

# MORTGAGE RECORD 88

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 lessees, 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 July 1, 1942, except from "net earnings" of the Company available for such dividends, distributions or retirements, accumulated subsequent to July 1, 1942. "Net earnings" of the Company shall be determined at the end of each fiscal year by independent public accountants selected by the Company and approved by the Trustee. "Net earnings" of the Company may be determined any time during each fiscal year by the officer of the Company rendering a supplementary certificate bringing the annual audit report down to date. For the purpose of this Indenture, "net earnings" shall mean the amount remaining from gross earnings of the Company after making proper deductions, which deductions shall include, but shall not be limited to, deductions for all operating expenses (other than charges for depreciation), taxes, maintenance, accrued 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 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 not yet accrued) which will become due and payable within eighteen (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 8.01 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 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 replacement, renewal, move or change of position, unless such property be released from the lien of this Indenture in the manner hereinafter provided.

(II) Unless an event of default, as defined in Section 8.01 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 an 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 the Subdivision (II) 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 (6) 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