

## MORTGAGE RECORD 85

replacement, renewal, move or change of position, unless such property be released from the lien of this Indenture in the manner hereinafter provided.

(11) Unless an event of default, as defined in Section 6.01 hereof, shall have happened and be continuing, the Company may, at any time and from time to time, without any release by the Trustee;

(a) sell or otherwise dispose of, free from the lien of this Indenture any machinery, equipment, fixtures or other chattels, upon replacing the same with, or substituting for the same, machinery, equipment, fixtures or other property not necessarily of the same character but of a value at least equal to the value of that so disposed of;

(b) surrender or assent to the modification of any franchise, license, authority or permit which it may hold, or under which it may be operating; provided that (i) in the event of any such modification, the franchise, license, authority or permit, as modified, shall, in the opinion of counsel for the Company, authorize the continuance of the same or an extended business in the same or an extended territory during the same or an extended or unlimited or indeterminate or indefinite period of time, or (ii) in the event of any such surrender, the Company shall receive in exchange a new franchise, license, authority or permit which, in the opinion of such counsel, shall authorize the Company to do the same or an extended business in the same or an extended territory during the same or extended or unlimited or indeterminate or indefinite period of time or (iii) after any such surrender or modification, the Company shall still under some other franchise, license, authority or permit, have the right, in the opinion of such counsel, to conduct the same or an extended business in the same or an extended territory during the same or an extended or unlimited or indeterminate or indefinite period of time; and

(c) surrender or assent to or procure a modification of any franchise, license, authority or permit which it may now or hereafter hold, or under which it may now or hereafter operate any of its properties, if, in the opinion of the Board of Directors of the Company, it is no longer necessary or desirable in the profitable conduct of the business of the Company to operate such properties or to comply with the terms and provisions of such franchise, license, authority or permit and the value and efficiency generally of all of its properties as an entirety will not thereby be impaired.

For the purposes of Paragraph (b) of this Subdivision (11) and of any opinion to be rendered under it, any right of any municipality or other governmental body to terminate a franchise, license, authority or permit by purchase thereof or of the property operated thereunder, shall not be deemed to abridge or affect its duration.

The words "opinion of counsel" as used in this Section 6.01 mean and shall be construed to mean the written opinion of counsel filed with the Trustee.

SECTION 6.02. The Company shall have the right, at any time and from time to time, so long as it is not in default hereunder to the knowledge of the Trustee, to sell or exchange any part of the mortgaged property which shall no longer be needed in the judicious management and maintenance of the trust estate or in the conduct of the business of the Company, provided that in no case shall the Company accept as consideration for the sale or exchange of any such property, purchase money obligations secured by a purchase money mortgage on the property, the release of which is then being requested, to an amount in excess of 70% of the value thereof; and, provided further, that the total amount of any such purchase money obligations owned by the Company and deposited with the Trustee shall not exceed at any one time an amount in excess of 20% of the outstanding Bonds of the Company.

The Trustee shall from time to time release property so sold or exchanged from the operation and lien of this Indenture but only upon receipt by the Trustee of:

A. A resolution of the Board requesting such a release and describing the property so to be released.

B. A certificate of the Company signed also (except as to Clause (c) of this Paragraph B) by an engineer selected by the Board of Directors of the Company and acceptable to the Trustee, who may be in the employ of the Company, setting forth in substance as follows:

(1) that the Company has sold or exchanged or has contracted to sell or exchange the property so to be released for a consideration described in said certificate, and that such sale or exchange is desirable in the conduct of the business of the Company and that the property to be released is no longer needed in the judicious management and maintenance of the trust estate or in the conduct of the business of the Company;

(2) that the consideration described in said certificate has a value to the Company at least equal to that of the property to be released, and setting forth the value to the Company as of the date of the execution of the certificate, of the property to be released;

(3) the amount of the obligations, if any, to be received by the Company as a part of the consideration and secured by a purchase money mortgage on the property being released and that such amount does not exceed 70% of the value of such property and that the total amount of purchase money obligations deposited with the Trustee (including those received or to be received for the property the release of which is being requested) does not exceed 20% of the outstanding Bonds of the Company;

(4) whether any part of such consideration consists of additional property, and if so, a brief description of such additional property as defined in Section 6.11 and the principal subdivisions of plant or capital account (or an account analogous to plant or capital account) to which the cost of such property has been charged shall be included in the certificate, and the certificate shall state that the same constitutes additional property as said term is hereinafter defined;

(5) whether such consideration includes any additional tract or parcel of real estate, and, if so, a separate description of such tract or parcel shall be included in the certificate; and

(6) that the Company is not, to the knowledge of the officers of the Company signing the certificate, in default in the performance of any of the covenants on its part to be performed under the provisions of this Indenture.

C. Any and all cash and/or obligations stated in said certificate to be the consideration for the property so to be released, (unless some other disposition, in the opinion of counsel referred to in the following Paragraph D, shall be required by same lien prior to the lien of this Indenture) subject to the provisions of Section 6.09. The money and/or obligations so received by the Trustee shall be held and paid over or applied by the Trustee as provided in Article Seven hereof.

D. AN OPINION OR OPINIONS OF COUNSEL.

(1) stating that the instruments which have been or are therewith delivered to the Trustee conform to the requirements of this Indenture and constitute sufficient authority under this Indenture for the Trustee to execute and deliver the release requested, and that, upon the basis of the consideration described in the certificate delivered to the Trustee pursuant to Paragraph B hereof, the property so sold or exchanged may be released from the operation and lien of this Indenture;

(2) stating that any obligations included in the consideration for the property so to be released are valid obligations and are duly secured by a valid purchase money mortgage constituting a direct lien upon the property to be released, free and clear of all prior liens, except taxes or assessments not delinquent and any prior liens subject to which such property shall have been sold;

(3) in case the consideration for the property to be released, or any part thereof, consists of additional property, specifying the mortgages, deeds, conveyances, assignments, transfers and instruments of further assurance which will be sufficient to subject to the direct lien of