

MORTGAGE RECORD 85

The Cost of any property comprising all or substantially all of the property and assets acquired by the Corporation as an entirety from any other corporation, may, at the option of the Corporation, include the cost to the Corporation of the acquisition of any stock or other securities of such corporation which are cancelled or surrendered for cancellation by the Corporation in connection with the acquisition of the property and assets of such other corporation.

Section 21. The term "Fair Value" as applied to any property (including obligations for the payment of money or other securities) in respect of which the Fair Value is to be ascertained under any provision of this Indenture, shall mean the fair and reasonable value of such property to the Corporation in the opinion of the person making the determination at the time of such determination.

In case such Fair Value of any property shall be stated under any provision of this Indenture both in an Engineer's Certificate and in an Independent Engineer's Certificate, the Fair Value of such property as stated in the Independent Engineer's Certificate shall control and shall be deemed the Fair Value thereof for all purposes of this Indenture.

Section 22. The term "Outstanding" used with reference to bonds issued under this Indenture shall mean as of any particular time all bonds which have been theretofore authenticated and delivered hereunder and which have not been cancelled or cremated by the Trustee or surrendered to the Trustee for cancellation or cremation, except coupon bonds which are held uncanceled by the Trustee for exchange for outstanding registered bonds without coupons, and except that in determining the bonds outstanding there shall not be included: (a) bonds to the credit whereof sums have been placed as provided in Section 3 of Article XVII hereof; (b) subject to the provisions of Section 5 of Article VI hereof, bonds which have been called for redemption and to the credit whereof sums have been placed, as provided in said Article VI; or (c) bonds in lieu of or in exchange and substitution for which any new bonds have been authenticated and delivered as provided in Sections 6 and 7 of Article I of this Indenture.

Section 23. The term "Outstanding" as used in this Indenture with reference to any indebtedness which is secured by any lien for the payment of money or its equivalent prior to or on a parity with the lien of this Indenture shall not include indebtedness secured by Permitted Liens.

Section 24. The term "Daily Newspaper" shall mean a newspaper customarily published on at least six business days of each calendar week.

Section 25. Each "Engineer's Certificate", "Independent Engineer's Certificate", "Opinion of Counsel", "Treasurer's Certificate", "Independent Accountant's Certificate" and "Net Earnings Certificate", and also each other certificate and opinion delivered to the Trustee under any of the provisions of this Indenture, with respect to compliance with a condition or covenant provided for in this Indenture (for the purpose of furnishing the Trustee with evidence of such compliance), shall include the following:

(1) A statement that the person making such Certificate or Opinion has read such covenant or condition of the Indenture, specifying in such statement such pertinent covenant or condition by appropriate reference to the Indenture;

(2) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Certificate or Opinion are based or, if in the judgment of the person making such Certificate or Opinion no examination or investigation was necessary as a basis thereof, a statement to that effect;

(3) A statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(4) A statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Any such Engineer's Certificate, Independent Engineer's Certificate, Treasurer's Certificate, Independent Accountant's Certificate, or Net Earnings Certificate may be based, so far as it relates to legal matters, upon an Opinion of Counsel (as defined herein). Any such Net Earnings Certificate may be based upon the books and records of the Corporation, and upon the certificate or opinion of or representation by an accountant or accountants, or by the Treasurer or an Assistant Treasurer, unless a person signing such Net Earnings Certificate knows that the books and records of the Corporation or the certificate or opinion or representation with respect to the matters above mentioned are erroneous, or unless such person should have known them to be erroneous, in the exercise of reasonable care.

Any Opinion of Counsel may be based, so far as it relates to factual matters concerning which information is in the possession of the Corporation, upon a certificate or opinion of or representation by an officer or officers of the Corporation, and so far as it relates to compliance by the Corporation with the net earnings requirement specified in the second paragraph of subdivision (A) of Section 4 of Article II of this Indenture, upon a certificate or opinion of or representation by an accountant or accountants or the Treasurer or an Assistant Treasurer of the Company, unless the signer of such Opinion knows that the certificate or opinion or representation, with respect to the matters above mentioned, is erroneous, or unless such person should have known it to be erroneous, in the exercise of reasonable care.

In the case of conditions precedent provided for in this Indenture (including any covenants compliance with which constitutes a condition precedent) which relate to the authentication and delivery of bonds hereunder, to the release or release and substitution of property subject to the lien hereof, to the satisfaction and discharge of this Indenture or to any other action to be taken by the Trustee at the request or upon the application of the Corporation, as the case may be, the Corporation will furnish to the Trustee, as evidence of compliance with such conditions precedent, in addition to or as a part of the certificates or opinions of officers of the Corporation or other persons required in such case by the other applicable provisions of this Indenture:

(a) A Treasurer's Certificate stating that such conditions precedent have been complied with; and

(b) An Opinion of Counsel stating that in his opinion such conditions precedent have been complied with.

ARTICLE XVII.

MISCELLANEOUS PROVISIONS.

Section 1. Reference to Either Party Includes Successors and Assigns.

Whenever reference is made in this Indenture to one of the parties hereto, the successors and assigns of such party shall be deemed to be included, and all the covenants, promises and agreements contained in this Indenture by the Corporation or by the Trustee shall bind and enure to the benefit of their respective successors and assigns, whether so expressed or not.

Section 2. No Rights Granted Hereunder Except to the Parties and to Holders and Owners of Bonds and Coupons.

Nothing expressed or implied in this Indenture is intended or shall be construed to confer upon or to give to any person or corporation, other than the parties hereto and the holders or registered owners of the bonds and the holders of coupons issued hereunder, any right, remedy or claim under or by reason of this Indenture or any indenture supplemental hereto, or any covenant, condition or stipulation of this Indenture or such supplemental indenture; and the covenants, promises and agreements contained in this Indenture and in any and all indentures supplemental hereto are and shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, and of the holders or registered owners of the bonds and of the holders of the coupons issued hereunder.

Section 3. Effect of Failure to Present Bonds or Coupons for Payment.

In the event that any bond issued hereunder shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for the redemption thereof, or in the event that any coupon shall not be presented for payment at the due date thereof, the Corporation, having deposited for the use and benefit of the holder thereof with the Trustee, in trust for the purpose, or left with it if previously so deposited, funds sufficient to pay the principal of such bond