

## MORTGAGE OF REAL ESTATE

renewal or rebuilding and an Opinion of Counsel that the property so rebuilt or renewed is subject to the Lien hereof to the same extent as was the property so lost or damaged, provided, however, that to the extent that moneys paid by the Corporate Trustee to the Company for reimbursement, as aforesaid, shall represent the proceeds of property that was not Funded Property damaged or destroyed by fire, the property so rebuilt or renewed (for which reimbursement is so made), shall not be deemed to be Funded Property.

Any such money not so applied within eighteen (18) months after its receipt by the Corporate Trustee, or in respect of which notice in writing of intention to apply the same to the work of rebuilding or renewal then in progress and uncompleted shall not have been given to the Corporate Trustee by the Company with<sup>in</sup> such eighteen (18) months, or which the Company shall at any time notify the Corporate Trustee is not to be so applied, shall thereafter be withdrawn, used or applied in the manner, to the extent and for the purposes and subject to the conditions provided in Section 61 hereof.

SECTION 38 (1). The Company will not, except as herein permitted, do or suffer any act or thing whereby the Mortgaged and Pledged Property might or could be impaired, and it will at all time maintain, preserve and keep the Mortgaged and Pledged Property and every part thereof, in good repair, working order and condition. The Company will from time to time make all needful and proper repairs, replacements, additions, betterments and improvements, so that the operations and business of and pertaining to the Mortgaged and Pledged Property and every part thereof shall at all times be conducted properly and advantageously; and whenever any portion of the Mortgaged and Pledged Property shall have been worn out or destroyed or shall have become obsolete, inefficient or other wise unfit for use, the Company will procure substitutes of at least equal utility and efficiency, so that at all times the efficiency of the Mortgaged and Pledged Property shall be fully maintained.

Nothing herein contained, however, shall be held to prevent the Company from permanently discontinuing the operation of or reducing the capacity of any of its plants or properties, if, in the judgment of the Company, it is no longer advisable to operate the same, or to operate the same at its former capacity, as the case may be, or if the Company intends to sell or dispose of the same and within a reasonable time shall endeavor to effectuate such sale; nor shall anything herein contained be construed to prevent the Company from taking such action with respect to the use of its plants and properties as is proper under the circumstances, including the cessation or omission to exercise rights, permits, licenses, privileges or franchises which, in the judgment of the Company, can no longer be profitably exercised or availed of.

The Company covenants that it will promptly retire on its books of account all property included in plant account (except real estate held for the purpose of sale or resale) that has, in the opinion of the Company, permanently ceased to be used or useful in its business.

Whenever (but not oftener than once in any period of five (5) Years) the holders of at least twenty-five per centum (25%) in principal amount of the bonds Outstanding hereunder shall deliver to the Corporate Trustee and to the Company a written statement that they have reasonable grounds to believe that the Mortgaged and Pledged Property has not been adequately maintained in good repair, working order and condition and request the Company to furnish to the Corporate Trustee an Independent Engineer's Certificate stating whether or not the Mortgaged and Pledged Property, as an operating system or systems, has been maintained in good repair, working order and conditions, and whether or not there is any property of the Company which should be retired on the books of the Company as having ceased permanently to be used or useful in the business of the Company and which has not been so retired, the Company shall cause such Independent Engineer's Certificate to be furnished to the Corporate Trustee within a reasonable time after such request. If such Independent Engineer shall report that the Mortgaged and Pledged Property, as an operating system or systems, has not been maintained in good repair, working order and condition, he shall state clearly in his report the character and extent and estimated cost of making good the deficiency in such maintenance, and, if longer than one year, the time reasonably necessary to make good such deficiency and, if he shall report that there is property of the Company which should be retired on the books of the Company as having ceased permanently to be used or useful in the business of the Company and which has not been so retired, his report shall briefly describe such property and shall state the aggregate amount, if separately shown on the books of the Company, or the amount estimated by the Company if not separately shown, which should be so retired upon the books of the Company. Said report shall be placed on file by the Corporate Trustee and shall be open to inspection by any bondholder at any reasonable time.

If the Company, within thirty (30) days after the filing of the report of such Independent Engineer, does not consent to and approve in writing the amount stated therein as aforesaid as the estimated cost of making good such maintenance deficiency and/or the amount stated therein which should be retired upon the books of the Company, the amount of such maintenance deficiency, if any, and/or <sup>the</sup> amount, if any so to be retired upon the books of the Company shall be forthwith referred to three (3) arbitrators selected in the following manner; The Corporate Trustee, within ten (10) days after the expiration of said period of thirty (30) days, shall name one arbitrator and give