee, its successors and assigns, shall have a lien upon the Deposited Bonds and their avails and the claims and other property and securities and the moneys, if any, under the control of the Reorganization Committee for its compensation and the compensation of the Protective Committee and for all expenditures and advances made and liabilities incurred by it or by the Protective Committee.

Sixth.—Upon the consummation of the Plan, Depositors shall be entitled, upon compliance with all of the terms and conditions of the Plan and Agreement, including payment of such sums of money, if any, as may be required to be paid pursuant thereto, and upon surrender of their certificates of deposit in negotiable form, to receive the new securities to which they shall respectively be entitled under the Plan and Agreement, but only as and when the same shall be issued and ready for delivery.

Seventh.—Subject to the provisions in that behalf contained in the Plan, the times within which the cash payable by Depositors must be paid for New Bonds shall be fixed by the Reorganization Committee; and, either generally or in special instances and on such terms and conditions, if any, as it may see fit, the Reorganization Committee may extend or may renew any period or periods so fixed or limited. The cash so payable by Depositors must be paid to the Depositary, or some duly authorized agent thereof, for account of the Reorganization Committee, and must be receipted for by the Depositary, or some such duly authorized agent on the certificates of deposit in respect of which such cash is paid, upon presentation of said certificates of deposit to the Depositary or such agent or on new certificates of deposit to be issued in exchange for certificates so presented. All Depositors who shall elect to purchase New Bonds as permitted by the Plan and Agreement severally and respectively agree that prompt payment of the cash payable by them, respectively, on the terms of the Plan and Agreement, is an essential condition to their acquisition, respectively, of New Bonds or stock under the Plan, and that any such Depositor who shall fail to make prompt payment of any cash so payable, as provided in the Plan or in this Agreement, within any period fixed or limited for such

payment in the Plan or this Agreement or by the Reorganization Committee, forthwith and without other notice or action shall cease to be entitled to receive any of the new securities provided for in the Plan or any benefits hereunder, and that no such Depositor shall be entitled to the return of any Deposited Bonds or the repayment of any cash theretofore paid by him; and that in such event the Reorganization Committee, in its discretion, without any proceedings either at law or in equity and without demand or notice, and in such manner and on such terms as it shall deem expedient, may at public or private sale or sales, for the account of such defaulting Depositor, dispose of any or all of the interests or rights to which such defaulting Depositor would otherwise have been entitled, including all of the New Bonds and all shares of stock in the Holding Company to which such Depositor would otherwise have been entitled and also all Old Bonds and claims against the Denver Company, or the avails thereof, represented by his certificate of deposit, and may apply the proceeds of such sale or sales to payment of the costs and expenses thereof and of any proceeding looking thereto and to the satisfaction of the obligation of such defaulting Depositor hereunder and under his agreement to purchase New Bonds (paying the over-plus if any to such Depositor), and thereupon all interest and right of such Depositor in any of the securities or any property or rights so disposed of or any avails thereof shall cease and determine. At any public sale hereunder of any securities or of any such interests or rights, the Reorganization Committee or any other party hereto or anyone in any manner connected with said Committee or any such party may become the purchaser thereof for their or his own benefit without accountability. The Reorganization Committee, however, in its discretion, may waive such default, may accept payments of overdue instalments due from any Depositor at any time with or without penalty, and may also waive or limit any penalty prescribed either in the Plan or Agreement or in pursuance thereof.

Eighth.—If and when the Plan shall be declared operative by the Reorganization Committee, the Depositors, each for himself, hereby make, constitute and appoint, the parties of the first part and their successors, constituting the Reorganization Committee for the time being as herein provided, or a majority of them, the true and lawful attorneys of them and each of them for the purposes herein set forth, with full power and authority to act for and in the name, place and stead of each of them, and with full power of substitution, from time to time, and of revocation. The Depositors hereby irrevocably request the Reorganization Committee to endeavor to carry the Plan into practical operation in its entirety, or with changes therein as hereinbefore provided, or with such additions, exceptions and modifications as shall be adopted as herein provided, and the Depositors hereby agree that the Reorganization Committee shall be, and it hereby is, vested with all the rights, powers and authority necessary or proper to enable it to carry out the Plan and Agreement in its entirety, or with such additions, exceptions and modifications.

Ninth.—The Reorganization Committee is authorized in its discretion to demand, receive and collect all amounts that may at any time be due or owing or payable in respect of the Deposited Bonds, any claims against the Denver Company or other securities or claims acquired by the Reorganization Committee as permitted hereby and whether such sums be payable for principal, interest or otherwise; to elect or cause any trustee or trustees under the mortgage securing the Old Bonds or any other mortgage or trust indenture, if the foreclosure of such mortgage or indenture shall in its judgment be advisable for the purposes of the reorganization, to elect to have the

principal of the Old Bonds or of the obligations secured by any such other mortgage or trust indenture become due and payable and at pleasure revoke or withdraw such election or cause the same to be revoked or withdrawn; to request or instruct any such trustee or trustees to prosecute or foreclose or to take any other proceedings for the enforcement of the Old Mortgage or the Old Bonds or any such mortgage or trust indenture or any bonds or obligations secured thereby, or to exercise the powers or any of them conferred by the Old Mortgage or any such mortgage or indenture and generally to make any such requests and demands and give any such instructions upon or to any such trustee or trustees and to confirm and give to such trustee or trustees all such powers as in the judgment of the Reorganization Committee may be advantageous in carrying out the Plan; to enforce or cause to be enforced the claims against the Denver Company under Contract B or any guaranties endorsed upon Deposited Bonds or in favor of the Old Company; to institute or to become parties to or to dismiss or cause to be dismissed any legal proceedings; to compromise any litigation now or at any time existing or threatening, in whole or in part (except that claims against the Denver Company under Contract B or guaranties endorsed upon any of the Old Bonds shall not be compromised by virtue of such power to compromise litigation), with plenary power to enter into any agreement tending to or deemed by it in its discretion likely to promote the consummation of the Plan and Agreement; to give all agreements or bonds of indemnity or other bonds, and therewith to charge the Deposited Bonds and their avails, any property purchased or new securities to be issued hereunder or any or any part of any thereof; to acquire, upon such terms and conditions and at such prices as it may deem fit, any property deemed by it expedient for the purposes or requirements of the Plan; to do whatever in the judgment of the Reorganization Committee may be expedient to promote or procure the sale or purchase as an entirety, or the sale or purchase at separate sales or in separate parcels, of any property of the Old Company and to sell and dispose of, upon such terms and for such consideration as the Reorganization Committee may deem fit, any portion of the property of the Old Company or of any property acquired by the Committee or in its behalf that it shall deem unnecessary for the purposes of the reorganization; to bid or to cause anyone else to bid or to refrain from bidding at any sale, either public or private, of any property whatever, whether owned or controlled by the Old Company or otherwise, to adjourn or consent to the adjournment of any sale or sales, and at, before or after any sale or purchase to arrange and agree for the resale of any portion of the property which it may decide to sell rather than to retain; to make any offer, or to cause or permit anyone else to offer, to purchase all or any portion of the property of the Old Company or any other property, and, as part of any such offer or otherwise, to offer to pay and to pay, or to cause or permit to be offered or paid, any amounts in cash or otherwise to any bondholders, creditors or other person or persons; to hold any property purchased either in its name or in the name of any person or corporation approved by it, and to apply Old Bonds held by it hereunder or their avails in satisfaction of any bid or pursuant to any offer or contract, whether made by it or any other person or corporation approved by it, or towards obtaining funds for the satisfaction or performance thereof. The amount to be paid or offered or bid by the Reorganization Committee, or which it may cause to be paid or offered or bid, for any property shall be absolutely discretionary with it and in case of a sale to others of any property, the Reorganization Committee may receive out of the proceeds of such sale or otherwise any distributive shares payable on account of Deposited Bonds. The Reorganization Committee may enter into any agreement or arrangement for decrees or orders for facilitating or hastening the course of litigation or tending towards or deemed by the Com-

mittee likely to promote the consummation of the Plan; it may apply for or consent to the appointment or reappointment of any receiver or receivers of the Old Company or of any corporation in which the Depositors as such may be interested or against which it may hold demands, or of the property of any such corporation or the extension of any receivership, or it may apply for or consent to the removal of any receiver or receivers and the substitution of one or more other receivers or the termination of any receivership and the delivery of the property subject thereto to its owners; it may consent to the issue and sale of receiver's certificates or other obligations and to the securing of any receiver's certificates so issued by such liens or charges upon all or any of the property of the Old Company and having such priorities as it may approve. It may lend money to the Receivers of the Old Company or to the Holding Company or the Operating Company and loan money in its discretion for any of the purposes of the Plan and Agreement.

The Reorganization Committee may also borrow and use such sums of money on such terms and subject to such conditions as in its discretion it may deem wise or necessary in order to carry out the Plan or to protect the interests of the Depositors and for that purpose and to secure such sums as may be so borrowed with interest it may pledge, hypothecate or otherwise create charges upon any or all of the Deposited Bonds or their avails, property purchased or the new securities to be created as contemplated by the Plan and all moneys paid by the Depositors or by any Underwriting Syndicate. In case of any such borrowing, whether upon pledge or not, the Reorganization Committee may give to the lender for the sum so borrowed the promissory note or notes of the Reorganization Committee signed on behalf of such Committee by its Chairman or otherwise as may be authorized by the Committee.

The Reorganization Committee shall have the sole control, discretion and management of the Plan and its execution. It may make such expenditures and incur such obligations and liabilities, and do such acts as in its absolute discretion it may deem judicious and proper in order to carry out fully and effectively the purposes of the Plan and of this Agreement, and it may, or the Protective Committee with its consent may, exercise any powers of the Protective Committee under the Protective Agreement. Statements in the Plan and Agreement of the intended arrangements or as to the methods to be employed in effecting the details of the proposed reorganization shall not limit the discretion of the Reorganization Committee, but may be modified or changed or departed from or entirely abandoned as often as the Committee shall deem advisable, it being intended that the Reorganization Committee shall have full discretion and power to use whatever means it shall deem most convenient and advisable for accomplishing the reorganization, the acquisition of any property, directly or indirectly, and the issue and disposition of the new securities and the other objects contemplated by the Plan and Agreement. Anything which anywhere in the Plan and Agreement it is provided the Reorganization Committee may do or allow to be done it may do or allow to be done by or through such agents or agencies as it may determine, or by or through others with its approval or consent or acquiescence, or it may contract with any other person or corporation that any such thing shall be done or permitted to be done.

The Reorganization Committee in carrying out the Plan may organize or procure to be organized one or more companies or it may adopt or use any companies whether now existing or not. It may make or cause to be made consolidations, mergers, sales, purchases, leases, guaranties or other arrangements by or between any such companies, any of the companies mentioned in the Plan or any companies thereby permitted to be employed in connection with the reorganization; it may make or cause to be made conveyances and transfers of the property or securities acquired by it or with its appro-

val, and may cause the ownership of all or any property by the Operating Company or the Holding Company to be either direct ownership or ownership through the ownership of bonds or stocks or both of any other company, and may cause the New Mortgage to be either a direct lien upon any particular property or a lien upon the bonds or stocks or both of any company owning such property; and all of the provisions of the Plan and Agreement shall equally apply to and in respect of any physical properties embraced in the reorganization and to and in respect of securities representing any such property, it being intended that for all purposes of the Plan and Agreement any such property and any securities representing such property may be treated or accepted by the Reorganization Committee in its discretion as substantially identical. It may take or allow to be taken such other proceedings as it may deem proper for the purpose of the creation of the new securities provided for in the Plan and Agreement and the carrying out of any of the provisions thereof. The Reorganization Committee may pay the expense of listing certificates of deposit or any new securities to be issued under the Plan and Agreement upon the New York Stock Exchange or elsewhere, and any taxes, fees or charges payable in connection therewith, and as well any taxes, fees or charges imposed by any public authority wherever situated in respect of the authorization, creation, issue, transfer or distribution of all or any of the new securities or other securities under the control of the Reorganization Committee, as provided or permitted by the Plan and Agreement, and it may pay or discharge any taxes, fees or governmental charges payable in connection with the deposit, use, assignment or transfer of Old Bonds under or in pursuance of the Plan and Agreement.

The Reorganization Committee may prescribe or approve the form and terms of all charters and by-laws of the Operating Company and of the Holding Company and of any other corporations that shall be utilized in the reorganization, and all certificates of stock and bonds at any time to be issued and the New Mortgage and all other instruments to be executed, and may make contracts with regard to the form thereof. The Reorganization Committee may create and provide for all necessary trusts and may appoint trustees thereunder. The Reorganization Committee may in its discretion set apart and hold in trust or permit or cause to be set apart and held in trust with any trust company or otherwise any part of the new securities to be issued and any cash which may be received from the Depositors or any syndicate or from sales of New Bonds or stock or otherwise as it may deem suitable for the purpose of securing the application thereof to any of the purposes of the Plan and Agreement.

It may make or cause to be made any underwriting agreement with any syndicate or otherwise which it may deem advisable to insure or promote the carrying out of the Plan and Agreement or any portion thereof, including not only any agreement or arrangement for the sale or the underwriting of the sale of New Bonds and of stock to be issued pursuant to the Plan and Agreement, but as well any agreement or arrangement for the purpose of obtaining money for the purposes of the Plan whereby the new stock to which holders of such Old Bonds who shall not be Depositors would have been entitled if they had become parties to the Plan and Agreement or any other new securities authorized by the Plan and Agreement and not otherwise appropriated or all such securities shall be sold or the sale thereof shall be underwritten, and they may provide for the payment to any such syndicate or any syndicate organized pursuant to the authority contained or as stated in the Plan and Agreement of reasonable compensation and likewise for the payment of compensation to bankers or managers whom the Protective Committee has procured or the Reorganization Committee may procure to organize or with whom they may agree for the organization of any such syndicate; and for the performance of

any agreement entered into by the Protective Committee or by it, the Reorganization Committee may charge the Deposited Bonds, the property purchased and the new securities to be issued hereunder.

The Reorganization Committee may dispose of or consent to the disposition of any of the new securities not required for delivery to Depositors or to the Underwriting Syndicate, or the securities of any company which shall be utilized in the reorganization not reserved under the Plan for specific uses; and it may use, or allow to be used, the proceeds thereof, if required for the purpose of carrying out the reorganization, in such manner as it may deem expedient and advisable for the purposes of the Plan.

The Reorganization Committee shall have power to make equitable provision for any case of lost or destroyed bonds, certificates of stock, certificates of deposit or other securities and to provide for and make such issues of scrip or convertible securities as it shall deem expedient properly to represent any fractional interest in the New Bonds or the stock to be issued under the Plan, and it may in its discretion settle for and adjust any such fractional interest in cash. In case it shall deem it advisable for any reason it may issue or authorize the issue of temporary or interim certificates to represent new securities.

All moneys at any time held under the Plan and Agreement shall be subject to the order of the Reorganization Committee, which shall apply the same or cause or permit the same to be applied for any of the purposes of the Plan as from time to time may be determined by it; its determination as to the propriety and purpose of any such application shall be final, and nothing in the Plan shall be understood as limiting or requiring the application of specific moneys to specific purposes. The Reorganization Committee may, if in its judgment such course shall be in the interest of the Operating Company or the Holding Company, abandon any particular purpose or purposes for which money is appropriated in the Plan and, within the limitations and subject to the conditions expressly prescribed in Article V of the Plan, may provide for the application of any of the moneys, to be raised as contemplated by the Plan, to any of the purposes mentioned in said Article V and in such amounts or proportions, respectively, as may be determined by the Committee.

The Reorganization Committee may acquire, pay, compromise, settle, surrender or release any obligations or indebtedness of, or claims against, the Old Company, or any claims or demands against or liens or charges upon any property of the Old Company, or upon any other property which the Reorganization Committee may deem it advisable for the Operating Company or the Holding Company to acquire, or any claims or demands whereby, or by reason whereof, any such property may be encumbered or the title thereto affected, or any Receiver's certificates or other obligations or liabilities incurred or which may be issued or incurred by the Receivers of the Old Company, and for such purpose may use any cash provided by the Plan or any new securities which it is provided in the Plan may be issued in the course of the reorganization and which are not otherwise appropriated in the Plan. It may surrender or cancel, or consent to the surrender or cancellation of or may adopt or consent to the adoption or renounce or consent to the renunciation of any agreement to which the Old Company is a party or the Receivers of the Old Company are parties. It may compromise, settle, surrender or release or consent to the compromise, settlement, surrender or release of any claims of the Old Company or of its Receivers (but claims against the Denver Company under Contract B or guaranties endorsed on Old Bonds acquired from the Depositors under the Plan and Agreement may be compromised or settled by the Reorganization Committee, if at all,

only by virtue of the power conferred and within the limitations prescribed in Article II of the Plan and as provided hereinafter in this Article *Ninth*).

Generally the Reorganization Committee may make or ratify or permit to be made or ratified contracts with any person, syndicate, committee or corporation in respect of any matter connected with the Plan and Agreement.

The Reorganization Committee may employ counsel, depositaries, agents and all necessary assistants and may incur, agree with respect to and discharge any and all expenses and obligations which it deems reasonable for the purposes of the Plan or for carrying out or attempting to carry out the same, all expenses in connection with the preparation of the Plan and Agreement, the issue of certificates, all expenses of organizing the Operating Company and the Holding Company and any other company or companies utilized in connection with the reorganization, the issue and transfer of property and securities, legal expenses, expenses for advertising and printing, all expenses of or incident to the receivership of the Old Company and the foreclosure of the mortgage securing the Old Bonds, all expenses incurred hereunder or under the Protective Agreement the compensation and obligations and liabilities of the Protective Committee, and all other expenses in any manner connected with the Plan and Agreement or which the Committee may deem it expedient to incur or pay in undertaking to promote or in effecting any of the purposes thereof. The Committee shall be the sole judge of the propriety or expediency of any and all expenses and of the amount thereof.

The Reorganization Committee may proceed under the Plan and Agreement or any part thereof with or without judicial sale, and in case of judicial sale it may exercise any power either before or after sale. Any action contemplated in the Plan and Agreement may be performed before or after reorganization, and any such action may be taken by the Reorganization Committee or by anyone approved by it at any time when it shall deem the reorganization advanced sufficiently to justify such course and as it may deem necessary the Reorganization Committee may defer or permit to be deferred the performance of any provision of the Plan or Agreement or may commit such performance to the Operating Company or the Holding Company or such other person, persons or corporation as it shall determine and may cause any such company to pay any indebtedness authorized or incurred by the Reorganization Committee or otherwise in furtherance of the Plan and to assume any obligations which in its judgment may be necessary or proper to carry out the Plan and Agreement; and pending the completion of the reorganization, if in its judgment occasion shall require, the Reorganization Committee notwithstanding any other provision of this Agreement, may exercise, but only upon the affirmative vote or concurrent action of three-fourths of all its members, any of the powers which by the terms of the Plan are to be vested in or may be exercised by the Holding Company or by the Operating Company.

In the event that any agreement or arrangement providing for compromise or settlement of claims against the Denver Company shall be made in the exercise of the power last conferred, the same shall be made, and shall be subject to, the condition that such compromise or settlement shall be submitted to the Depositors, registered as such upon the books of the Depositary, and shall not be disapproved by more than one-third in amount thereof. In the event of the making of any such agreement or arrangement, a statement of the proposed compromise or settlement, setting forth the terms thereof, shall be filed with the Depositary and with each of its agents then authorized to accept deposits under the Plan and Agreement, which statement shall be subject to inspection by Depositors, and notice of the filing thereof shall be published as provided in Article

Fifteenth hereof. Any Depositor desiring to disapprove such compromise or settlement may within four weeks from the date of the first publication of said notice, file with the Depositary or with any of its said authorized agents, a writing stating that he disapproves the same. Any Depositor who shall fail so to file such written disapproval within the time so limited shall be conclusively deemed to have consented to such compromise or settlement notwithstanding any objection thereto that he may make in any other manner; and such compromise or settlement shall be binding upon all the Depositors as fully as if every Depositor had expressly consented thereto unless more than one-third in amount of all of the Depositors, registered as such upon the books of the Depositary, shall in writing disapprove the same in the manner and within the period aforesaid. In case more than one-third in amount of said Depositors shall so disapprove such compromise or settlement, the same shall be without any force whatsoever and shall not be consummated by the Reorganization Committee.

Tenth.—The Protective Committee and the Depositary under the Protective Agreement, upon notice from the Reorganization Committee that the Plan has become operative, will deliver to or hold subject to the order of the Reorganization Committee, and will assign, transfer and deliver as shall be directed by any such order, all of the Deposited Bonds and coupons subject to the Protective Agreement, the holders whereof or of certificates of deposit wherefor shall have become bound by the Plan and Agreement, all claims against the Denver Company that may have been subject to the Protective Agreement and all avails of any such bonds or claims and all other securities and benefits whatsoever subject to the control of the Protective Committee; and the Protective Committee, with respect to all such Deposited Bonds and coupons, claims, securities and benefits, shall at any time exercise any or all of its powers or rights under the Protective Agreement, as may be requested by the Reorganization Comittee, for the purpose of carrying out any of the provisions of the Plan and Agreement or the intent or any of the purposes thereof.

Eleventh.—The Reorganization Committee undertakes in good faith to endeavor to execute the Plan, either in its original form or as the same shall be modified as provided herein, but neither the Reorganization Committee nor the Protective Committee, assumes any personal responsibility for the execution thereof or for the result of any steps taken or acts done for the purposes thereof. The Reorganization Committee may act by any sub-committee or Board of Managers or by other agents, and may delegate authority to any such sub-committee, Board of Managers or agents to carry out the provisions of the Plan, and the members of any such sub-committee or Board of Managers or any such agent may be allowed reasonable compensation for services. Neither the Reorganization Committee nor the Protective Committee nor any member of either of said committees, nor the Depositary, shall be personally liable for any act or omission of any agent or employee selected by them, or any of them, nor for any action taken or not taken in good faith in the belief that any Deposited Bond or New Bond or certificate of stock or of deposit or other instrument or any signature is genuine or effective, nor for anything done or not done under the advice of counsel, nor for any error of judgment nor mistake of law or fact, nor for anything except its or his own individual wilful misconduct or bad faith, and neither the Reorganization Committee nor the Protective Committee nor any member of either of said committees nor the Depositary shall be personally liable for the acts or defaults of any other person or body.

The accounts of the Reorganization Committee are to be filed with the Board of Directors of the Holding Company. The accounts when approved by disin-

terested public accountants to be designated and employed by said Board of Directors shall be final, binding and conclusive upon all parties having any interest therein, and upon such approval whenever given the Reorganization Committee shall be discharged and any liability upon its part shall cease. The acceptance of new securities by any Depositor shall estop the person accepting the same from questioning the conformity of such securities in any particular with any of the provisions of the Plan, and the acceptance of new securities by the holders of a majority in amount of the Depositors shall so estop all Depositors and constitute full ratification of all of the accounts, acts and proceedings of the Reorganization Committee and the Protective Committee and a release and discharge of the Reorganization Committee and the Protective Committee and all of the members of each thereof and the Depositary from all liability and accountability of every kind, character and description whatsoever.

Twelfth.—The Reorganization Committee, by vote of three-fourths of its members as the Committee shall then be constituted, may at any time increase the number of members constituting the Reorganization Committee and appoint additional members, and the member or members so elected shall have all the powers of, and, together with those herein named and their successors respectively, shall constitute the Reorganization Committee, with like force and effect as if they were specially named herein, and the Reorganization Committee may by like vote fill any vacancy, but need not necessarily do so, and the Committee as at any time constituted, notwithstanding any vacancy, shall have all the powers, rights, property and interests of the Committee as originally formed or theretofore existing. Any member of the Reorganization Committee may resign by giving notice of his resignation in writing to the chairman of the Reorganization Committee or to a majority of the other members. The Reorganization Committee may settle any account or transaction with any member who shall have resigned or be under other disability to act or with the representatives of any deceased member, and give or receive a full release and discharge with reference thereto. The Reorganization Committee may elect one of its members to be Chairman of the Committee, may appoint a Secretary, who need not be a member of the Committee, may prescribe regulations for its meetings and the convening thereof, and may keep a record of its acts and proceedings. Except as herein otherwise provided, the affirmative vote of a majority of the members of the Reorganization Committee, as at any time constituted, shall be necessary and sufficient for the passage of any resolution or the taking of any other action (but a member may vote by proxy—who may or may not be another member of the Committee—at any meeting of the Reorganization Committee), and such affirmative vote of the majority, except as aforesaid, shall be binding upon the Reorganization Committee and the Depositors. It shall not be necessary for the members of the Reorganization Committee formally to meet in order to take any action provided they agree on any matter and embody such agreement in any form of writing signed by every member of the Reorganization Committee.

All members of the Reorganization Committee shall be entitled to compensation for their services.

The Reorganization Committee and any member thereof and the Depositary and any officer or director thereof and anyone connected with the Reorganization Committee or with any of the members thereof or with the Depositary or with the Operating Company or the Holding Company or with any other company mentioned or referred to herein (whether as member, incorporator, stockholder, director, officer or in any capacity) and any Depositor or any transferee of any Depositor and any partnership or corpora-

tion with which any person above mentioned may be connected in any manner may be or become pecuniarily interested, without accountability in respect thereof, in any contract, transaction, property or matter with which the Plan or Agreement or the Operating Company or the Holding Company or any other company or any committee mentioned or referred to herein are concerned, including participation in any syndicate agreement whether or not mentioned in the Plan. Any such person or corporation may also become a Depositor under the Plan and Agreement, and in such event shall have the same rights, benefits and obligations hereunder and in respect of all Old Bonds deposited, all claims transferred, all property purchased, all securities of the Operating Company or the Holding Company to be issued or received, and all payments to be made, as other Depositors in like case, and may buy and sell certificates of deposit and undeposited Old Bonds in the same manner and with the same rights as any one not a Depositor.

The Reorganization Committee may form or procure the formation of any syndicate or syndicates which it may deem necessary or advantageous for carrying out the purposes of the Plan or of this Agreement and any of the members of the Reorganization Committee may act as members or managers of any such syndicate or syndicates. The terms of any agreement forming, and of all agreements with, any such syndicate may be fixed by the Reorganization Committee, and as so fixed shall be binding and conclusive upon the Depositors. The syndicate managers, whether or not members of the Reorganization Committee may receive compensation as such syndicate managers, and syndicate managers who may be members of the Reorganization Committee may receive also compensation as members of the Reorganization Committee.

The Reorganization Committee may remove and in such event or in the event of its resignation or incapacity may appoint a successor to the Depositary. Any direction given by the Reorganization Committee, evidenced by a writing signed by the Chairman or certified by the Secretary thereof, shall be full and sufficient authority for any action of the Depositary or of any other custodian or of any committee or agent. The Depositary shall incur no liability for anything done or permitted at the request or direction of the Reorganization Committee.

Thirteenth.—The enumeration of specific powers hereby conferred shall not be construed to limit or to restrict the general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer on the Reorganization Committee in all respects any and all powers which the Reorganization Committee may deem necessary or expedient in or towards carrying out or promoting in any respect the purposes of the Plan and Agreement as now existing or as the same may be modified as herein provided, even though any such power be apparently of a character not now contemplated, and the Reorganization Committee may exercise any and every such power as fully and effectively as if the same were herein specified and as often as for any cause or reason it may deem expedient.

Fourteenth.—No right is conferred or created hereby nor is any trust, liability or obligation (except the agreements herein contained in favor of Depositors and of the Reorganization Committee, the Protective Committee and the Depositary) created by the Plan and Agreement or assumed hereunder by or for the Operating Company or the Holding Company, or in favor of any creditor or of any holder of any claim whatsoever against the Old Company or in favor of any other company now existing or to be formed hereafter or in favor of any person or corporation whatsoever, with respect to any Deposited Bonds or coupons or any claims against the Denver Company or any moneys paid to or received by the Reorganization Committee or by the Depositary

hereunder or with respect to any property acquired by purchase at any sale or otherwise acquired or with respect to any new securities to be issued under the Plan or with respect to any other matter or thing, but this Agreement shall be construed as strictly an agreement between the parties and as solely affecting and relating to the Reorganization Committee, the Protective Committee, the Depositary and Depositors hereunder. The Deposited Bonds and claims against the Denver Company and all property, securities, claims, demands and rights acquired pursuant to the Plan and Agreement shall remain in full force and effect for all purposes and shall not be deemed merged, satisfied or discharged, and no legal right or lien shall be deemed released or waived unless the same shall be specifically provided for by affirmative action of the Reorganization Committee as permitted hereby; and all such claims, demands and rights may be enforced by the Reorganization Committee or by anyone to whom the same may be assigned, as provided herein, with authority conferred by the Reorganization Committee for the enforcement thereof.

Fifteenth.—All calls for payments to be made under the Plan or for the surrender or presentation of certificates of deposit issued hereunder or under the Protective Agreement, all notices fixing or limiting any period for the deposit or withdrawal of securities or for the taking of any action or for payments and all other calls and notices hereunder shall be inserted in at least two daily newspapers published in the City of New York and in at least one daily newspaper published in the City and County of San Francisco, twice in each week for two successive calendar weeks in each case on any days of the week. Any call or notice whatsoever when so published by the Committee shall be taken and considered as though personally served upon all parties to be bound thereby as of the respective dates of insertion thereof, and such publication shall be the only notice required to be given under any provision of the Plan and Agreement.

Sixteenth.—The Plan and this Agreement shall bind and benefit the several parties and their and each of their survivors, successors, executors, administrators and assigns.

A printed copy of this Agreement signed by the members of the Protective Committee or three-fourths of them and by the members of the Reorganization Committee or a majority of them and lodged with The Equitable Trust Company of New York shall be held and taken to be the original Agreement. This Agreement may, however, be executed in any number of counterparts with the same effect as if all of the parties executing the same had executed but one instrument.

In Witness Whereof, the undersigned members of the Protective Committee and of the Reorganization Committee have caused these presents to be duly executed the day and year first above written and the parties of the second part have become parties hereto in the manner herein provided.

Alvin W. Krech,
Chairman.

C. Ledyard Blair,

I. de Bruyn,

Alvin W. Krech,

A. M. Hunt,

F. H. Ecker,
David R. Forgan,
A. M. Hunt,
Starr J. Murphy,
James D. Phelan,
W. A. Read,
William Salomon,
George Whittell,
Richard B. Young,
Protective Committee.

Lyman Rhoades,
Secretary.

James D. Phelan,
George Whittell,
David R. Forgan,
I. de Bruyn,
C. Ledyard Blair,
F. H. Ecker,
Starr J. Murphy,
W. A. Read,
William Salomon,
Richard B. Young,
Reorganization Committee.