

MORTGAGE RECORD 83

the Trustee and who or which shall not be in the employ of the Company but who or which may be under retainer by the Company.

"Gross expenditures," as used in this Indenture, shall mean and include cash payments actually made or agreed to be made and for which liability shall have been actually incurred by the Company for the construction of bondable property and, in the case of purchased property, shall mean (a) all cash payments actually made or agreed to be made and for which liability shall have been actually incurred by the Company for the purchase thereof in excess of any current assets received by the Company (including any expenditures made by the Company in the payment or discharge of the principal of any mortgage indebtedness existing on any purchased property at the time of its acquisition by the Company) or (b) the value of such purchased property at the time of its acquisition by the Company, whichever shall be less. In cases where purchased property is acquired by the Company without consideration or for a consideration not consisting wholly of cash payments made or agreed to be made, the value (determined as in this section provided) of such purchased property at the time of its acquisition by the Company, shall, within the meaning of this Indenture, be deemed to be a gross expenditure for such property. The "cost" (as that term is used in this Indenture) of any bondable property shall mean the aggregate of the gross expenditures therefor.

The "net expenditures" for bondable property, as that term is used in this Indenture, shall be determined as of any date as follows: From the total gross expenditures for bondable property made by the Company during the period beginning December 1, 1936, to the date as of which the net expenditures are to be determined, there shall be deducted (a) the aggregate amount of such gross expenditures, if any, certified during such period to comply with the requirements of sub-paragraph (b) of Article VII hereof, and (b) the excess, if any, of the aggregate amount of gross retirements of property, as hereinafter defined, made during the period over the sum of (1) all amounts during such period certified by the Company to the Trustee as expended for purposes specified in sub-paragraphs (b) and (c) of Article VII hereof (excluding all amounts certified under Article VII as a basis for the withdrawal of moneys under said Article), (2) all amounts paid to the Trustee during said period to comply with the requirements of Article VII and (3) the aggregate amount of all net considerations received by the Company during said period as the avails of property released from the lien of this Indenture under the provisions of Article VIII hereof.

In making any determination of net expenditures for the purpose of the authentication of bonds under this section or the withdrawal of deposited cash under the provisions of Section 4 of this article or the withdrawal of moneys under Article IX of this Indenture, the deductions required by subdivisions (a) and (b) of the next preceding paragraph to be made from gross expenditures shall be made for the period from December 1, 1936, to a date not more than sixty days prior to the authentication of such bonds or the withdrawal of such deposited cash or the delivery of such certificate or the withdrawal of such moneys, as the case may be.

"Gross retirements of property," as that term is used herein, made during any such period shall include all tangible property, plant and equipment, coming within the description of bondable property, retired by the Company (either out of property owned by it at the date of this Indenture or thereafter acquired by it) through renewals, replacements, abandonments, sales and/or releases of property made during such period. Such retirements shall be stated at the amount at which the property retired was recorded on the books of the Company at the date of this Indenture, if owned by the Company at said date, or at the cost thereof (as in this section defined) if acquired by the Company after the date of this Indenture. Gross retirements of property shall not include for the purpose of this section any intangible property of the Company or any property other than bondable property at any time owned by the Company.

Bonds shall be authenticated by the Trustee under this section subject to the restrictions hereof and shall be delivered by it to or upon the written order of the President or a Vice-President of the Company upon receipt by the Trustee of the following:

(a) A copy of a resolution of the Board of Directors of the Company authorizing the execution and authentication of the bonds proposed to be issued and stating the principal amount thereof and the designation of the series in which to be issued and, except as to bonds of Series A, setting forth, either expressly or by reference to a resolution of the Board of Directors theretofore adopted, the terms, provisions and characteristics of such bonds, all in accordance with and subject to the restrictions of Section 1 of Article I hereof;

(b) A certificate signed by the President or a Vice-President and by the Treasurer or an Assistant Treasurer of the Company, setting forth (1) the gross expenditures for bondable property (other than purchased property) made by the Company in the period covered by the certificate (which, in the case of the first certificate, shall begin on December 1, 1936, and in the case of each subsequent certificate shall begin at the end of the period covered by the next preceding certificate), on account of which such bonds are requested to be authenticated, briefly describing such bondable property, and stating that said expenditures have been actually made, or a liability therefor incurred, by the Company, and are not, in the opinion of the officers signing the certificate, in excess of the value of such bondable property, and that no part of such expenditures has been charged by the Company or is properly chargeable to the cost of maintenance or to other operating expense, and (2) the gross expenditures for, and the value (as determined by engineer's certificate in accordance with the provisions of this Section 3 of Article II) of, any purchased property acquired by the Company during the period covered by the certificate, on account of which such bonds are requested to be authenticated, a brief description of such purchased property (identifying the same as purchased property within the definition thereof contained in this section), the date of its acquisition and the amount and character of the consideration paid therefor, and (3) the aggregate amount of such gross expenditures, if any, certified during the period covered by the certificate, to comply with the requirements of sub-paragraph (b) of Article VII hereof, and (4) (a) the aggregate amount of gross retirements of property, as hereinbefore in this section defined, made during said period and (b) the sum of all amounts during said period certified by the Company to the Trustee as expended for purposes specified in sub-paragraphs (b) and (c) of Article VII hereof (excluding all amounts certified under Article VII as a basis for the withdrawal of moneys under said Article), (c) all amounts paid to the Trustee during said period to comply with the requirements of Article VII and (d) the aggregate amount of all net considerations received by the Company during said period as the avails from the property released from the lien of this Indenture under the provisions of Article VIII hereof, and (5) a computation showing the net expenditures for bondable property, as hereinbefore in this section defined, made by the Company during such period, and (6) that all such bondable property, including such purchased property, if any, has become subject to the lien of this Indenture and is not subject to the lien of any other mortgage prior to the date of this Indenture except any such property which is subject to a mortgage or other lien not constituting obligations for the payment or redemption of which the necessary funds have been deposited with the trustee under such mortgage or with the Trustee hereunder, and (7) that no part of said net expenditures for bondable property has been previously used as a basis for the authentication of any bonds under this Indenture or as a basis for the withdrawal of any moneys or the release of any property under any provision of this Indenture or has been made or acquired out of any insurance moneys or moneys received from the condemnation or sale of any property of the Company subject to the lien of this Indenture or has been used or applied or certified to the Trustee to comply with any requirements of Article VII of this Indenture or has been certified or used to comply with the provisions respecting any sinking fund created hereafter pursuant to the terms of this Indenture, or, in the alternative, that the provisions relating to any such sinking fund then existing do not preclude the use of any such expenditures as a basis for the authentication of bonds hereunder, and (8) any other facts and data (not specifically required to be shown in some other manner) showing that the Company is entitled under the foregoing provisions of this section to have authenticated the bonds requested to be authenticated; and