

## MORTGAGE RECORD 83

and requesting the payment to or on the order of the Company of an amount of money equal to the excess of said expenditures. Any sums received by the Trustee under this paragraph may be withdrawn in accordance with the provisions of Article IX hereof.

No expenditures certified and applied to the requirements of this Article and no bonds redeemed, purchased or retired through expenditures certified and applied to the requirements of this Article shall be available as a basis for the authentication of bonds or the withdrawal of moneys or the release of property under, or to comply with, any provision of this Indenture.

The percentage of the gross operating revenues of the Company required to be expended as in this Article specified may, at the option of the Company, be redetermined in the manner hereinafter provided, but no such redetermination shall be made effective prior to January 1, 1940, and no such redetermination shall be made effective within three years from the effective date of the last previous determination. Subject to the foregoing, the Company may at any time appoint in writing an independent engineer, satisfactory to the Trustee, to redetermine said percentage. A copy of such appointment shall be delivered to the Trustee. The engineer so appointed by the Company, satisfactory to the Trustee, shall file with the Trustee and with the Company a certificate signed by him in which shall be stated the percentage of the gross operating revenues of the Company which in his judgment, having due regard for the provisions of Section 7 of Article III of this Indenture, shall be sufficient and proper to provide adequate maintenance, repair, renewal and replacement of the property of the Company, and such percentage so stated in such certificate shall, effective for the calendar year in which such certificate shall be filed with the Trustee, be substituted for the percentage in effect at the time of filing such certificate and shall remain in effect until a further redetermination thereof is made in accordance with the provisions of this Article.

The Trustee shall be under no duty to make any examination or investigation with respect to the facts stated in any certificate furnished as in this Article provided, but shall be entitled to rely on such certificate and shall not be in any way liable for any act, matter or thing done or omitted by it in reliance thereon, and each such certificate shall be full warrant and authority for any action taken by the Trustee in accordance therewith; but the Trustee in its discretion may require other or further evidence.

## ARTICLE VIII

## Possession, Use and Release of Mortgaged Property

SECTION 1. Until the Company shall, to the knowledge of the Trustee, make default in any of the respects specified in Section 1 of Article X of this Indenture, and such default shall continue for the period, if any, therein specified, it shall be suffered and permitted by the Trustees to remain in full possession, enjoyment and control of all the properties, rights, privileges and franchises hereby mortgaged (other than any cash and securities deposited or pledged hereunder) and shall be permitted to manage and operate the same, and, subject always to the observance of the covenants in this Indenture with respect thereto, to receive, receipt for, take, use, enjoy and dispose of all rents, tolls, earnings, surplus, profits, revenues and income thereof, to modify and/or terminate its contracts, rights, permits, privileges and/or franchises and to make changes in the location of its lines, structures and equipment in the same manner and with the same effect as if this Indenture had not been made.

The Company may at all times and from time to time so long as it shall remain in possession of the trust estate, sell or otherwise dispose of, free from the lien of this Indenture and without any release by the Trustees, any machinery, equipment, tools or implements, when obsolete, worn-out or unnecessary for the purposes of the Company, upon replacing the same with new machinery, equipment, tools or implements (in such manner as to come under the lien hereof) of a value at least equal to the value of those so disposed of, and the Company covenants and agrees to make such replacements from time to time as required by the provisions of this section.

SECTION 2. The Company may at any time and from time to time sell or otherwise dispose of any other property of the Company (including pledged securities) which shall be subject to the lien of this Indenture (but as to securities pledged hereunder pursuant to the provisions of Article VI hereof, subject to the provisions of any instrument executed for the purpose of or in connection with the subjecting of such securities to the lien hereof) and the Trustees shall release the same from the lien hereof upon receipt by the Trustee of the following:

1. A copy of a resolution of the Board of Directors of the Company requesting such release;  
2. A certificate signed by the President or a Vice-President of the Company and by an engineer selected by the Company and satisfactory to the Trustee, who may be an engineer of the Company (except when the value of the property to be released shall be in excess of One Hundred Twenty-five Thousand Dollars (\$125,000) in which event such engineer shall be an independent engineer), stating in substance as follows:

(a) That the Company has sold or exchanged, or contracted to sell or exchange, the property so to be released for a consideration representing, in the opinion of the signers, its full value to the Company, which consideration may be cash, purchase money obligations secured by first mortgage lien upon the property to be released (subject to no liens of record for the payment of money except current taxes) and/or other property, to be described in reasonable detail in such certificate, of such character as may be made the basis for the authentication of bonds under the provisions of Section 3 of Article II of this Indenture; and

(b) That the retention of the property to be released is no longer desirable in the conduct of the business of the Company or that other property to be acquired, in the case of exchange, is not less suited to the needs of the business of the Company than that to be released, and that the security hereby afforded will not be impaired by such release;

3. Any money and/or purchase money obligations stated in said certificate to have been or to be received in consideration for the property requested to be released, or the certificate of the trustee under any mortgage constituting a prior lien upon the property to be released stating that it has received such money and/or purchase money obligations; and, if real estate or other property is included in the consideration for the property to be released, such deeds or other instruments of conveyance, assignment or transfer as are sufficient, in the opinion of counsel, to subject the same to the lien of this Indenture with the same degree of priority which it possessed as a lien on the property to be released, or an opinion of counsel to the effect that no deeds or other instruments of conveyance, assignment or transfer are necessary to vest in the Company the consideration received or to be received for such sale or exchange or to subject the same to the lien of this Indenture in the manner stated;

4. An opinion of counsel to the effect that any purchase money obligations included in such consideration and the mortgage or other instrument securing the same are valid instruments and that such mortgage constitutes a first mortgage lien upon the property released subject to no liens of record for the payment of money except current taxes; and

5. A certified copy of a certificate or order of each public service commission or other governmental agency of the United States of America, or of any state or states thereof, if any, then having jurisdiction in the premises, together with an opinion of counsel to the effect that such certificates or orders are such as are required to be obtained in connection with the sale or exchange of the property to be released and that no certificate, consent or authorization of any other such commission or agency is required for the release of said property, or, in the alternative, an opinion of counsel to the effect that no certificate, consent or authorization of any such commission or agency is required in the premises.