

TITLE TO REAL ESTATE

application of the purchase money.

§5.07. §§5.01 to 5.04, inclusive, shall not be construed as being in limitation of one another, but as separate and independent methods of using, releasing or disposing of property subject to the lien of this Indenture.

The instruments and/or things mentioned in §§5.02 to 5.05, inclusive, shall be full evidence of compliance by the Company with the provisions of each such Section, respectively, and full authority to the Trustee for taking any action to be taken by it thereunder.

§5.08. Notwithstanding the foregoing provisions of this Article 5, whenever §5.03 provides for the deposit of cash with the Trustee, such cash need not be deposited to the extent that the Company, pursuant to §5.09, would at the time be entitled to withdraw such cash if deposited, and to the extent that the requirements of said §5.09 have been fully complied with.

§5.09. The Trustee shall pay over to the Company from time to time upon written request of its Treasurer or an Assistant Treasurer all moneys held by it as proceeds of released or sold property, or as insurance money (unless otherwise applied as provided in §4.05) to an amount or amounts equal to the value of additional property acquired by the Company as defined below, not previously used as a basis for the release of cash or of property under this Indenture, and properly chargeable and so charged to fixed property accounts of the Company after April 1, 1940, when and only when the Trustee shall have previously received or shall receive contemporaneously with the release of the cash,

(A) a certificate of an appraiser (who shall be an independent appraiser in case the property covered by the certificate is stated therein to have a value in excess of \$25,000), selected and paid by the Company and approved by the Trustee, stating in substance;

(1) That the Company has acquired additional property (as hereinafter defined) (which shall be described with reasonable detail in the certificate or in any exhibit attached to and made a part thereof);

(2) The value (as hereinafter defined in §5.11) of such additional property; and

(3) That none of such additional property has been previously used as a basis for the payment of release, sale, insurance or other moneys to the Company hereunder and that the same is properly chargeable, and has been so charged, to the fixed property accounts of the Company after April 1, 1940;

(B) an opinion of counsel (which may be based on his own investigation and/or upon certificates, statements and/or investigations made by persons in whom he has confidence), stating in substance

(1) That the Company has good title to the additional property described in the appraiser's certificate provided for in (A) above;

(2) That such additional property is subject to the lien of this Indenture and is free and clear of all other encumbrances except permitted liens; and

(3) That the term "permitted liens" is used in the opinion as defined in §4.02.

Additional property within the meaning of this Article shall be of the nature of permanent extensions, additions, alterations, betterments, improvements or replacements to, of, in or upon the mortgaged property constructed or acquired by the Company subsequent to April 1, 1940; which have not previously been used as the basis for the release of property nor as the basis for the release of sale, insurance or other moneys to the Company hereunder. It is understood and agreed that no expenditures for maintenance or repairs, or other expenses which in the ordinary practice of companies carrying on a similar business, are charged to operating expenses, shall be deemed to be additional property.

In no event shall the Trustee if it acts in good faith be responsible for the payment of money under the provisions of this §5.09 if made as aforesaid.

§5.10. Any or all moneys held by the Trustee under this Article 5 if not withdrawn as above provided shall at the option of the Company, expressed by resolution of its Board of Directors, be added to the Sinking Fund and applied as provided in Article 6 hereof.

§5.11. For the purposes of this Article 5 the value of property to be used as the basis for the withdrawal of money or release of property hereunder shall be deemed to be the fair value to the Company as of the date of the execution of any certificate as to such value provided for in this Article 5, but in no event more than the amount of cash or other consideration actually expended therefor by the Company. Any and all additional property as hereinbefore defined, acquired before the execution of any release or sale of property or withdrawal of money may be used as a basis for the release or sale of property or the withdrawal of money, provided, however, that if such property so added shall have been used for any such release or withdrawal purposes to the extent only of a part of its fair value, the excess thereof not so used may thereafter be used as a basis for the release or sale of property or the withdrawal of money to the extent of