

## MORTGAGE RECORD 85

(if this Indenture shall have been executed on or prior to said date), and on July 1 of each year thereafter, and at any time upon the request of the Trustee, the Company will file with the Trustee a certificate containing a detailed list of the insurance then in effect upon the property of the Company on a date therein specified (which date shall be within 30 days of the filing of such certificate), and said list shall be accompanied by a certificate of the Company stating that said insurance complies with the provisions of this Section 5.09. The Trustee shall be entitled to accept such list and certificate as satisfactory evidence of compliance by the Company with the provisions of this Section 5.09. In case the Trustee shall at any time notify the Company in writing that it disapproves of any insurer with which the Company has insured any part of the mortgaged property, other insurance satisfactory to the Trustee shall forthwith be effected by the Company.

SECTION 5.10. The Company will keep proper books of record and account, in accordance with the system of accounts prescribed by any governmental authority having jurisdiction in the premises, if any, in which books of record and account full, true and correct entries shall be made of all dealings or transactions of or in relation to the plants, properties, business and affairs of the Company. The Company will at any and all times upon the written request of the Trustee, and at the expense of the Company, (a) permit the Trustee by its agents, engineers, accountants and attorneys to examine and inspect the plants and properties, books of account, records, reports and other papers of the Company, and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such examination and inspection, and (b) furnish the Trustee any financial statements and all such other information as the Trustee may reasonably request, so that it may keep itself informed as to the performance and observance by the Company of the covenants, agreements and conditions in this Indenture contained to be by it kept, observed and performed.

The Trustee shall be under no duty to institute any such examination or inspection or to require the Company to furnish any such statement or information, unless requested so to do by the holders of at least 15% in amount of the Bonds at the time outstanding, and unless indemnified as hereinafter provided.

The information furnished to the Trustee pursuant to the provisions of this Section 5.10 shall at all reasonable times during business hours be open to inspection by the holders of Bonds, but the Trustee shall have no duty with respect to any such information furnished to it except to retain the same on file for such inspection.

SECTION 5.11. The Company will record, register, file, renew and re-record, re-register and re-file this Indenture and every Indenture supplemental hereto which hereafter may be executed and all such documents as may be required by law in order to maintain this Indenture at all times as a mortgage of both real estate and personal property, all in such manner, at such times and in such places as may be required by law in order fully to preserve and protect the security of the Bondholders and the rights of the Trustee. The Company will pay any mortgage recording tax due on any recording or filing hereof or of any such supplemental Indenture and will comply with the requirements of any and every mortgage recording tax law or similar law affecting the due recording or maintaining of this Indenture, and will do whatever else may be necessary or be reasonably required by the Trustee in order to perfect and continue the lien of this Indenture upon the property mortgaged, pledged or assigned hereunder or intended so to be.

SECTION 5.12. Except in the case of a merger, consolidation, conveyance or transfer as hereinafter in Article Ten provided, the Company will at all times maintain its corporate existence and right to carry on business, and will duly procure all renewals and extensions thereof, and, subject to the provisions hereof, will diligently maintain, preserve and renew all the rights, powers, privileges, immunities, franchises and good will owned by it. The Company will not enter into any merger or consolidation, or make any conveyance or lease of all or substantially all the mortgaged property as an entirety, unless, in connection therewith the Company and/or the successor corporation and/or the lessee, as the case may be, shall observe and comply with the terms and conditions of Article Ten hereof applicable to such transaction.

SECTION 5.13. So long as any of the bonds remain outstanding, the Company will not declare or pay any dividends or make any distribution on its shares of capital stock, or purchase, acquire or otherwise retire, for a consideration, any shares of its capital stock in any year subsequent to December 31, 1936, except from "net earnings" of the Company available for such dividends, distributions or retirements, accumulated subsequent to June 30, 1936. "Net earnings" of the Company shall be determined by independent public accountants selected by the Company and approved by the Trustee. For the purpose of this Indenture, "net earnings" shall mean the amount remaining from gross earnings of the Company after making proper deductions, in accordance with standard accounting practice, which deductions shall include, but shall not be limited to, deductions for all operating expenses (other than charges for depreciation), taxes, maintenance, interest on the bonds outstanding, other interest, and amortization of bond discount and expense, and in addition a deduction at the rate of \$20,000 per year. The Company further covenants that no such dividends, distributions or retirements, as aforesaid, shall be paid or made if to do so the "net working capital" of the Company would thereby be reduced to an amount less than \$30,000. The term "net working capital" shall be determined in accordance with standard accounting practice by independent public accountants selected by the Company and approved by the Trustee, as aforesaid, and shall mean the excess of current assets over current liabilities, including in the term "current liabilities" but not by way of limitation, all bank loans and other obligations (exclusive of principal of the bonds and interest thereon accruing thereafter) which will become due and payable within 18 months from the date such "net working capital" is determined.

## ARTICLE SIX.

## POSSESSION, USE AND RELEASE OF PROPERTY.

SECTION 6.01. (1) Unless an event of default, as defined in Section 6.01 hereof, shall have happened and be continuing, the Company shall be suffered and permitted to possess, use and enjoy all the property and appurtenances, franchises and rights mortgaged by this Indenture (other than securities, obligations and moneys deposited, or required to be deposited, with the Trustee), and to receive and use the rents, issues, income, products and profits thereof, with power in the ordinary course of business, freely and without let or hindrance on the part of the Trustee or of the Bondholders;

(a) to use and consume materials and supplies, and to sell or otherwise dispose of the whole or any part of any stock of merchandise or appliances kept for sale;

(b) to make and deal with choses in action, contracts and leases to others, and to exercise the rights and powers conferred upon it thereby, the property affected by any such lease, however, to remain subject to the lien of this Indenture to the same extent as it was prior to such lease; and to modify or renew any leasehold;

(c) to grant or convey to municipalities or other governmental bodies any right-of-way, easement or license, the property over, through or under which any such right-of-way, easement or license shall be so granted or conveyed, however, to remain subject to the lien of this Indenture to the same extent as it was prior to such grant or conveyance; provided that in the judgment of the Board of Directors of the Company any such grant or conveyance will not be prejudicial to the security of the Bonds hereunder; and

(d) to alter, repair and move its buildings and structures, change the position of any of its plants, holders, pipes, mains, conduits or other property and replace and renew any of its equipment, machinery or other property; provided, however that no property shall be replaced, renewed moved or its position changed if after such move or change of position such property would be subject to any lien prior to the lien of this Indenture to which it was not subject prior to such