

# UNOFFICIAL COPY

This instrument prepared by and  
after recording should be mailed to:

Wayne F. Osoba  
Foley & Lardner LLP  
321 North Clark Street  
Suite 2800  
Chicago, IL 60654-5313



Doc# 1831934096 Fee \$126.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 11/15/2018 03:56 PM PG: 1 OF 45

THE PEOPLES GAS LIGHT AND COKE COMPANY

U.S. BANK NATIONAL ASSOCIATION  
Trustee

Dated as of November 1, 2018

First and Refunding Mortgage 3.87% Bonds, Series FFF

## INDEX THE FOLLOWING PINS ONLY

36284570v7

Permanent Index Number	Permanent Index Number
10-30-201-033-0000	Part of 13-03-405-022-0000 and 13-03-405-023-0000

CCRD REVIEWER *WJH*  
3 PINS / *Dep't page 1283*  
45 pgs

# UNOFFICIAL COPY

## TABLE OF CONTENTS

ARTICLE I FIRST AND REFUNDING MORTGAGE 3.87% BONDS, SERIES FFF.....	10
Section 1. Designation, Maturity and Interest Rate of Bonds.....	10
Section 2. Issuance of Bonds.....	11
Section 3. Exchanges of Bonds.....	11
Section 4. Execution and Authentication of Bonds.....	11
Section 5. Redemption of Bonds by Company.....	12
Section 6. Notice of Redemption.....	14
Section 7. Form of Bonds.....	15
Section 8. Definitions.....	15
Section 9. Date of Payments.....	17
Section 10. Reservation of Right to Amend Mortgage.....	17
Section 11. Private Placement of Bonds.....	19
Section 12. Private Placement Legend.....	19
ARTICLE II COVENANTS OF THE COMPANY.....	20
Section 1. Covenants of Company under Indenture.....	20
Section 2. After-Acquired Property Subject to Mortgage.....	28
Section 3. Documents to Furnish Upon Acquisition of Land.....	29
Section 4. Discharge of Prior Liens.....	30
ARTICLE III MISCELLANEOUS.....	31
Section 1. Trustee's Acceptance.....	31
Section 2. Execution of Supplemental Indenture.....	31
Section 3. Assignment.....	31
Section 4. Effective Time of Supplemental Indenture.....	31
Section 5. Governing Law.....	31
Section 6. Counterparts.....	32

# UNOFFICIAL COPY

This Supplemental Indenture, dated as of November 1, 2018, made and entered into by and between THE PEOPLES GAS LIGHT AND COKE COMPANY, a corporation organized and existing under the laws of the State of Illinois (hereinafter called the "*Company*"), and U.S. Bank National Association (hereinafter called the "*Trustee*"), a corporation organized and existing under the laws of the United States of America and successor to Illinois Merchants Trust Company, as trustee under the indenture of Chicago By-Product Coke Company to said Illinois Merchants Trust Company, as trustee, dated January 2, 1926.

## WITNESSETH:

WHEREAS, Chicago By-Product Coke Company, a corporation organized and existing under the laws of the State of Delaware, heretofore gave its mortgage in the form of an indenture (hereinafter called the "*Original Mortgage*") to Illinois Merchants Trust Company, as trustee, under date of the second day of January, 1926; and

WHEREAS, the Company executed and delivered to said Illinois Merchants Trust Company, as trustee under the Original Mortgage, an indenture bearing date the first day of March, 1928, whereby, among other things, the Company assumed and agreed to pay the principal and interest of all bonds issued or to be issued under the Original Mortgage and secured thereby, and to perform and fulfill all of the terms, covenants, and conditions of the Original Mortgage binding upon said Chicago By-Product Coke Company, and in and by said indenture the Company subjected to the lien of the Original Mortgage, subject to the existing liens permitted by Section 2 of Article XIV of the Original Mortgage but with statements required by said Section 2 with regard to such existing liens, all of the property then owned by the Company or thereafter acquired by it (excepting such of its property as the Company was by said Section 2 of Article XIV of the Original Mortgage expressly authorized to reserve from the lien of the Original Mortgage); and

WHEREAS, by virtue of all the things done as in the next preceding paragraph recited, the Company has become the successor corporation under the Original Mortgage, subject to all the terms, conditions and restrictions thereof; and

WHEREAS, thereafter the Company has made, executed and delivered (i) other indentures supplemental to the Original Mortgage, of which the indentures supplemental to the Original Mortgage delivered to U.S. Bank National Association, as Trustee, successor to Illinois Merchants Trust Company, as Trustee under the Original Mortgage, dated, respectively, May 20, 1936, March 10, 1950, as of June 1, 1951, as of August 15, 1967, as of September 15, 1970, as of September 1, 2009, as of August 1, 2010, as of October 1, 2010, as of December 1, 2012, as of April 1, 2013, as of August 1, 2013, as of November 1, 2014, as of November 1, 2016, as of December 1, 2016 and as of November 1, 2017 are wholly or partially in full force and effect and (ii) Amendments dated as of August 9, 2017 and January 25, 2018, which are in full force and effect (said Original Mortgage, and said Indenture dated March 1, 1928, as so supplemented and amended, being collectively called the "*Mortgage*", and said Mortgage, as supplemented by this Supplemental Indenture, being collectively called the "*Mortgage as supplemented*"); and

# UNOFFICIAL COPY

WHEREAS, all bonds which have heretofore been issued and outstanding under the Mortgage have been retired and cancelled, except that as of November 1, 2018, there were bonds of the following series outstanding in the aggregate principal amounts indicated below:

BONDS	DUE DATE	AGGREGATE PRINCIPAL AMOUNT
Series UU	September 1, 2019	\$75,000,000
Series VV	March 1, 2030	\$50,000,000
Series WW	February 1, 2033	\$50,000,000
Series YY	December 1, 2042	\$100,000,000
Series ZZ	February 1, 2033	\$50,000,000
Series AAA	August 1, 2043	\$220,000,000
Series BBB	November 1, 2044	\$200,000,000
Series CCC	December 15, 2046	\$50,000,000
Series DDD	December 15, 2046	\$150,000,000
Series EEE	December 1, 2047	\$100,000,000

; and

WHEREAS, it is provided in Article III of the Mortgage that bonds of any series may from time to time be issued by the Company under the Mortgage in a principal amount equal to 75% of expenditures made for the acquisition of any permanent property as defined in the Mortgage or upon the deposit of cash with the Trustee equal to the aggregate principal amount of bonds whose authentication and delivery is then applied for; and

WHEREAS, it is provided in Article III of the Mortgage that bonds of any series may from time to time be issued by the Company under the Mortgage for or on account of the acquisition and cancellation, or of the payment, cancellation, redemption or other discharge, at, before or after maturity, of an equal aggregate principal amount of bonds of any one or more other series theretofore authenticated under any of the provisions of the Mortgage and which shall have been or shall be outstanding; and

WHEREAS, the Company has duly determined to create an additional series of its bonds to be issued under the Mortgage as supplemented designated "The Peoples Gas Light and Coke Company First and Refunding Mortgage 3.87% Bonds, Series FFF" (herein sometimes referred to as "*bonds of Series FFF*") and to issue an aggregate of \$150,000,000 principal amount of said bonds all of which bonds shall be fully registered without coupons; and

WHEREAS, the Company desires to reserve the right to amend the Mortgage without any consent or other action by holders of the bonds of Series FFF or any subsequent series, to provide that the Mortgage, the rights and obligations of the Company and the rights of the bondholders may be modified with the consent of the holders of not less than 60% in aggregate principal amount of the bonds adversely

# UNOFFICIAL COPY

affected; *provided, however*, that no modification shall (1) extend the maturity of any of the bonds of Series FFF or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of principal thereof (or with respect to the bonds of Series FFF change the amount or time of any prepayment or payment of principal or of any payment of interest or reduce the rate of interest or change the method of computation of interest or of the Make-Whole Amount), or reduce the Make-Whole Amount, if any, payable on redemption thereof or change the coin or currency in which any bond or interest thereon or Make-Whole Amount, if any, is payable without the consent of the holder of each bond so affected, (2) permit the creation of any lien, not otherwise permitted, prior to or on a parity with the lien of the Mortgage, without the consent of the holders of all bonds then outstanding, or (3) reduce the above percentage of the aggregate principal amount of bonds the holders of which are required to approve any such modification without the consent of the holders of all bonds then outstanding; and

WHEREAS, the form of registered bond of Series FFF and the form of the Trustee's Certificate to appear on all bonds of Series FFF shall be substantially as follows:

(Form of Series FFF Registered Bond Without Coupons)

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION, UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

ICC Identification No. 6780  
CUSIP: 711123 D#3

No. R \_\_\_\_\_ \$ \_\_\_\_\_

THE PEOPLES GAS LIGHT AND COKE COMPANY  
FIRST AND REFUNDING MORTGAGE 3.87% BONDS,  
SERIES FFF

DUE NOVEMBER 1, 2028

THE PEOPLES GAS LIGHT AND COKE COMPANY, an Illinois corporation (hereinafter called the "*Company*"), for value received, hereby promises to pay to \_\_\_\_\_ or registered assigns on November 1, 2028, unless this Bond shall have been called for redemption and payment of the redemption price shall have been duly made or provided for in accordance with the hereinafter described Mortgage, the principal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_), and to pay interest on the balance of said principal sum from time to time remaining unpaid until payment of said principal amount has been made or duly provided for, at the rate of 3.87% per annum

# UNOFFICIAL COPY

(calculated on the basis of a year of 360 days consisting of twelve 30-day months), payable at or before 9:00 a.m., Chicago time, on May 1, and November 1, of each year and on the maturity date, commencing May 1, 2019 until payment in full of such principal sum on November 1, 2028. With respect to the initial interest period ending on May 1, 2019, interest shall accrue from November 15, 2018. Interest shall also accrue on any overdue principal, premium, if any, and (to the extent that such interest shall be legally enforceable) on any overdue installment of interest until paid at the Overdue Rate. Overdue Rate shall mean the rate of interest that is the greater of (i) 1% per annum above the rate of interest stated as the coupon rate of the bonds of Series FFF or (ii) 1% over the rate of interest publicly announced by Citibank N.A. in New York, New York as its "base" or "prime" rate. The interest so payable on any interest payment date will, subject to certain exceptions provided in the Mortgage, be paid to the person who is the registered owner of this Bond at the close of business on the applicable record date next preceding such interest payment date (April 15 or October 15, as the case may be). Subject to Section 9 of that certain Bond Purchase Agreement dated as of October 10, 2018 with respect to the bonds of Series FFF (the "Bond Purchase Agreement") between the Company and the institutional investors named in Schedule A thereto, principal of, Make-Whole Amount (as hereinafter defined), if any, and interest on this Bond shall be payable in lawful money of the United States of America at the principal corporate trust office of U.S. Bank National Association in St. Paul, Minnesota.

This Bond is one of the First and Refunding Mortgage 3.87% Bonds, Series FFF, due November 1, 2028 (the "*Series FFF Bonds*") of the Company, all issued and to be issued in a single series, from time to time, under and in accordance with and, irrespective of the time of issue or of such series in which issued or the designation thereof, equally secured by an Indenture, dated the second day of January, 1926, executed by Chicago By-Product Coke Company, a Delaware corporation, to Illinois Merchants Trust Company, as trustee, and recorded on January 19, 1926, as Document No. 9154395 in Book 22219 of Records, at page 283, in the Recorder's Office of Cook County, Illinois, which Indenture was assumed by the Company as a successor corporation, as defined therein, by an indenture, dated the first day of March, 1928, executed by the Company to said trustee, and recorded on April 7, 1928, as Document No. 9980547 in Book 25701 of Records, at page 599, in the Recorder's Office of Cook County, Illinois, and has heretofore been, and from time to time hereafter may be, amended and supplemented by amendment and indentures supplemental thereto, including the Supplemental Indenture dated as of November 1, 2018 relating to the hereinafter described bonds of Series FFF (the "*Supplemental Indenture*"). Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Supplemental Indenture. The word "*Mortgage*", as used in this Bond, shall mean said Indenture, as amended and supplemented from time to time by amendment and indentures supplemental thereto, including the Supplemental Indenture. The word "*Company*", as used in this Bond, shall be construed to include any successor corporation, as defined in the Mortgage. The word "*Trustee*", as used in this Bond, shall be construed to mean and include U.S. Bank National Association (successor to Illinois Merchants Trust Company), as trustee under the Mortgage, and any successor trustee thereunder. Reference is hereby made to the Mortgage and all indentures supplemental thereto for a description of the property mortgaged and pledged (except that certain parcels described in the Mortgage and in said

# UNOFFICIAL COPY

supplemental indentures have been released from the lien of the Mortgage pursuant to the terms thereof), the nature and extent of the security and the terms and conditions governing the issuance and security of the bonds issued or to be issued under the Mortgage. As provided in the Mortgage, the bonds may be for various principal sums, are issuable in series, may bear interest at different rates and may otherwise vary as provided therein. This Bond is one of the series of such First and Refunding Mortgage Bonds designated as "*The Peoples Gas Light and Coke Company First and Refunding Mortgage 3.87% Bonds, Series FFF*", hereinafter called the "Series FFF Bonds".

The Series FFF Bonds shall be deliverable in the form of registered Bonds without coupons in denominations of \$100,000 and any integral multiple thereof.

As more fully described in the Supplemental Indenture, the Company reserves the right, without any consent or other action by holders of the Series FFF Bonds or the bonds of any subsequent series, to amend the Mortgage to provide that the Mortgage, the rights and obligations of the Company and the rights of the bondholders may be modified with the consent of the holders of not less than 60% in aggregate principal amount of the bonds adversely affected; *provided, however*, that no modification shall (1) extend the maturity of any of the Series FFF Bonds or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of principal thereof (or with respect to the Series FFF Bonds change the amount or time of any prepayment or payment of principal or of any payment of interest or reduce the rate of interest or change the method of computation of interest or of the Make-Whole Amount), or reduce the Make-Whole Amount, if any, payable on redemption thereof or change the coin or currency in which any bond or interest thereon or Make-Whole Amount, if any, is payable without the consent of the holder of each bond so affected or, (2) permit the creation of any lien, not otherwise permitted, prior to or on a parity with the lien of the Mortgage, without the consent of the holders of all bonds then outstanding, or (3) reduce the above percentage of the principal amount of bonds the holders of which are required to approve any such modification without the consent of the holders of all bonds then outstanding.

The Series FFF Bonds are subject to optional redemption by the Company, in whole but not in part, at any time, at a redemption price of 100% of the principal amount thereof, plus accrued interest, if any, to the redemption date, upon the occurrence of certain events described in the Supplemental Indenture (relating to unreasonable burdens or excessive liabilities imposed upon the Company; changes in the economic availability of raw materials, operating supplies, fuel or other energy sources or supplies or technological or other changes rendering its property uneconomic; or court order or decree preventing operations at its property or rendering the continuation of its operations economically unfeasible).

All of the outstanding Series FFF Bonds may be redeemed at any time by the Company, by the payment of the principal amount thereof and accrued interest thereon to the date of redemption, without the payment of any premium, in the event of the acquisition by any federal, state or municipal authority of any substantial portion (which shall be not less than one-third as determined by book values) of the income-producing properties of the Company which are subject to the lien of the Mortgage.

# UNOFFICIAL COPY

All of the outstanding bonds under the Mortgage shall be redeemed by the Company by the payment of the respective applicable redemption price or prices and accrued interest thereon to the date of redemption, without the payment of any premium, in the event of the acquisition by any federal, state or municipal authority of all or substantially all of the income-producing properties of the Company which are subject to the lien of the Mortgage.

The Company may, at its option, upon notice as provided in the Supplemental Indenture, prepay at any time all, or from time to time, any part of the Series FFF Bonds at 100% of the principal amount so prepaid, plus, if prior to August 1, 2028, the Make-Whole Amount, determined in accordance with Section 5(d)(i) of Article I of the Supplemental Indenture with respect to such principal amount, together with accrued and unpaid interest thereon. Reference is made to the Supplemental Indenture for the terms and conditions of such prepayment and the definition of Make-Whole Amount.

Notice of any redemption of the Series FFF Bonds shall be given by mailing by first class mail, postage prepaid, at least thirty (30) days and not more than sixty (60) days prior, to the redemption date, to the holders of all such bonds to be redeemed at their last addresses that shall appear upon the registry book, all as more fully provided in the Mortgage. Notice of redemption having been duly given, the bonds called for redemption shall become due and payable upon the redemption date and, if the redemption price shall have been deposited with the Trustee, interest thereon shall cease to accrue on and after the redemption date, and whenever the redemption price thereof shall have been deposited with the Trustee and notice of redemption shall have been duly given or provision therefore made, such bonds shall no longer be entitled to any lien or benefit of the Mortgage.

In case of certain events of default specified in the Mortgage, the principal of all bonds issued and outstanding thereunder may be declared or may become due and payable in the manner and with the effect provided in the Mortgage.

No recourse shall be had for the payment of the principal of, Make-Whole Amount, if any, or interest on this Bond, or for any claim based hereon, or otherwise in respect hereof or of the Mortgage, to or against any incorporator, stockholder, director or officer, past, present or future, of the Company, either directly or through the Company, under any constitution or statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability of incorporators, stockholders, directors and officers being released by the holder hereof by the acceptance of this Bond, and being likewise waived and released by the terms of the Mortgage.

This Bond is transferable by the registered holder hereof in person or by a duly authorized attorney at the office or agency of the Company in the City of Chicago, State of Illinois, upon surrender and cancellation of this Bond, and thereupon a new registered bond or bonds, without coupons, of the same series and for the same aggregate principal amount will be issued to the transferee in exchange herefor. In the manner provided in the Mortgage, registered Bonds without coupons of this series may, at the option of the registered owner and upon surrender at said office or agency of the Company, be



# UNOFFICIAL COPY

exchanged for registered Bonds without coupons of this series of the same aggregate principal amount of other authorized denominations.

The Company and the Trustee and any paying agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment and for all other purposes and neither the Company nor the Trustee nor any paying agent shall be affected by any notice to the contrary.

This Bond shall not be entitled to any security or benefit under the Mortgage, and shall not become valid or obligatory for any purpose, until this Bond shall have been authenticated by the execution of the certificate, hereon endorsed, by the Trustee or its successor in trust under the Mortgage.

This Bond shall be construed and enforced in accordance with, and the rights of the Company and the holder of this Bond shall be governed by, the law of the State of Illinois, excluding choice-of-law principles of such State that would permit the application of the laws of a jurisdiction other than such State.

IN WITNESS WHEREOF, the Company has caused this Bond to be executed in its name by its President, Executive Vice President, Chief Financial Officer, Treasurer or a Vice President manually or in facsimile, and has caused its corporate seal manually or in facsimile to be hereto affixed, attested by the manual or facsimile signature of its Secretary or Assistant Corporate Secretary.

# UNOFFICIAL COPY

Dated: [ \_\_\_\_\_, \_\_\_\_ ]

THE PEOPLES GAS LIGHT AND COKE  
COMPANY

(SEAL)

By: \_\_\_\_\_

Its:

ATTEST:

\_\_\_\_\_

Its:

**(FORM OF TRUSTEE'S CERTIFICATE)**

This bond is one of the bonds of the series designated, referred to and described in the within-mentioned Mortgage.

U.S. BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_

Authorized Officer

# UNOFFICIAL COPY

## ASSIGNMENT

For value received, the undersigned hereby sell(s) and transfer(s) unto:

PLEASE INSERT IDENTIFYING NUMBER OF ASSIGNEE: \_\_\_\_\_

\_\_\_\_\_  
(Please print or typewrite name and address, including zip code of assignee)

the within Bond and all rights thereunder, hereby irrevocably constituting and appointing \_\_\_\_\_ Attorney to transfer said Note on the books of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Notice: The signature to this Assignment must correspond with the name as written upon the face of the within instrument in every particular, without alteration or enlargement, or any changes whatever.

and

WHEREAS, all acts and things necessary to make the bonds of Series FFF, when authenticated by the Trustee and issued as in the Mortgage and in this Supplemental Indenture provided, the valid, binding and legal obligations of the Company, entitled in all respects to the security of the Mortgage, have been done and performed and the creation, execution and delivery of this Supplemental Indenture have in all respects been duly authorized by a resolution adopted by the Board of Directors of the Company; and

WHEREAS, the Company has requested the Trustee, pursuant to the provisions of Article XVI of the Mortgage, to enter into this Supplemental Indenture for the purpose of supplementing the Mortgage as herein provided;

NOW, THEREFORE, IT IS HEREBY COVENANTED, DECLARED AND AGREED by and between the Company and the Trustee, and its successor or successors in trust, as follows:

### DESCRIPTION OF CERTAIN PROPERTY SUBJECT TO THE LIEN OF THE MORTGAGE

The Company hereby mortgages and conveys unto the Trustee, its successor or successors in trust, the property described in Schedule A hereto attached and expressly made a part hereof pursuant to the terms set forth in said Schedule A.

# UNOFFICIAL COPY

## ARTICLE I FIRST AND REFUNDING MORTGAGE 3.87% BONDS, SERIES FFF

*Section 1. Designation, Maturity and Interest Rate of Bonds.* A new series of bonds of the Company shall be issued under and secured by the Mortgage as supplemented, which shall be designated as the Company's "First and Refunding Mortgage 3.87% Bonds, Series FFF." The aggregate principal amount of bonds of Series FFF which may be executed by the Company and authenticated by the Trustee shall be limited to \$150,000,000 (exclusive of bonds authenticated and delivered upon transfers pursuant to Section 3 of Article I hereof and Sections 2, 5, 11 and 12 of Article I of the Original Mortgage and delivered pursuant to Section 3 of Article VI of the Original Mortgage as the same may relate to fully registered bonds). Bonds of Series FFF all shall be registered bonds without coupons, and shall be due and payable November 1, 2028. All bonds of Series FFF shall bear interest from the date thereof (provided, however, that with respect to the initial interest period ending on May 1, 2019, interest shall accrue from November 15, 2018), payable at or before 9:00 a.m. Chicago time on May 1 and November 1 in each year and on the maturity date, commencing May 1, 2019, until the principal thereof shall have become due and payable, at the rate of 3.87% per annum and on any overdue principal and (to the extent that payment of such interest is enforceable under the applicable law) on any overdue installment of interest at the Overdue Rate, and shall be payable both as to principal and interest, and as to Make-Whole Amount, if any, in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, at the office or agency of the Trustee in the City of St. Paul, Minnesota.

Subject to Section 9 of the Bond Purchase Agreement, so long as there is no existing default in the payment of interest on the bonds of Series FFF, the interest payable on any interest payment date shall be to the person in whose name any bond of Series FFF is registered at the close of business on any record date with respect to any interest payment date, and such person shall be entitled to receive the interest payable on such interest payment date notwithstanding any transfer or exchange of such bond of Series FFF subsequent to the record date and on or prior to such interest payment date, except as and to the extent the Company shall default in the payment of the interest due on such interest payment date, in which case such defaulted interest shall be paid to the person in whose name such bond of Series FFF is registered at the close of business on a subsequent record date, which shall not be less than five (5) days prior to the date of payment of such defaulted interest established by notice given by mail by or on behalf of the Company to the person in whose name such bond of Series FFF is then registered and to the Trustee not less than ten (10) days preceding such subsequent record date.

The term "record date" as used herein with respect to any interest payment date (May 1 or November 1, as the case may be) shall mean the 15th day of April or the 15th day of October, as the case may be, next preceding such interest payment day.

As used in this Section 1, the term "default in the payment of interest" means failure to pay interest on the applicable interest payment date disregarding any period of grace permitted by Article X of the Mortgage.

# UNOFFICIAL COPY

*Section 2. Issuance of Bonds.* Bonds of Series FFF may be issued only as registered bonds without coupons (hereinafter sometimes referred to as "registered bonds"), and they shall be substantially in the form hereinbefore recited. They shall be issuable in denominations which shall be multiples of \$100,000 and any integral multiple thereof and the execution by the Company of any bond of Series FFF shall evidence conclusively the due authorization of the denomination of such bond. Each registered bond of Series FFF shall be dated as of the date of the interest payment date on which interest was paid on other bonds of said Series next preceding the date of issue of such registered bond, except that (i) so long as there is no existing default in the payment of interest upon the bonds of Series FFF, any bond of Series FFF issued after the close of business on any record date with respect to any interest payment date and prior to such interest payment date shall be dated as of such interest payment date, and (ii) any bond of Series FFF issued on an interest payment date on which interest on other bonds of Series FFF was paid shall be dated as of the date of issue and (iii) any bond of Series FFF issued before the initial interest payment date shall be dated November 15, 2018, the date of commencement of the first interest period for the bonds of Series FFF, unless (i) above is applicable.

The registered owner of any bond of Series FFF dated as of an interest payment date as provided in (i) above shall, if the Company shall default in the payment of interest due on such interest payment date and such default shall be continuing, be entitled to exchange such bond for a bond or bonds of Series FFF of the same aggregate principal amount dated as of the interest payment date next preceding the interest payment date first mentioned in this sentence, or, if the Company shall default in the payment of interest on the first interest payment date for bonds of Series FFF, such owner shall be entitled to exchange such bond for a bond or bonds of Series FFF of the same aggregate principal amount dated as of November 15, 2018. If the Trustee shall have knowledge at any time that any registered owner of a bond of Series FFF shall be entitled by the provision of the next preceding sentence to exchange such bond, the Trustee shall within thirty (30) days mail to such owner at the address of such owner appearing upon the registry book, a notice informing such owner that such owner has such right of exchange.

*Section 3. Exchanges of Bonds.* In the manner prescribed in the Mortgage, the holder of a registered bond or bonds of Series FFF may, at the office or agency of the Trustee in the City of St. Paul, State of Minnesota, surrender such bond or bonds in exchange for a like aggregate principal amount of one or more registered bonds of Series FFF of any authorized denomination or denominations.

No charge will be made by the Company to the registered owner of a bond of Series FFF for the transfer thereof or for the exchange thereof for bonds of Series FFF of other authorized denominations, except, in the case of transfer, a charge sufficient to reimburse the Company for any stamp or other tax or governmental charge required to be paid by the Company or the Trustee.

*Section 4. Execution and Authentication of Bonds.* All bonds of Series FFF shall be executed on behalf of the Company by the manual signature of its President or the Executive Vice President or the Chief Financial Officer or the Treasurer or a Vice

# UNOFFICIAL COPY

President and shall have affixed thereon the manual seal of the Company attested by the manual signature of its Secretary or one of its Assistant Secretaries and be authenticated by the execution by the Trustee of the certificate endorsed on said bonds, and said bonds shall be issued from time to time, as the Board of Directors of the Company may determine, but in accordance with the terms, provisions, conditions and restrictions set forth in the Mortgage and in this Supplemental Indenture. The definitive bonds of Series FFF may be issued in typewritten or printed form.

*Section 5. Redemption of Bonds by Company.* (a) The bonds of Series FFF are subject to optional redemption by the Company, in whole but not in part, at any time, at a redemption price of 100% of the principal amount thereof plus accrued interest, if any, to the redemption date, if any of the following shall have occurred and if within one hundred and eighty (180) days following said occurrence the Company files written notice with the Trustee and directs that the bonds of Series FFF are to be redeemed:

(i) if, in the reasonable judgment of the Company's Board of Directors, unreasonable burdens or excessive liabilities shall have been imposed upon the Company with respect to its property or the operation thereof, including, without limitation, federal, state or other *ad valorem* property, income or other taxes, other than *ad valorem* taxes presently levied upon privately owned property used for the same general purposes as its property; or

(ii) if changes in the economic availability of raw materials, operating supplies, fuel or other energy sources or supplies, or facilities necessary for the operation of the Company's property or such technological or other changes shall have occurred which, in the reasonable judgment of the Company's Board of Directors, render its property uneconomic for such purposes; or

(iii) any court or administrative body shall enter an order or decree preventing operations at the Company's business for six consecutive months; or

(iv) any court or administrative agency shall issue an order, decree or regulation the compliance with which would, in the reasonable opinion of the Board of Directors of the Company, render the continuation of its operations economically unfeasible.

(b) All of the outstanding bonds of Series FFF may be redeemed at any time by the Company, by the payment of the principal amount thereof and accrued interest thereon to the date of redemption, without the payment of any premium, in the event of the acquisition by any federal, state or municipal authority of any substantial portion (which shall be not less than one-third as determined by book values) of the income-producing properties of the Company which are subject to the lien of the Mortgage.

(c) In the event of the acquisition at any time by any federal, state or municipal authority of all or substantially all of the income-producing properties of the Company which are subject to the lien of the Mortgage, the Company shall be deemed to have elected to redeem and to have requested the Trustee to redeem all the bonds of all

# UNOFFICIAL COPY

series at the respective applicable redemption price or prices (together with accrued interest to the date of redemption), without the payment of any premium, on a date determined by the Trustee in its discretion to be the earliest practicable redemption date after receipt by the Trustee of all cash which the Trustee is entitled to receive in respect of such acquisition by such federal, state or municipal authority. If the cash so received by the Trustee and all other cash then held by the Trustee as such, except funds held in trust for the benefit of the holders of particular bonds and coupons, is not sufficient to effect the redemption of all the bonds of all series as aforesaid and to pay all amounts owing to the Trustee under the Mortgage as supplemented (including fees and expenses to be incurred by the Trustee in connection with such redemption), the Company covenants and agrees that, within five (5) days after receipt by the Trustee of all cash which the Trustee is entitled to receive as aforesaid in respect of such acquisition, the Company will deposit with the Trustee for that purpose cash in an amount sufficient to make up such deficiency.

Upon receipt by the Trustee of moneys sufficient for said purposes, notice of such redemption shall be given by the Trustee for and on behalf and in the name of the Company. To the extent that such cash received, held and deposited as aforesaid shall be required for the purpose of redeeming bonds pursuant to this Section 5(c), the Company shall be deemed to have directed the Trustee to apply the same for the purpose, and the balance, if any, after payment of all said amounts owing to the Trustee, shall be paid to or upon the order of the Company.

(d) (i) The Company may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the bonds of Series FFF, in an amount not less than 10% of the aggregate principal amount of the bonds of Series FFF then outstanding in the case of a partial prepayment, at 100% of the principal amount so prepaid, together with interest accrued and unpaid thereon to the date of such prepayment, and, if prior to August 1, 2028, the Make-Whole Amount determined for the prepayment date with respect to such principal amount. The Company will give each holder of bonds of Series FFF written notice of each optional prepayment under this Section 5(d)(i) not less than 30 days and not more than 60 days prior to the date fixed for such prepayment. Each such notice shall specify such date (which shall be a Business Day), the aggregate principal amount of the bonds of Series FFF to be prepaid on such date, the principal amount of each bond of Series FFF held by such holder to be prepaid (determined in accordance with Section 5(d)(ii)), and the interest to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of a Senior Financial Officer as to the estimated Make-Whole Amount due in connection with such prepayment (calculated as if the date of such notice were the date of the prepayment), setting forth the details of such computation. Two Business Days prior to such prepayment, the Company shall deliver to each holder of bonds of Series FFF a certificate of a Senior Financial Officer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

(ii) In the case of each partial prepayment of the bonds of Series FFF pursuant to Section 5(d)(i), the principal amount of the bonds of Series FFF to be prepaid shall be allocated among all of the bonds of Series FFF at the time

# UNOFFICIAL COPY

outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

(iii) In the case of each prepayment of bonds of Series FFF pursuant to Section 5(d)(i), the principal amount of each bond of Series FFF to be prepaid shall mature and become due and payable on the date fixed for such prepayment (which shall be a Business Day), together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Company shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any bond of Series FFF paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no bond of Series FFF shall be issued in lieu of any prepaid principal amount of any bond of Series FFF.

(iv) The Company will not and will not permit any Affiliate to purchase, redeem, prepay or otherwise acquire, directly or indirectly, any of the outstanding bonds of Series FFF except (1) upon the payment or prepayment of the bonds of Series FFF in accordance with the terms of this Supplemental Indenture and the bonds of Series FFF or (2) pursuant to an offer to purchase made by the Company or an Affiliate pro rata to the holders of all bonds of Series FFF at the time outstanding upon the same terms and conditions. Any such offer shall provide each holder with sufficient information to enable it to make an informed decision with respect to such offer, and shall remain open for at least 15 Business Days. If the holders of more than 10% of the principal amount of the bonds of Series FFF then outstanding accept such offer, the Company shall promptly notify the remaining holders of such fact and the expiration date for the acceptance by holders of bonds of Series FFF of such offer shall be extended by the number of days necessary to give each such remaining holder at least 5 Business Days from its receipt of such notice to accept such offer. The Company will promptly cancel all bonds of Series FFF acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of bonds of Series FFF pursuant to any provision of this Supplemental Indenture and no bonds of Series FFF may be issued in substitution or exchange for any such bonds of Series FFF.

*Section 6. Notice of Redemption.* If bonds of Series FFF are to be redeemed as provided in Section 5(a), (b) or (c) of this Article I, notice of redemption shall be mailed by or on behalf of the Company, postage prepaid, at least thirty (30) days and not more than sixty (60) days prior to such date of redemption, to the registered owners of all bonds of Series FFF to be so redeemed, at their respective addresses appearing upon the registry book and in the manner provided in Section 14 of the Bond Purchase Agreement. Any notice which is mailed as herein provided shall be conclusively presumed to have been properly and sufficiently given on the date of such mailing, whether or not the holder receives the notice. In any case, failure to give due notice by mail, or any defect in the notice, to the registered owners of any bonds of Series FFF designated for redemption as a whole or in part, shall not affect the validity of the proceedings for the redemption of any other bond of Series FFF. In case of any redemption of bonds of Series FFF by the



# UNOFFICIAL COPY

Trustee pursuant to the provisions of the Mortgage or any indenture supplemental thereto, notice of redemption shall be given in a similar manner by the Trustee.

Except as provided above, the provisions of Article VI of the Mortgage shall in all respects apply to any such redemption.

*Section 7. Form of Bonds.* Bonds of Series FFF will be substantially in the form recited above. Bonds of Series FFF shall bear a private placement legend.

*Section 8. Definitions.* In this Supplemental Indenture, the following terms shall have the meanings specified in this Section 8, unless the context otherwise requires:

*"Affiliate"* shall have the meaning assigned thereto in the Bond Purchase Agreement.

*"Business Day"* means any day which is not a Sunday or a legal holiday or a day (including Saturday) on which banking institutions in Chicago, Illinois, in New York, New York, and in the city where the principal office of the Trustee is located are not required or authorized to remain closed and other than a day on which the New York Stock Exchange is not closed.

*"Bond Purchase Agreement"* means that certain Bond Purchase Agreement dated as of October 10, 2018 with respect to the bonds of Series FFF between the Company and the Institutional Investors named on Schedule A thereto, under and pursuant to which the bonds of Series FFF were issued, as the same may from time to time be amended or supplemented.

*"Institutional Investor"* shall have the meaning assigned thereto in the Bond Purchase Agreement.

*"Make-Whole Amount"* means, with respect to any bond of Series FFF, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such bond over the amount of such Called Principal; provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

*"Called Principal"* means, with respect to any bonds of Series FFF, the principal of such bond of Series FFF that is to be prepaid pursuant to Section 5(d)(i).

*"Discounted Value"* means, with respect to the Called Principal of any bond of Series FFF, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with

# UNOFFICIAL COPY

respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the bond of Series FFF is payable) equal to the Reinvestment Yield with respect to such Called Principal.

*"Reinvestment Yield"* means, with respect to the Called Principal of any bond of Series FFF, 0.50% (50 basis points) over the yield to maturity implied by (i) the yields reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as "Page PX1" (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on the run U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable (including by way of interpolation), the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. In the case of each determination under clause (i) or clause (ii), as the case may be, of the preceding paragraph, such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the applicable U.S. Treasury security with the maturity closest to and greater than such Remaining Average Life and (2) the applicable U.S. Treasury security with the maturity closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable bond of Series FFF.

*"Remaining Average Life"* means, with respect to any Called Principal, the number of years (calculated to the nearest one-twelfth year) obtained by dividing (a) such Called Principal into (b) the sum of the products obtained by multiplying (i) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (ii) the number of years (calculated to the nearest one-twelfth year) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

*"Remaining Scheduled Payments"* means, with respect to the Called Principal of any bond of Series FFF, all payments of such

# UNOFFICIAL COPY

Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date; provided that if such Settlement Date is not a date on which interest payments are due to be made under the terms of the bonds of Series FFF, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 5(d).

"Settlement Date" means, with respect to the Called Principal of any bond of Series FFF, the date on which such Called Principal is to be prepaid pursuant to Section 5(d).

"Maturity Date" means November 1, 2028.

"Overdue Rate" means that rate of interest that is the greater of (i) 1% per annum above the rate of interest stated in clause (a) of the first paragraph of the bonds of Series FFF or (ii) 1% over the rate of interest publicly announced by Citibank N.A. in New York, New York as its "base" or "prime" rate.

"Securities Act" means the Securities Act of 1933, as amended.

"Senior Financial Officer" shall have the meaning assigned thereto in the Bond Purchase Agreement.

*Section 9. Date of Payments.* In any case where the date of maturity of interest of the bonds of Series FFF or the date fixed for redemption of any bonds of Series FFF shall be in the location of the designated corporate trust office of the Trustee on a day other than a Business Day, then payment of interest or principal (and Make-Whole Amount, if any) need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date fixed for redemption, and no interest shall accrue for the period after such date, provided that if the maturity date of the bonds of Series FFF is a day other than a Business Day, the payment otherwise due on such maturity date shall be made on the next succeeding Business Day and shall include the additional days elapsed in the computation of interest payable on such next succeeding Business Day.

*Section 10. Reservation of Right to Amend Mortgage.* The Company reserves the right, without any consent or other action by holders of the bonds of Series FFF or any subsequent series of bonds, to amend the Mortgage by inserting the following language as Section 4 of Article XVI immediately following current Section 3 of Article XVI of the Mortgage:

*Section 4.* Anything in Section 1 of this Article to the contrary notwithstanding, with the consent of the holders of not less than sixty per centum (60%) in aggregate principal amount of the bonds at the time outstanding or their

# UNOFFICIAL COPY

attorneys-in-fact duly authorized, or, if the rights of the holders of one or more, but not all, series then outstanding are affected, the consent of the holders of not less than sixty per centum (60%) in aggregate principal amount of the bonds at the time outstanding of all affected series, taken together, and not any other series, the Company, when authorized by resolution of its Board of Directors, and the Trustee, from time to time and at any time, subject to the restrictions in this Mortgage contained, may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or modifying the rights and obligations of the Company and the rights of the holders of any of the bonds and coupons; *provided, however*, that no such supplemental indenture shall (1) extend the maturity of any of the bonds or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of the principal thereof (or with respect to the bonds of Series FFF change the amount or time of any prepayment or payment of principal or of any payment of interest or reduce the rate of interest or change the method of computation of interest or of the Make-Whole Amount), or reduce the Make-Whole Amount, if any, or any premium payable on the redemption thereof or change the coin or currency in which any bond or interest thereon, or Make-Whole Amount, if any is payable, without the consent of the holder of each bond so affected, or (2) permit the creation of any lien, not otherwise permitted, prior to or on a parity with the lien of the Mortgage, without the consent of the holders of all the bonds then outstanding, or (3) reduce the aforesaid percentage of the aggregate principal amount of bonds the holders of which are required to approve any such supplemental indenture, without the consent of the holders of all the bonds then outstanding. For the purposes of this Section 4, bonds shall be deemed to be affected by a supplemental indenture if such supplemental indenture adversely affects or diminishes the rights of holders thereof against the Company or against its property.

Upon the written request of the Company, accompanied by a resolution of its Board of Directors authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of bondholders as aforesaid (the instrument or instruments evidencing such consent to be dated within one year of such request), the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Mortgage or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture. The Trustee shall be entitled to receive and, subject to Section 7 of Article XV hereof, may rely upon, an opinion of counsel as conclusive evidence that any such supplemental indenture is authorized or permitted by the provisions of this Section 4.

It shall not be necessary for the consent of the bondholders under this Section 4 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof;

# UNOFFICIAL COPY

*provided* that the Company shall or shall cause the Trustee to deliver an execution copy of such Supplemental Indenture to each of the bond holders.

The Company and the Trustee, if they so elect, and either before or after such 60% or greater consent has been obtained, may require the holder of any bond consenting to the execution of any such supplemental indenture to submit its bond to the Trustee or to such bank, banker or trust company as may be designated by the Trustee for the purpose, for the notation thereon of the fact that the holder of such bond has consented to the execution of such supplemental indenture, and in such case such notation, in form satisfactory to the Trustee, shall be made upon all bonds so submitted, and such bonds bearing such notation shall forthwith be returned to the persons entitled thereto; *provided*, with respect to the bonds of Series FFF, that if the holder of any bond is an Institutional Investor which certifies in writing that it has at a minimum net worth of at least \$50,000,000, such holder may not surrender its bond for such notation but shall be deemed to have consented to the execution of such Supplemental Indenture. All subsequent holders of bonds bearing such notation shall be deemed to have consented to the execution of such supplemental indenture, and consent, once given or deemed to be given, may not be withdrawn.

Prior to the execution by the Company and the Trustee of any supplemental indenture pursuant to the provisions of this Section 4, the Company shall publish a notice, setting forth in general terms the substance of such supplemental indenture, at least once in one daily newspaper of general circulation in each city in which the principal of any of the bonds shall be payable, or, if all bonds outstanding of any series shall be registered bonds without coupons or coupon bonds registered as to principal, such notice with respect to such series shall be mailed first class, postage prepaid, and registered to each registered holder of bonds of such series at the last address of such holder appearing on the registry books and at the last address of such holder as provided in Section 14 of the Bond Purchase Agreement, such publication or mailing, as the case may be, to be made not less than thirty (30) days prior to such execution. Any failure of the Company to give such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture.

*Section 11. Private Placement of Bonds.* Bonds of Series FFF shall initially be offered and sold in reliance on the exemption contained under Section 4(a)(2) of the Securities Act to an institution which is an "accredited investor" as defined in Rule 501(a)(1), (3) or (7) under the Securities Act.

*Section 12. Private Placement Legend.* Each Bond of Series FFF shall bear a legend in substantially the following form:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN

# UNOFFICIAL COPY

MAY BE REOFFERED, SOLD, ASSIGNED OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION, UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION.

## ARTICLE II COVENANTS OF THE COMPANY

*Section 1. Covenants of Company under Indenture.* The Company covenants and agrees, so long as any of the bonds of Series FFF are outstanding or until provision shall have been made for the redemption or payment thereof by the deposit with the Trustee of money necessary to effect such redemption or payment, as follows:

(2) The Company, during or at the close of the calendar year 2018, and during or at the close of each calendar year thereafter, shall charge against the income for such calendar year and place to the credit of a "depreciation reserve account" to be kept on its books, the greater of the following two amounts: (i) the amount of \$1,550,000, or (ii) an amount equal to 2-1/2% of the sum of

(i) the aggregate principal amount of all bonds which, at the time such credit is placed to said "depreciation reserve account", shall be outstanding and shall have been outstanding under the Mortgage as supplemented for a period of not less than six (6) months, or which at such time shall have been outstanding under the Mortgage supplemented for less than six (6) months, if such bonds shall have been issued, or the proceeds thereof shall have been used, directly or indirectly, for or on account of the pledge, acquisition, exchange, cancellation, payment, refundment, redemption or discharge at, before or after maturity of the bonds of any series theretofore issued under the Mortgage or of any "underlying bonds" or "specified obligations" as defined in Section 4 of Article III of the Mortgage; and

(ii) the aggregate principal of all indebtedness of the Company secured by a mortgage lien upon the properties or assets of the Company, which is a lien superior to the lien of the Mortgage, except (A) any such mortgage indebtedness the evidences of which shall then be pledged with the Trustee under the provisions of the Mortgage or pledged with the trustee under any mortgage constituting a lien superior to the lien of the Mortgage on any part of the properties or assets of the Company, and (B) any such mortgage indebtedness for the payment or redemption of which the necessary moneys shall have been deposited with the Trustee under the Mortgage securing the same; *provided, however,* that (1) the amount required by this subparagraph (a) to be placed to the credit of such "depreciation reserve account" in or for any calendar year shall be deemed to include and not to be in addition to amounts which, by the provisions of the Mortgage, the Company is required to add to any depreciation reserve account for such year, (2) nothing in this subparagraph (a) shall prevent the Company from crediting to such "depreciation reserve account", during or at the close of any calendar year, an amount greater than the amount required by this subparagraph (a) for such year, and (3) the Company may, from time to time,

# UNOFFICIAL COPY

during each such calendar year, charge against such "depreciation reserve account" the cost of depreciable property retired by it during such year, including the cost, if any, of dismantling such retired property, less any salvage credits applicable thereto.

(b) The Company, after it shall have issued bonds of Series FFF in the aggregate principal amount of \$150,000,000, shall not request the Trustee

(i) to authenticate bonds of any series under the Mortgage

(A) pursuant to Section 2 of Article III of the Mortgage for or on account of the acquisition and cancellation, or of the payment, cancellation, redemption or other discharge at, before or after maturity, affected prior to January 1, 1951, of any bonds of any series theretofore issued under the Mortgage, or

(B) pursuant to Section 4 of Article III of the Mortgage, for or on account of the pledge, acquisition, exchange, cancellation, payment, refundment, redemption or discharge effected prior to January 1, 1951, of "underlying bonds" or "specified obligations" mentioned in said Section 4, or

(C) pursuant to Section 5 of Article III of the Mortgage, for or in respect of expenditures made prior to January 1, 1951, for or on account of "permanent property", or

(ii) to pay to the Company any cash pursuant to Section 6 of said Article III for or on account of any transactions mentioned in clause (A) or clause (B) of subdivision (i) of this subparagraph (b) or for or in respect of any expenditures mentioned in clause (C) of subdivision (i) of this subparagraph (b).

Neither shall the Company request the Trustee to authenticate bonds of any series under the provisions of Section 4 of Article III of the Mortgage or to pay the Company any moneys under Section 6 of said Article III or under Article IX of the Mortgage for or on account of the payment, discharge and cancellation effected on or after January 1, 1944, at, before or after maturity of any of the Refunding Mortgage Five Per Cent Gold Bonds of the Company, dated September 1, 1897, due September 1, 1947.

(c) The Company shall not request the Trustee to authenticate bonds of any series under the Mortgage or to pay to the Company any cash deposited with or received by the Trustee under the Mortgage (except cash deposited with or received by the Trustee as and for a sinking fund for any series of bonds which have been or may hereafter be issued under the Mortgage), unless the Company as a part of such request, and in addition to all other documents required by the Mortgage to be delivered to the Trustee in connection with such request, shall deliver to the Trustee a certificate or certificates, signed by the President or the Executive Vice President or the Chief Financial Officer or a Vice President and by the Treasurer or an Assistant Treasurer of the Company:

# UNOFFICIAL COPY

(i) showing, in case such request is for the authentication of bonds pursuant to Section 5 of Article III of the Mortgage or for the payment of cash pursuant to Section 6 of said Article III for or in respect of expenditures made by the Company on or after January 1, 1951, for or on account of "permanent property":

(A) the total amount of expenditures (reduced to the extent required, if any, by the provisions of clause (G) of this subdivision (i)) made on or after January 1, 1951, for or on account of "permanent property";

(B) the original cost of all properties, subject to the lien of the Mortgage at any time on or after January 1, 1951, replaced or retired on or after January 1, 1951, less, if any such property shall have been released from the lien of the Mortgage pursuant to any applicable provision of the Mortgage and to obtain such release cash shall have been deposited with the Trustee, the amount of such cash;

(C) an amount equal to the sum of (1) 133-1/3% of the aggregate principal amount of bonds which have been authenticated after January 1, 1951, pursuant to Section 5 of Article III of the Mortgage for or on account of such expenditures made on or after January 1, 1951, plus (2) 133-1/3% of the aggregate amount of deposited cash withdrawn after January 1, 1951, pursuant to the provisions of Section 6 of Article III of the Mortgage for or in respect of such expenditures made on or after January 1, 1951, plus (3) 133-1/3% of the aggregate amount of excess of the nature described in subdivision (2) of Section 4 of Article III of the Mortgage eliminated or compensated, as in said subdivision (2) provided, for or in respect of expenditures of the Company for or on account of "permanent property" during said period commencing January 1, 1951;

(D) an amount equal to 100% of the aggregate amount of moneys withdrawn by the Company pursuant to the provisions of Article IX of the Mortgage on or after January 1, 1951, for or in respect of expenditures made for or on account of "permanent property";

(E) an amount equal to the excess, if any, of the amount shown pursuant to clause (A) above over the sum of the amounts shown pursuant to clauses (B), (C) and (D) above;

(F) that, for a period of twelve (12) consecutive calendar months (to be selected by the Company) ending within ninety (90) days next preceding such request, the "net earnings of the Company" shall have been at least twice the amount of the annual interest requirement of all "mortgage and prior lien debt of the Company";



# UNOFFICIAL COPY

(G) that the amount of the expenditure, if any, included in the expenditures set forth in clause (A) above in respect of any particular "permanent property", which at the time of its acquisition was subject to the lien of any mortgage existing or placed thereon at the time of its acquisition, does not exceed an amount equal to the excess, if any, of the value (determined as provided in the first paragraph of Section 8 of Article III of the Mortgage) of such particular "permanent property" at the time of acquisition of such property over 133-1/3% of the principal amount of all indebtedness secured by all such mortgages existing or placed on such particular property at the time of the acquisition thereof, and that the amount of the expenditure, if any, included in the expenditures set forth in clause (A) above in respect of any particular "permanent property", which at the time of its acquisition was not subject to any such lien, does not exceed an amount equal to the value (determined as provided in the first paragraph of Section 8 of Article III of the Mortgage) of such particular "permanent property" at the time of acquisition of such property;

(ii) showing, in case such request is for the authentication of bonds pursuant to Section 4 of Article III of the Mortgage or for the payment of cash pursuant to Section 6 of said Article III for or on account of the pledge, acquisition, exchange, cancellation, payment, refundment, redemption or discharge effected on or after January 1, 1951, at, before or after maturity of any "specified obligations" mentioned in said Section 4, that at the time such "specified obligations" became "specified obligations" or at some later date the Company, pursuant to the provisions of Section 5 of Article III of the Mortgage, as limited by the provisions of this Section 1, shall have obtained, or shall have had the right to obtain, the authentication and delivery of bonds in any principal amount for or in respect of expenditures made on or after January 1, 1951, for or on account of "permanent property";

(iii) showing, in case such request shall be for the payment of moneys pursuant to Article IX of the Mortgage for or in respect of expenditures made for or on account of "permanent property", that none of such expenditures were made (1) prior to January 1, 1951, or (2) for or on account of "permanent property" acquired more than six months prior to the date when the Trustee received the moneys so to be paid (or in case of moneys representing the proceeds of obligations, referred to in said Article IX, the date when the Trustee received such obligations); and

(iv) showing, in case such request is for the application of any moneys pursuant to Article IX of the Mortgage to the payment, redemption or purchase of any "specified obligations", that such "specified obligations", if pledged under the Mortgage, would permit the Company to obtain the authentication of bonds in a principal amount equal to the principal amount of such "specified obligations" pursuant to the provisions of Section 4 of Article III of the Mortgage as limited by the provisions of this Section 1.

# UNOFFICIAL COPY

(d) In connection with any request for the authentication of bonds pursuant to Section 5 of Article III of the Mortgage or the payment of cash pursuant to Section 6 of said Article III of the Mortgage, for or in respect of expenditures made by the Company on or after January 1, 1951, the Company shall not obtain the authentication of bonds of any series under the Mortgage or the payment of any cash in excess of 75% of the amount shown in the certificate delivered as a part of such request pursuant to clause (E) of subdivision (i) of subparagraph (c) of this Section 1; and the Company shall not obtain the authentication of any bonds or the payment of any cash deposited with or received by the Trustee under the Mortgage otherwise than in accordance with the provisions of the Mortgage as supplemented.

(e) Wherever used in this Supplemental Indenture

(i) "mortgage and prior lien debt of the Company", as of the date of any request to the Trustee for the authentication of bonds or the payment of cash, shall mean:

(A) all the bonds then outstanding under the Mortgage, less the amount of any of such bonds which shall then be held by or be delivered to the Trustee for cancellation under any of the provisions of the Mortgage, and less the amount of any such bonds for the payment or redemption of which the necessary moneys shall have been deposited under the Mortgage with the Trustee to effect such payment or redemption;

(B) the bonds then requested to be authenticated under the Mortgage; and

(C) all mortgage indebtedness secured by a lien superior to the lien of the Mortgage on any part of the properties and assets of the Company, except any such mortgage indebtedness the evidences of which shall then be pledged with the Trustee under the provisions of the Mortgage or pledged with the Trustee under any mortgage constituting a lien superior to the lien of the Mortgage on any part of the properties and assets of the Company, and except any such mortgage indebtedness for the payment or redemption of which the necessary moneys shall have been deposited with the trustee under the mortgage securing the same to effect such payment or redemption;

(ii) "net earnings of the Company" for any twelve (12) months' period shall mean the amount remaining after deducting from the sum of

(A) the gross operating revenues of the Company for such period derived from its property subject to the lien of the Mortgage, including but not limited to revenues derived from electrical energy, gas or steam purchased by the Company and resold by it, and the net income

# UNOFFICIAL COPY

derived by the Company from its merchandising and jobbing operations; and

(B) other income of the Company for such period derived from interest on bank balances and from current working capital invested in unpledged obligations of the United States of America or of any state or of any municipality or subdivision thereof, and other currently earned income of the Company derived from the ownership of securities, in the treasury of the Company and unpledged, of operating electric, gas or steam companies (including natural or mixed gas production, storage, transportation or distribution companies) or from unpledged advances to such companies any of the securities of which are so owned, the sum of the following:

(C) operating expenses of the Company for such period, including maintenance and repairs, rentals, taxes (except taxes based upon net income), insurance and the cost of electrical energy, gas or steam purchased for resale, but excepting expenses in connection with operations, the net income only of which is included in clause (A) of subdivision (ii) of this subparagraph (e), and excepting all reserves or charges for amortization of debt discount and expense; and

(D) an amount, if such period shall end with the close of a calendar year, equal to the amount which the Company is required by subparagraph (a) of this Section 1 to place, during or at the close of such calendar year, to the credit of the "depreciation reserve account", mentioned in said subparagraph (a) (all determined without deduction for any charge made to the "depreciation reserve account" permitted by clause (3) of the proviso of subparagraph (a) of this Section (1), or, if such period shall include parts of two (2) calendar years, then an amount which shall be determined by (1) prorating, on a monthly basis over the portion of the earlier year thus included, the amount which the Company shall have been so required to credit to the "depreciation reserve account" during or at the close of such earlier year, and (2) prorating, on a monthly basis over the portion of the later of said two (2) years thus included, the amount which the Company would be required to credit to such "depreciation reserve account" if such credit were placed to such account at the close of such period;

*provided, however,* that the amount of other income of the Company, referred to in clause (B) of subdivision (ii) of this subparagraph (e), shall not exceed 10% of said net earnings; and income in the form of dividends received by the Company upon stock of any class owned by it shall be considered as currently earned under the provisions of said clause (B) to the extent that during such period the earnings of the paying company shall be sufficient for the payment of dividends upon all stock of such class during such period; and income in the form of interest received by the Company upon evidences of indebtedness of any class owned by it shall be

# UNOFFICIAL COPY

considered as currently earned under the provisions of said clause (B) to the extent that during such period the earnings of the paying company shall be available for the payment of the interest accruing during such period upon all indebtedness of such class, after deducting from such earnings all interest charges accruing during such period upon obligations secured by prior liens; and, in case any property owned by the Company at the date of the request to the Trustee for the authentication of bonds or payment or withdrawal of cash shall not have been owned by it during any part of any such period, or shall have been owned by it during a part only of such period, then and in every such case the net earnings (or net losses) of such property (ascertained in like manner as above provided) during said period, or during such part thereof as shall have preceded the acquisition of such property by the Company, shall be considered and treated as net earnings (or net losses) of the Company for such period, and shall be included in (or, if a net loss, deducted in determining) such net earnings of the Company;

(iii) "permanent property" shall mean any and all plants, equipment, additions, improvements, betterments, facilities, or other property of any kind (and includes "extensions" and "purchased property" as those terms are used in the Mortgage) acquired through construction, purchase, consolidation, exchange or otherwise, as and for a part of the permanent or fixed investment for the business of the Company and used or useful in connection with the generation and conversion of electrical energy or in the manufacture of gas or steam or in the distribution or transmission of electrical energy or gas or steam in the territory in which the Company is now operating its present properties, or in territory contiguous thereto, or in territory capable of economic interconnection therewith, but "permanent property" shall not include cash, accounts or bills receivable, securities, supplies, fuel or other assets ordinarily classed as quick assets, or leasehold estates;

(iv) "original cost" of property shall mean the original cost of such property to the Company if ascertainable from its records or, if such original cost is not ascertainable, the value of such property at the time of its acquisition, such value to be determined by an engineer or firm of engineers to be selected by the Company and to be acceptable to the Trustee, and the Trustee under such circumstances shall be furnished with a certificate of such value signed by such engineer or firm of engineers.

(f) In connection with any request to the Trustee for the authentication of bonds, pursuant to the provisions of Section 5 of Article III of the Mortgage or the payment of cash pursuant to the provisions of Section 6 of said Article III or the provisions of Article IX of the Mortgage or the elimination or compensation of any excess of the nature described in subdivision (2) of Section 4 of said Article III, for or on account of expenditures for "permanent property", the Company shall furnish to the Trustee, in addition to the certificates and other documents required to be delivered by the provisions of the Mortgage and the provisions of other subparagraphs of this Section 1, the following:

# UNOFFICIAL COPY

(i) An opinion of counsel (who may be counsel for the Company), selected by the Company and satisfactory to the Trustee, stating that the Company has acquired good title to the property for or on account of the expenditures for which additional bonds are requested to be authenticated and that such property is subject to the Mortgage as a direct lien thereon, subject only to the lien of any mortgages or easements existing or placed on any of such property at the time of its acquisition, liens for taxes and assessments not due or, if due, in the course of contest, judgments in the course of appeal or otherwise in contest and secured by sufficient bond, liens arising out of proceedings in court in the course of contest and undetermined liens and charges (if any) incidental to current construction; and

(ii) A certificate signed by the President or the Executive Vice President or the Chief Financial Officer or a Vice President and also by the Treasurer or an Assistant Treasurer of the Company certifying that the property for or on account of the expenditures for which bonds are requested to be authenticated or cash is requested to be paid is "permanent property".

(g) The Company shall not hereafter issue any bonds under any "underlying mortgage" as defined in Section 4 of Article III of the Mortgage, or under any mortgage which could become such an "underlying mortgage" upon compliance with clause (b) of the proviso of subdivision (2) of said Section 4.

(h) The Company shall not request the Trustee to authenticate any bonds under the provisions of Section 2 or Section 3 or Section 4 of Article III of the Mortgage and shall not apply for the payment of cash under Section 6 of said Article or under Article IX of the Mortgage (i) for or on account of bonds of Series J deposited by the Company with the Trustee in lieu of cash under the provisions of the sinking fund provided for in the supplemental indenture, dated as of May 1, 1961, or for or on account of bonds of Series J redeemed through the operation of said sinking fund, or (ii) for or on account of bonds of Series K redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of July 15, 1966, or (iii) for or on account of bonds of Series L redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of August 15, 1967, or (iv) for or on account of bonds of Series M redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of September 15, 1970, or (v) for or on account of bonds of Series N redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of April 1, 1972, or (vi) for or on account of bonds of Series O redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of July 15, 1973, or (vii) for or on account of bonds of Series T redeemed through the operation of the sinking fund provided for in the supplemental indenture dated as of August 15, 1980, or (viii) on account of any cancelled or uncanceled underlying bonds (or any uncanceled underlying bonds deposited as collateral under Section 4 of Article III of the Mortgage) which shall have been deposited under the provisions of the supplemental indenture, dated as of August 1, 1941, in lieu of cash.

# UNOFFICIAL COPY

(i) In the event of the acquisition at any time by any federal, state or municipal authority of all or substantially all of the income-producing properties of the Company which are subject to the lien of the Mortgage, the Company shall be deemed to have elected to redeem and to have requested the Trustee to redeem all the bonds of all series at the respective applicable redemption price or prices (together with accrued interest to the date of redemption), without the payment of any premium, on a date determined by the Trustee in its discretion to be the earliest practicable redemption date after receipt by the Trustee of all cash which the Trustee is entitled to receive in respect of such acquisition by such federal, state or municipal authority. If the cash so received by the Trustee and all other cash then held by the Trustee as such, except funds held in trust for the benefit of the holders of particular bonds and coupons, is not sufficient to effect the redemption of all the bonds of all series as aforesaid and to pay all amounts owing to the Trustee under the Mortgage as supplemented (including fees and expenses to be incurred by the Trustee in connection with such redemption), the Company covenants and agrees that, within five (5) days after receipt by the Trustee of all cash which the Trustee is entitled to receive as aforesaid in respect of such acquisition, the Company will deposit with the Trustee for that purpose cash in an amount sufficient to make up such deficiency.

Upon receipt by the Trustee of moneys sufficient for said purposes, notice of such redemption shall be given by the Trustee for and on behalf and in the name of the Company. To the extent that such cash received, held and deposited as aforesaid shall be required for the purpose of redeeming bonds pursuant to this subparagraph (i), the Company shall be deemed to have directed the Trustee to apply the same for the purpose, and the balance, if any, after payment of all said amounts owing to the Trustee, shall be paid to or upon the order of the Company.

(j) The Company shall promptly classify as "property replaced or retired", for the purposes of clause (B) of subdivision (i) of subparagraph (c) of this Section 1 during any period all property which has been replaced or has permanently ceased to be used or useful in the business of the Company, but the Company shall not, in making such classification, be bound by determinations, rulings or orders made by regulatory authorities for rate-making or other purposes.

(k) The Company shall not consolidate with or merge into any other corporation or transfer or lease all or substantially all the mortgaged property as an entirety to any other corporation, unless the corporation resulting from such consolidation or the corporation into which the Company shall have been merged or the corporation to which such transfer or lease shall have been made shall, by an instrument executed and delivered to the Trustee, assume the due and punctual payment of the principal of and premium, if any, and interest on all the bonds of all series according to their tenor at the time outstanding under the Mortgage and the due and punctual performance and observance of all the covenants and conditions of the Mortgage and all indentures supplemental thereto to be performed or observed by the Company.

*Section 2. After-Acquired Property Subject to Mortgage.* The Company covenants and agrees that any and all property hereafter acquired by the Company and

# UNOFFICIAL COPY

any and all improvements, extensions, betterments or additions to property of the Company, which by the Original Mortgage or any indenture supplemental thereto or amendment thereto are to become subject to the Mortgage, immediately upon the acquisition thereof by the Company or upon such improvements, extension, betterments, or addition being made, as the case may be, and without any further conveyance, mortgage, assignment or act on the part of the Company or the Trustee, or either of them shall become and be subject to the lien of the Mortgage fully and completely as though owned by the Company at the date of the execution of the Original Mortgage and at the date of the Indenture dated the first day of March, 1928, mentioned in the second paragraph of the recitals of this Supplemental Indenture and at the dates of the supplemental indentures dated May 20, 1936, March 10, 1950, as of June 1, 1951, as of August 15, 1967, as of September 15, 1970, as of September 1, 2009, as of August 1, 2010, as of October 1, 2010, as of December 1, 2012, as of April 1, 2013, as of August 1, 2013, as of November 1, 2014, as of November 1, 2016, as of December 1, 2016 and as of November 1, 2017, respectively, and the Amendments dated as of August 9, 2017 and January 25, 2018, in each case as mentioned in the fourth paragraph of the recitals of this Supplemental Indenture, and at the date of this Supplemental Indenture, and specifically described in the granting clauses of the Original Mortgage or said Indenture or said supplemental indentures, but the provisions of this Section 2 shall not limit the generality of the provisions of Sections 12 and 13 of Article IV of the Original Mortgage.

*Section 3. Documents to Furnish Upon Acquisition of Land.* The Company covenants and agrees that in the furtherance of, but without limiting the generality of, the provisions of Sections 12 and 13 of Article IV of the Mortgage or of Section 2 of this Article II, the Company will furnish to the Trustee on November 1, 1944, and thereafter within sixty (60) days after and as often as the Company shall have acquired, subsequent to September 3, 1944, any additional land or lands or interest or interests in land, or any new plant or plants, not included in any certificate theretofore furnished pursuant to this Section 3, the aggregate cost of which shall equal or exceed \$500,000, and at such other times as thirty six (36) months shall have elapsed since the date of furnishing the last preceding certificate to the Trustee pursuant to this Section 3, the following:

(a) a certificate, signed by the President or the Executive Vice President or the Chief Financial Officer or a Vice President and by the Treasurer or an Assistant Treasurer of the Company and dated as of a date not more than sixty (60) days preceding the date as of which such certificate is required to be filed pursuant to this Section 3, briefly describing any additional land or interest in land and any new plant which the Company may have acquired since the date of the most recent Certificate furnished to the Trustee pursuant to this Section, or, in the case of the first such certificate, since the date of the execution and delivery of the Indenture dated the first day of March, 1928 mentioned in the second paragraph of the recitals of this Supplemental Indenture, which is required by the provisions of the Mortgage and this Supplemental Indenture, to be subjected to the lien of the Mortgage;

(b) the mortgages, deeds, covenants, assignments, transfers and instruments of further assurance, if any, specified in the opinion of counsel referred to in the following subparagraph (c); and

# UNOFFICIAL COPY

(c) an opinion of counsel, who may be counsel for the Company, specifying the mortgages, deeds, covenants, assignments, transfers and instruments of further assurance which will be sufficient to subject to the direct lien of the Mortgage (so far as permitted by law) all the Company's right, title and interest in and to the land and interest in land and any plant described in said certificate, or stating that no such mortgage, deed, conveyance, assignment, transfer or instrument of further assurance is necessary for such purpose, and that, upon the recordation or filing or registering, in the manner stated in such opinion, of the instruments so specified, if any, and upon the recordation and filing and registering of the Mortgage or any supplemental indenture in the manner stated in such opinion, or without any such recordation or filing or registering if such opinion shall so state, the Mortgage will (so far as permitted by law) constitute a valid lien upon all the Company's right, title and interest in and to such land, interest in land or plant as against all creditors and subsequent purchasers, subject only to the lien of any mortgages or easements existing or placed on such property at the time of its acquisition by the Company, liens for taxes and assessments not due, or, if due, in the course of appeal or otherwise in contest, liens arising out of proceedings in court in the course of contest and undetermined liens and charges (if any) incidental to current construction.

For the purposes of this Section 3, any certificate heretofore or hereafter delivered to the Trustee pursuant to Section 3 of Article III of Division B of the supplemental indenture dated as of June 1, 1951, or pursuant to Section 3 of Article III of the Supplemental Indenture dated as of July 1, 1954, or pursuant to Section 3 of Article III of any of the supplemental indentures dated, as of May 1, 1961, as of July 15, 1966, as of August 15, 1967, as of September 15, 1970, as of April 1, 1972, or as of July 15, 1973, or pursuant to Section 3 of Article II of any of the Supplemental Indentures dated as of October 1, 1973, as of October 1, 1974, as of December 1, 1974, or as of April 1, 1975, or pursuant to Section 3 of Article III of the Supplemental Indenture dated as of August 15, 1980, or pursuant to Section 3 of Article II of any of the supplemental indentures dated as of June 1, 1984, as of June 1, 1984, as of October 1, 1984, as of March 1, 1985, as of March 1, 1985, as of March 1, 1985, as of May 1, 1990, as of April 1, 1993, as of December 1, 1993, as of December 1, 1993, as of June 1, 1995, as of March 1, 2000, as of March 1, 2000, as of March 1, 2000, as of March 1, 2000, as of February 1 2003, as of February 1, 2003, as of February 15, 2003, as of April 15, 2003, as of October 1, 2003, as of November 1, 2003, as of January 1, 2005, as of November 1, 2008, as of November 1, 2008, as of September 1, 2009, as of August 1, 2010, October 1, 2010, as of November 1, 2011, as of December 1, 2012, as of April 1, 2013, as of August 1, 2013, as of November 1, 2014, as of November 1, 2016, as of December 1, 2016 and as of November 1, 2017 shall be deemed to have been delivered in compliance with this Section 3.

*Section 4. Discharge of Prior Liens.* The Company covenants and agrees that, upon cancellation and discharge of any "prior lien", the Company shall cause all cash or obligations then held by the trustee or other holder of such prior lien, which were received by such trustee or other holder by reason of the release of, or which represent the proceeds of the taking by eminent domain or any disposition of, or the proceeds of insurance on, any of the properties at any time subject to the lien of the Mortgage (including all proceeds of or substitutions for any thereof), to be paid to or deposited and



# UNOFFICIAL COPY

pledged with the Trustee, subject to any lien or charge prior to the lien of the Mortgage, such cash to be held and paid over or applied by the Trustee, and such obligations to be held and disposed of, as provided in Article IX of the Mortgage; *provided, however*, that in lieu of taking or delivering to the Trustee all or any part of such cash or obligations, the Company may deliver to the Trustee a certificate of the trustee or such other holder of such prior lien, stating that a specified amount thereof has been deposited with such trustee or other holder pursuant to the requirements of such other prior lien, in which case there shall also be delivered to the Trustee an opinion of counsel, who may be counsel for the Company, stating that such deposit is required by such other prior lien. The term "prior lien" as used in this Section 4 shall mean and include any "underlying mortgage" and shall also mean and include any other lien (except liens for taxes and assessments not due, or, if due, in the course of appeal or otherwise in contest, liens arising out of proceedings in court in course of contest and undetermined liens and charges, if any, incidental to current construction) prior to the lien of the Mortgage upon property acquired by the Company after the execution and delivery of the Indenture, dated the first day of March, 1928, referred to in the second paragraph of the recitals of this Supplemental Indenture, existing on said property or placed thereon to secure unpaid portions of the purchase price, at the time of such acquisition.

## ARTICLE III MISCELLANEOUS

*Section 1. Trustee's Acceptance.* The Trustee hereby accepts the trusts hereunder and agrees to perform the same upon the terms and subject to the applicable provisions of the Mortgage and the indentures supplemental thereto now in effect.

*Section 2. Execution of Supplemental Indenture.* This Supplemental Indenture is executed by the parties hereto pursuant to the provisions of Article XVI of the Mortgage, and so long as any of the bonds of Series FFF are or shall be outstanding the terms and conditions of this Supplemental Indenture shall be deemed to be a part of the terms and conditions of the Mortgage for any and all purposes. The provisions of this Supplemental Indenture shall be inapplicable and shall terminate and become void and of no effect upon the payment or redemption of all of the bonds of Series FFF in accordance with the provisions of the Mortgage and of the bonds of Series FFF.

*Section 3. Assignment.* All covenants, conditions and provisions contained in this Supplemental Indenture by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not, legally or equitably under or by reason of this Supplemental Indenture.

*Section 4. Effective Time of Supplemental Indenture.* Although this Supplemental Indenture is dated as of November 1, 2018, it shall be effective only from the actual time of its execution and delivery by the Company and the Trustee on the date indicated by their respective acknowledgments hereto annexed.

*Section 5. Governing Law.* This Supplemental Indenture shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the law of the State of Illinois, excluding choice-of-law principles of such State that would permit the application of the laws of a jurisdiction other than such State.

# UNOFFICIAL COPY

*Section 6. Counterparts.* This Supplemental Indenture may be simultaneously executed in any number of counterparts and all such counterparts executed and delivered, each as an original, shall constitute but one and the same instrument entered into by the parties hereto pursuant to the provisions of Article XVI of the Mortgage.

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

IN WITNESS WHEREOF, THE PEOPLES GAS LIGHT AND COKE COMPANY has caused this instrument to be executed in its corporate name by its Chairman, President, the Executive Vice President, the Chief Financial Officer, Treasurer or a Vice President, and its corporate seal to be hereunto affixed and attested by its Secretary or Assistant Corporate Secretary, and U.S. Bank National Association, as Trustee under the Mortgage, has caused this instrument to be executed in its corporate name by one of its Vice Presidents and attested by one of its Vice Presidents or Assistant Vice Presidents, all as of the day and year first above written.



THE PEOPLES GAS LIGHT AND COKE COMPANY

By: *Scott J. Lauber*

Scott J. Lauber

Its: Executive Vice President, Chief Financial Officer and Treasurer

*Keith H. Ecke*

Keith H. Ecke

Its: Assistant Corporate Secretary

U.S. BANK NATIONAL ASSOCIATION

By: *Linda Garcia*

Linda E. Garcia

Its: Vice President

ATTEST:

*Jonathan W. Glover*

Jonathan W. Glover

Its: Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

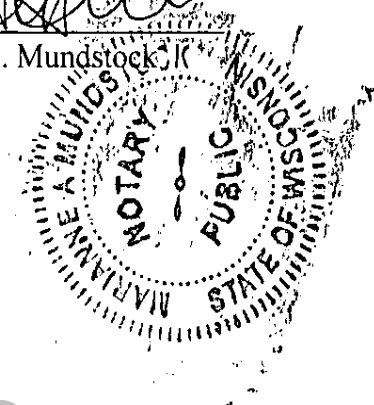
STATE OF WISCONSIN            )  
   ) SS  
 COUNTY OF MILWAUKEE        )

I, Marianne A. Mundstock, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Scott J. Lauber, the Executive Vice President, Chief Financial Officer and Treasurer for The Peoples Gas Light and Coke Company, an Illinois corporation, and Keith H. Ecke, the Assistant Corporate Secretary of said corporation, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Executive Vice President, Chief Financial Officer and Treasurer and Assistant Corporate Secretary, respectively, and who are both personally known to me to be the Executive Vice President, Chief Financial Officer and Treasurer and Assistant Corporate Secretary, respectively, of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act as such Executive Vice President, Chief Financial Officer and Treasurer and Assistant Corporate Secretary, respectively, of said corporation, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal the 7th day of November, 2018.

*Marianne A. Mundstock*  
 Notary Public, Marianne A. Mundstock

My commission expires on the 4th day of June, 2019.



Property Of Cook County Clerk's Office

# UNOFFICIAL COPY

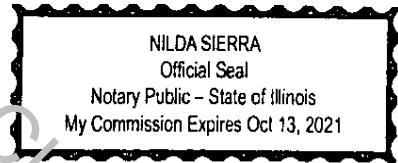
STATE OF ILLINOIS            )  
  ) SS  
COUNTY OF COOK            )

I, Nilda Sierra, a Notary Public in and for said County and State aforesaid, DO HEREBY CERTIFY that Linda E. Garcia, a Vice President for U.S. Bank National Association, a corporation organized and existing under the laws of the United States of America, and Jonathan W. Glover, a Vice President of said corporation, who are both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Vice President, respectively, and who are both personally known to me to be Vice President and Vice President, respectively, of said corporation, appeared before me this day in person and severally acknowledged that they signed, sealed and delivered said instrument as their free and voluntary acts as Vice President and Vice President, respectively, of said corporation, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal the 15<sup>th</sup> day of November, 2018.

Nilda Sierra  
Notary Public  
Name: Nilda Sierra

My commission expires on the 13<sup>th</sup> day of October, 2021.



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

## THE PEOPLES GAS LIGHT AND COKE COMPANY

### SCHEDULE A

The Company hereby mortgages and conveys unto the Trustee, its successor or successors in trust, the property described below.

TO HAVE AND TO HOLD all of said property hereby conveyed and mortgaged or intended to be conveyed and mortgaged, together with the rents, issues and profits thereof, unto the Trustee, and its successor or successors in trust and their assigns in trust, under the and subject to all of the terms, conditions and provisions of the Mortgage (as the Mortgage is defined herein) and of this Supplemental Indenture as fully and in all respects as if said property had originally been described in said Mortgage.

Subject, however, to the reservations, exceptions, limitations and restrictions contained in the several deeds, leases, servitudes, contracts or other instruments through which the Company acquired and/or claimed title to and/or enjoys the use of the mortgaged property, and subject also to any mortgages or easements existing or placed on any of said property at the time of its acquisition, liens for taxes and assessments not due or, if due, in the course of contest, judgments in the course of appeal or otherwise in contest and secured by sufficient bond, liens arising out of proceedings in court in the course of contest and undetermined liens or charges (if any) incidental to construction, and subject also to such servitude, easements, rights and privileges in, over, on or through said property as may have been granted by the Company to other persons prior to the date of this Supplemental Indenture.

BUT IN TRUST, NEVERTHELESS, for the equal and proportionate benefit and security of the holders of all bonds and interest coupons now or hereafter issued under the Mortgage and for the enforcement of and payment of said bonds and coupons when payable and the performance of and compliance with the covenants and conditions of the Mortgage without any preference, distinction or priority as to lien or otherwise of any bond or bonds over others by reason of difference in time of the actual issue, sale or negotiation thereof; but so that each and every bond now or hereafter issued under the Mortgage shall have the same lien so that the interest and principal of any and all of such bonds shall, subject to the terms of the Mortgage, be equally and proportionately secured thereby, as if they had been made, executed, delivered, sold and negotiated simultaneously with the execution thereof.

UPON CONDITION that, until the happening of an event of default as provided in the Mortgage, the Company shall be suffered and permitted to possess, use and enjoy the property, rights, privileges and franchises conveyed herein and to receive and use the rents, issues, income, revenues, earnings and profits thereof.

{continued on next page}

# UNOFFICIAL COPY

EASTERLY RIGHT OF WAY 14.11 FEET TO THE POINT OF BEGINNING, IN  
COOK COUNTY, ILLINOIS,

COMMON ADDRESS: 4055 W. Peterson Avenue, Chicago, Illinois 60646

Grantor	Cook County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
GHP Group, Inc.	1825334003	10-30-201-033-0000	August 29, 2018	September 10, 2018

THE NORTHERLY 70 FEET OF THE WESTERLY 400 FEET OF LOT 2 OF VAPOR RESUBDIVISION OF LOTS 1 AND 2 IN VAPOR SUBDIVISION OF PARTS OF LOTS 3 AND 4 IN ASSESSOR'S DIVISION OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, ACCORDING TO THE PLAT THEREOF RECORDED WITH THE COOK COUNTY RECORDER OF DEEDS ON MARCH 1, 2005 AS DOCUMENT NO. 0506027030.

COMMON ADDRESS: 6430 N. Howard Street, Niles, Illinois 60714

2. Easements, Rights of Way and Other Property Interests

All rights of way, easements, franchises, licenses, permits, privileges, leases, leaseholds and other authority granted to the Company for the purpose of constructing, installing, operating, using, maintaining, renewing, replacing or relocating gas mains, pipelines, services and other facilities on, over or in private property owned by others, including, without limiting the generality of the foregoing, those certain easements granted to the Company by the grantors hereinafter named and filed for record and recorded as hereinafter set forth, to wit:

Grantor	Cook County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
Chicago Park District	1702444044	26-08-106-001-000 26-08-200-001-000	11/21/16	1/24/2017
JAMA Investments II, LLC	1720816017	19-18-100-043-0000	6/20/2017	7/27/2017
Metropolitan Water Reclamation District of Greater Chicago	1812944014	10-26-200-013-0000	6/15/2017	5/09/2018
Prairie 4, LLC	1732829100	17-22-309-014 17-22-309-015	7/28/2017	11/24/2017

# UNOFFICIAL COPY

## DESCRIPTION OF CERTAIN PROPERTY SUBJECT TO THE LIEN OF THE MORTGAGE

1. Fee Simple Property

Grantor	Cook County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
4055 W. Peterson, LLC	1825333114	Part of 13-03-405-022-0000 and 13-03-405-023-0000	September 6, 2018	September 10, 2018

PARCEL A:

THAT PART OF LOT 1 IN OGDEN AND JONES' SUBDIVISION IN BRONSON'S PART OF CALDWELL'S RESERVATION IN FRACTIONAL SECTION 3, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE INDIAN BOUNDARY LINE WITH THE SOUTH LINE OF PETERSON AVENUE; THENCE SOUTH 89 DEGREES 17 MINUTES 31 SECONDS WEST ALONG SAID SOUTH LINE OF PETERSON AVENUE 43.00 FEET; THENCE SOUTH 00 DEGREES 43 MINUTES 01 SECONDS EAST 25.82 FEET TO THE INDIAN BOUNDARY LINE AFORESAID; THENCE NORTH 58 DEGREES 18 MINUTES 11 SECONDS EAST ALONG SAID INDIAN BOUNDARY LINE 50.15 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL X:

THAT PART OF ROGERS AVENUE LYING EASTERLY OF THE EASTERLY RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY AND LYING NORTH OF THE INDIAN BOUNDARY LINE ADJOINING LOT 1 IN OGDEN AND JONES SUBDIVISION IN BRONSON'S PART OF CALDWELL'S RESERVATION IN FRACTIONAL SECTION 3, TOWNSHIP 40 NORTH RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF SAID INDIAN BOUNDARY LINE WITH SAID EASTERLY RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE NORTH 58 DEGREES 18 MINUTES 11 SECONDS EAST ALONG SAID INDIAN BOUNDARY LINE 16.13 FEET; THENCE NORTH 60 DEGREES 39 MINUTES 06 SECONDS WEST 7.71 FEET TO SAID EASTERLY RIGHT OF WAY OF THE CHICAGO AND NORTHWESTERN RAILWAY; THENCE SOUTH 29 DEGREES 43 MINUTES 44 SECONDS EAST ALONG SAID



# UNOFFICIAL COPY

Grantor	Cook County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
		17-22-309-033		
Larry West LLC	1732829098	13-13-101-001-0000	9/5/2017	11/24/2017
Walden Property Holdings, LLC	1732829099	25-07-412-050-0000	10/3/2017	11/24/2017
Chicago Housing Authority	1727206078	14-30-123-002-0000	9/29/2017	9/29/2017
Centerpoint Chicago Enterprise LLC	1803145041	26-31-303-020-0000	11/9/2017	1/31/2018
Ford Motor Company	1735329106	26-30-100-054-0000	6/2/2017	12/19/2017
Chicago Title and Trust Company, Trust Number 8369 by and through T&B LTD	1735213063	20-06-100-125-0000	12/15/2017	12/18/2017
Centerpoint Chicago Enterprise LLC	1716439096	26-31-303-026-0000 26-31-415-003-0000 26-31-301-012-0000	3/30/2017	6/13/2017
1230 N Kostner	1808922061	20-07-304-047-0000 20-07-304-041-0000	11/30/2017	3/30/2018
The Chicago Park District	1702444044	26-08-106-001-0000 26-08-200-001-0000	11/21/2016	1/24/2017
2102 Natchez LLC	1822944092	13-31-205-081-0000 13-31-205-082-0000	10/12/2017	8/17/2018
Madison Park Property Owner's Association	1825019267	Various including 20-11-212-051-0000	12/15/17	9/7/2018
Chicago Title Land Trust Company as successor trustee to American National Bank and Trust Company of Chicago, as Trustee under the provisions of a Trust Agreement dated July 21, 1999 and known as Trust No. 125240-05	[not available]	25-18-200-045-0000	6/21/2018	[not available]
Erik Pappas	[not available]	25-18-200-044-0000 25-18-200-021-0000	6/8/2018	[not available]
Racine Courts Cooperative	1825019268	25-17-408-047 25-17-410-004	7/2/2018	9/7/2018

# UNOFFICIAL COPY

Grantor	Cook County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
1643 E 85th Place, LLC	[not available]	20-36-318-021-0000	7/2/2018	[not available]
Chicago Title Land Trust Company as successor trustee to Northwest National Bank of Chicago, not individually, but as Trustee under Trust Agreement dated March 1, 2078 and known as Trust No. 4552	[not available]	14-07-108-042-1001	7/3/2018	[not available]
Lincoln Fullerton REIT Property, LLC, a Delaware limited liability company	[not available]	14-33-100-005-0000 14-33-100-006-0000	6/8/2018	[not available]
City of Chicago	1822822036	21-30-406-001-0000	8/6/2018	8/16/2018
GHP Group, Inc.	1825334004	10-30-201-033-0000	8/17/2018	9/10/2018

Grantor	Will County Document Number	Permanent Index Number	Date of Instrument	Date Recorded
Chicago Title Land Trust, as Trustee under Trust Agreement dated February 1, 1992 and known as Trust No. 92-1117	R2018003389	14-12-08-300-010	11/17/2017	1/12/2018
William E. Fields, Trustee of the William E. Fields Declaration of Trust dated October 25, 2011 whose address is 1221 Glenwood Avenue, Joliet, Illinois, 60435 and Elizabeth F. Schultz, a married individual, whose address is 13556 Manchester Lane, Naples, Florida 34109	R2018018310	14-12-08-400-014	2/12/2018	3/16/2018

## UNOFFICIAL COPY

THE PEOPLES GAS LIGHT AND COKE COMPANY

Page 1  
County: Cook State: Illinois

<u>Instrument</u>	<u>Series</u>	<u>Date Filed</u>	<u>Book No.</u>	<u>Page No.</u>	<u>Doc No.</u>
Mortgage 01-02-1926		01-19-1926	22219	283	9154395
Ind. 03-01-1928		04-07-1928	25701	599	9980547
Ind. 08-01-1941		08-01-1941	36815	348	12731419
Supp. Ind. 06-01-1951	H	06-26-1951	46945	153	15108644
Supp. Ind. 07-01-1954	I	07-27-1954	50840	462	15971687
Supp. Ind. 05-01-1961	J	05-15-1961			18162126
Supp. Ind. 07-15-1966	K	07-18-1966			19888641
Supp. Ind. 08-15-1967	L	08-25-1967			20241723
(Torrens)		08-25-1967			2343718
Supp. Ind. 09-15-1970	M	09-17-1970			21267590
(Torrens)		09-17-1970			2522034
Supp. Ind. 04-01-1972	N	04-13-1972			21866638
(Torrens)		04-14-1972			2617512
Supp. Ind. 07-15-1973	O	07-26-1973			22414748
(Torrens)		07-26-1973			2706573
Supp. Ind. 10-01-1973	P	10-17-1973			22516291
(Torrens)		10-18-1973			2722994
Supp. Ind. 10-01-1974	Q	10-04-1974			22864666
(Torrens)		10-02-1974			2776585
Supp. Ind. 12-01-1974	R	11-26-1974			22917223
(Torrens)		11-26-1974			2784787
Supp. Ind. 04-01-1975	S	04-03-1975			23038653
(Torrens)		04-03-1975			2801241
Supp. Ind. 08-15-1980	T	08-22-1980			25556990
(Torrens)		08-22-1980			3174394
Supp. Ind. 06-01-1984	U	06-07-1984			27119273
(Torrens)		06-08-1984			3375550
Supp. Ind. 06-01-1984	V	06-07-1984			27119274
(Torrens)		06-08-1984			27121922
Supp. Ind. 10-01-1984	W	10-05-1984			27284900
(Torrens)		10-17-1984			3400220
Supp. Ind. 03-01-1985	X	03-12-1985			27471556
(Torrens)		03-14-1985			3424387
Supp. Ind. 03-01-1985	Y	03-12-1985			27471557

## UNOFFICIAL COPY

THE PEOPLES GAS LIGHT AND COKE COMPANY

Page 2

County: Cook State: Illinois

<u>Instrument</u>	<u>Series</u>	<u>Date Filed</u>	<u>Book No.</u>	<u>Page No.</u>	<u>Doc No.</u>
Supp. Ind. 03-01-1985 (Torrens)	Z	03-14-1985			3424388
Supp. Ind. 03-01-1985 (Torrens)	AA	03-12-1985			27471558
Supp. Ind. 03-01-1985 (Torrens)	BB	03-14-1985			3424389
Supp. Ind. 05-01-1990 (Torrens)		03-12-1985			27471559
Supp. Ind. 04-01-1993	CC	03-14-1985			3424390
Supp. Ind. 12-01-1993	DD	07-20-1990			90348965
Supp. Ind. 12-01-1993	EE	04-30-1993			93323465
Supp. Ind. 06-01-1995	FF	12-22-1993			03057204
Supp. Ind. 03-01-2000	GG	12-22-1993			03057203
Supp. Ind. 03-01-2000	HH	06-29-1995			95-422071
Supp. Ind. 03-01-2000	II	03-01-2000			00151877
Supp. Ind. 03-01-2000	JJ	03-01-2000			00151878
Supp. Ind. 03-01-2000	KK	03-01-2000			00151879
Supp. Ind. 02-01-2003	LL	03-01-2000			00151880
Supp. Ind. 02-01-2003	MM-1 & MM-2	02-06-2003			0030180896
Supp. Ind. 02-15-2003	NN-1 & NN-2	02-20-2003			0030243079
Supp. Ind. 04-15-2003		02-27-2003			0030280078
Supp. Ind. 10-01-2003	OO	04-30-2003			0311944120
Supp. Ind. 10-01-2003	PP	10-16-2003			0328931197
Supp. Ind. 11-01-2003	QQ	10-16-2003			0328931198
Supp. Ind. 01-01-2005	RR	12-18-2003			0335217226
Supp. Ind. 11-01-2008	SS	02-25-2005			0505644006
Supp. Ind. 11-01-2008	TT	11-03-2008			0830822086
Supp. Ind. 09-01-2009	UU	11-03-2008			0830822085
Supp. Ind. 08-01-2010	VV	09-30-2009			0927331127
Supp. Ind. 10-01-2010	VW	08-18-2010			1023018050
Supp. Ind. 11-01-2011	XX	10-05-2010			1027818058
Supp. Ind. 12-01-2012	YY	11-01-2011			1130545030
Supp. Ind. 04-01-2013	ZZ	12-05-2012			1234008590
Supp. Ind. 08-01-2013	AAA	04-19-2013			1310922070
Supp. Ind. 11-01-2014	BBB	08-01-2013			1321319093
Supp. Ind. 11-01-2016	CCC	11-07-2014			1431145050
		11-03-2016			1630817005

# UNOFFICIAL COPY

THE PEOPLES GAS LIGHT AND COKE COMPANY

Page 3

County: Cook State: Illinois

<u>Instrument</u>	<u>Series</u>	<u>Date Filed</u>	<u>Book No.</u>	<u>Page No.</u>	<u>Doc No.</u>
Supp. Ind. 12-01-2016	DDD	12-20-2016			1635506085
Supp. Ind. 11-01-2017	EEE	11-22-2017			1732619026

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

Property of Cook County Clerk's Office