

## MORTGAGE RECORD 85

therewith delivered to the New York Trustee conform to the requirements of this Indenture and constitute sufficient authority under this Indenture for the New York Trustee to pay over the Trust Moneys applied for, and that upon the basis of the acquisition of the Property Additions described in the Property Additions Certificate delivered to the New York Trustee pursuant to Paragraph C of this Section, the Trust Moneys whose withdrawal is then requested may be lawfully paid over under this Section.

Subject to the provisions of Section 59, upon compliance with the foregoing provisions of this Section, the Company shall be entitled to withdraw and the New York Trustee shall pay upon the Written Order of the Company an amount of Trust Moneys up to, but not exceeding, the amount of the Net Bondable Additions so certified to the New York Trustee pursuant to Paragraph C of this Section.

**Section 58.** Trust Moneys may be applied by the New York Trustee at any time and from time to time to the payment of the principal of Bonds upon redemption prior to maturity or to the purchase of Bonds upon tender or in the open market or at private sale or upon any securities exchange or in any one or more of said ways, according as the Company shall determine, upon receipt by and deposit with the New York Trustee of the following:

A. A RESOLUTION OF THE BOARD, requesting the application pursuant to the provisions of this Section of a specified amount of Trust Moneys, specifying the principal amount of Bonds and the series and maturity or maturities (if of serial maturities) thereof to be redeemed and the redemption price, or, in case such moneys are to be applied to the purchase of Bonds, prescribing the method of purchase, the price or prices to be paid, and the maximum principal amount of Bonds and the series and maturity or maturities thereof to be purchased, provided, however, that Bonds of Series A eligible for redemption or purchase under this Section shall not be so designated for redemption or purchase otherwise than in the inverse order of the respective maturities of all Bonds of Series A at the time outstanding; and provided further, that Bonds of series other than Series A shall not be so designated for redemption or purchase in an aggregate amount greater than an amount which bears the same relation to the aggregate amount of Bonds so designated of all series, as the amount of outstanding Bonds of series other than Series A bears to the total amount of outstanding Bonds of all series.

B. CASH equivalent to the maximum amount of the accrued interest and the premium, if any, required to be paid in connection with any such redemption or purchase, which cash shall be held by the New York Trustee in trust for such purpose, and, to the extent not required for such purpose, shall be repaid to the Company.

C. A CERTIFICATE OF THE COMPANY, setting forth:

(1) Whether any of the Trust Moneys so to be applied is Bonded Cash;

(2) That all Bonds so to be redeemed or purchased have been originally issued by the Company by way of bona fide sale other than to a Related Company;

(3) Whether any of the Bonds so to be redeemed or purchased are owned legally or equitably by the Company or any Related Company and, if so, that they were acquired by the Company otherwise than from a Related Company, or by such Related Company otherwise than from the Company, not more than 30 days prior to the date when the New York Trustee received the Trust Moneys whose application to such redemption or purchase is then requested (or in the case of Trust Moneys representing the proceeds of purchase money or governmental obligations, the date when the New York Trustee received such obligations);

(4) That the Company is not in default in the performance of any of the covenants on its part to be performed under this Indenture.

D. AN OPINION OF COUNSEL, stating that it is proper for the New York Trustee, under the provisions of this Section, to apply Trust Moneys in accordance with such Resolution of the Board. Subject to Sections 59, 61 and 62, upon compliance with the foregoing provisions of this Section, the New York Trustee may apply Trust Moneys as requested by said Resolution of the Board in an amount up to, but not exceeding, the principal amount of the Bonds so redeemed or purchased, using the cash deposited pursuant to Paragraph B of this Section, to the extent necessary, to pay any accrued interest and premium required in connection with any such redemption or purchase.

**Section 59.** To the extent that any Trust Moneys are proceeds of insurance upon any part of the Trust Estate, they may subject to the provisions of Section 60, be paid over upon the Written Request of the Company to reimburse the Company for expenditures made for the purpose of repairing, restoring or replacing the property destroyed or damaged, upon the receipt by the New York Trustee of the following:

A. A CERTIFICATE OF THE COMPANY, stating:

(1) Whether any of the Trust Moneys so to be withdrawn is Bonded Cash;

(2) That expenditures have been made for such purpose, and the amount thereof, and giving a brief description of the nature of such repairs restorations and replacements, and also stating that the amount so expended is not in excess of the reasonable value of such repairs, restorations or replacements, and also stating that no part of such repairs, restorations or replacements has in any previous or then pending application been made the basis for the authentication and delivery of Bonds or the withdrawal of any cash or the release of any property from the lien of this Indenture, or of a Prior Lien;

(3) That there is no outstanding indebtedness of the Company, or known, after due inquiry, to the Company, for the purchase price or construction of, or for labor, wages or materials in connection with the construction of, such repairs, restorations or replacements, which could become the basis of a lien thereon prior to the lien of this Indenture and which, in the opinion of the signers of said certificate, might materially impair the security afforded by such repairs, restorations or replacements; and

(4) That the Company is not in default in the performance of any of the covenants on its part to be performed under this Indenture.

B. AN OPINION OF COUNSEL to the effect that such repairs, restorations or replacements are subject to the direct lien of this Indenture free from all other liens, charges or encumbrances prior to the lien of this Indenture, except Permitted Encumbrances, and easements and similar encumbrances which in the opinion of such counsel, do not materially impair the use of such repairs, restorations or replacements in the operation of the business of the Company, and except also any Prior Liens, charges or encumbrances to which the property so destroyed or damaged shall have been subject at the time of such destruction or damage.

The amount so to be paid shall be an amount up to, but not exceeding, the amount of the expenditures stated in such certificate.

**Section 60.** In the event that at any time there shall be on deposit with the New York Trustee under this Article Trust Moneys in an amount in excess of \$250,000, and, if at all times during the preceding two years the amount of Trust Moneys so on deposit with the New York Trustee shall have exceeded such amount, then, and in every such case, the New York Trustee shall set aside all Trust Moneys then held by it and which have been held by it for more than two years, and thereafter the Trust Moneys so set aside may be applied only in accordance with the provisions of Section 58. In case Trust Moneys received by the New York Trustee under this Article shall represent the proceeds of a sale by the Company or of the taking by eminent domain or the purchase by a public authority of any portion of the Company's property the proceeds from which shall be in excess of \$1,000,000 (including, at their principal amount, and purchase money or governmental obligations constituting a part of such proceeds), then all such Trust Moneys shall be applied only in accordance with Section 58, except that in such case the Bonds to be designated for purchase or redemption shall be prorated, in amount, as between the Bonds of all series then outstanding, in proportion to the respective total amounts of the Bonds of each series then outstanding; provided, however, that, in case the proceeds of the taking by eminent domain or of