

MORTGAGE RECORD 85

ARTICLE XII.
EFFECT OF MERGER, CONSOLIDATION OR SALE.

Section 1. Corporation may be Consolidated or Merged or its Property Sold as an Entirety under Certain Limitations.

Nothing contained in this Indenture shall prevent any consolidation or merger of the Corporation with or into any other corporation, or any conveyance, transfer or lease, subject to this Indenture, of all the mortgaged and pledged property as an entirety, or substantially as an entirety, to any corporation lawfully entitled to acquire or lease or operate such property; provided, however, and the Corporation covenants and agrees as follows:

(a) That any such consolidation, merger, conveyance, transfer or lease shall be made upon such terms as fully to preserve and in no respect to impair the lien, efficiency, or security of this Indenture, or any of the rights or powers of the Trustee or the bondholders hereunder; and

(b) That any such lease shall be made expressly subject to immediate termination by the Trustee at any time during the continuance of a completed default hereunder, and also by the purchaser of the property so leased at any sale thereof under the terms of this Indenture, whether such sale be made under the power of sale conferred by this Indenture or under judicial proceedings; and

(c) That upon any such consolidation, merger, conveyance or transfer, or upon any such lease, (the term of which lease extends beyond the date of the maturity of any of the bonds secured hereby), the due payment of the principal of and any premium on and the interest on all bonds then outstanding hereunder according to their tenor, and the due and punctual performance and observance of all provisions, covenants and conditions of this Indenture to be observed, kept or performed by the Corporation, shall be assumed by the corporation which is formed by such consolidation or into which such merger shall have been made, or which acquires all the mortgaged and pledged property as an entirety or substantially as an entirety, as above stated, or by a lessee under any such lease, the term of which extends beyond the date of maturity of any of the bonds secured hereby.

Section 2. Successor Corporation May Issue Bonds on Certain Conditions.

In case the Corporation, pursuant to Section 1 of this Article XII, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to the lien of this Indenture, all the mortgaged and pledged property, as an entirety, or substantially as an entirety, the corporation resulting from such consolidation, or into which the Corporation shall have been merged, or which shall have received a conveyance or transfer as aforesaid (such corporation being called the "successor corporation" in this Indenture), - upon executing and causing to be recorded, an indenture with the Trustee, satisfactory to the Trustee, whereby the successor corporation shall assume and agree duly to pay the principal of and any premium on and the interest on the bonds issued hereunder in accordance with the provisions of such bonds and coupons and of this Indenture, and shall agree to perform, observe and fulfill all the provisions, covenants and conditions of this Indenture and any indenture supplemental hereto to be observed, kept and performed, - shall succeed to and be substituted for the Corporation, with the same effect as if it had been named herein and in the bonds hereby secured as the mortgagor or obligor corporation, and the successor corporation shall have and may exercise under this Indenture and under the bonds hereby secured the same powers and rights as the Corporation, and, (without in any way limiting or impairing by the following enumeration the scope and intent of the foregoing general powers and rights), such successor corporation thereupon may cause to be executed, issued and delivered, either in its own name or in the name of the Corporation, any or all of such bonds which shall not theretofore have been executed by the Corporation and authenticated by the Trustee, and upon the order of such successor corporation in lieu of the Corporation, and subject to the terms, conditions and restrictions in this Indenture contained with respect to the authentication and delivery of the bonds, the Trustee shall authenticate and deliver any of such bonds which shall have been previously signed and delivered by the officers of the Corporation to the Trustee for authentication, and any of such bonds which such successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be executed and delivered to the Trustee for such purpose. All the bonds so issued shall in all respects have the same legal right and security as the bonds theretofore issued in accordance with the terms of this Indenture, as though all of such bonds had been authenticated and delivered at the date of the execution hereof; provided, however, that as a condition precedent to the execution by such successor corporation and the authentication and delivery by the Trustee of any such additional bonds upon the basis of Available Capital Additions, the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as provided in this Section 2, or one or more subsequently executed supplemental indentures, shall contain a conveyance or transfer and mortgage in terms sufficient to include such Available Capital Additions; and provided further that the lien of this Indenture and of the indenture so to be executed by such successor corporation so created, shall have similar force, effect and standing as the lien of this Indenture would have had if the Corporation had not been consolidated with or merged into such other corporation or had not conveyed or transferred, subject to this Indenture, all the mortgaged property as an entirety, as aforesaid, to such successor corporation, and had itself acquired or constructed such Available Capital Additions, and requested the authentication and delivery of bonds under the provisions of this Indenture with respect thereto.

There shall be delivered to the Trustee at the time of the execution and delivery to the Trustee of any such indenture an Opinion of Counsel stating that such Indenture complies with the foregoing conditions and provisions of this Section 2, and that any such successor corporation is lawfully entitled to acquire the mortgaged property as an entirety, and to operate it.

Section 3. Extent of Lien of Indenture on Property of Successor Corporation.

In case the Corporation, pursuant to Section 1 of this Article XII, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to this Indenture, all the mortgaged and pledged property as an entirety, or substantially as an entirety, as aforesaid, neither this Indenture nor the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as provided in Section 2 of this Article XII, shall, unless such indenture shall otherwise expressly provide, (notwithstanding anything in this Indenture contained to the contrary), become or be a lien upon any of the properties or franchises of the successor corporation except upon those acquired by it from the Corporation, and upon extensions and additions appurtenant to the property acquired from the Corporation, and upon such franchises, replacement and additional property as may be acquired by the successor corporation in pursuance of the covenants contained herein to remain, renew and preserve the franchises covered by this Indenture and to keep and maintain the mortgaged property in good repair, working order and condition, or in pursuance of some other covenant or agreement required to be kept and performed by the Corporation.

Section 4. Successor Corporations to Be Included in Certain Definitions and Requirements.

The word "Corporation" whenever contained in this Indenture shall (subject to the provisions of this Article XII) include any successor corporation as defined in this Article XII, and the word "seal" whenever contained in this Indenture shall include the seal of the successor corporation, and any order, request, certificate or other instrument of any officer or officers of the Corporation, provided for in this Indenture, may be made by like officials of the successor corporation, and any Resolution, as hereinafter defined, may be adopted by the board of directors or board of trustees, as the case may be, of the successor corporation.

Section 5. Powers May Be Surrendered by Corporation or a Successor.

At any time prior to the exercise of any power reserved by this Article XII to the Corporation or to such successor corporation, the Corporation or such successor corporation may surrender any such power by delivery to the Trustee of an instrument in writing, executed by its President or a Vice-President under its corporate seal and attested by its Secretary or an Assistant Secretary, accompanied by the affidavit of its Secretary or an Assistant Secretary that the execution of such instrument was duly authorized by its Board of Directors, and thereupon the power so surrendered shall cease.