

MORTGAGE RECORD 75

character as to the execution thereof, or as to the appointment of any person signing the same as agent or attorney, or as to the ownership of Bonds transferable by delivery, if the Trustee shall otherwise be satisfied of such facts.

Section 2. In order to protect the Trustee and to promote and protect the equal ratable rights of every holder of the Bonds, and to avoid multiplicity of suits, no holder of any Bond or of any coupon thereto appertaining, shall have the right to institute any suit, action or proceeding at law or in equity, upon or in respect of this Indenture, or for the execution of any trust or power hereof, for foreclosure or for the appointment of a receiver or for any other remedy, under or upon this Indenture, unless such holder shall previously have given to the Trustee written notice of an existing default and of the continuance thereof as hereinbefore provided; nor unless also the holders of not less than either twenty five per cent (25%) in principal amount of the Bonds then outstanding or fifty per cent (50%) in principal amount at the time outstanding of any particular series, if more than one series be outstanding hereunder, in respect of which such default shall exist, shall have furnished the Trustee, with proof of ownership satisfactory to the Trustee, if required by the Trustee, and shall have made written request upon the Trustee to take action in respect of such event of default and shall have afforded to the Trustee a reasonable opportunity, after a right of action shall have accrued to the Trustee, to proceed to exercise the powers hereinbefore granted or to institute suit, action or proceeding in its own name; nor unless also one or more such holders shall have offered to the Trustee adequate security, funds and indemnity, satisfactory to the Trustee from time to time, against the cost, expenses and liabilities which might be incurred by the Trustee by reason of such action, suit or proceeding; nor unless also the Trustee shall have refused or neglected beyond a reasonable time to act in respect of such event of default. Such notice request, offer of security, funds and indemnity and (if required by the Trustee) proof of ownership are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action of cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood, intended and agreed that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice the rights of the Trustee or of any other Bondholder under this Indenture by his or their action, or to seek or obtain priority over or preference to any other such holder, or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the ratable and common benefit of all holders of the then outstanding Bonds similarly situated.

For the enforcement of the foregoing provisions of this section 2, and for the protection of their rights, hereunder each and every holder of Bonds, and the Trustee, shall be entitled to such relief as can be given either at law or in equity; but, subject only to the provisions of section 5 of Article VI, no provision of this section 2 or of this Indenture, or of the Bonds, shall be construed to limit or affect any discretion or power given by any provision of this Indenture, to the Trustee to determine whether or not the Trustee, shall take action in respect of any default without such notice, request, offer of security, funds, indemnity or proof of ownership or to affect any other discretion or power of the Trustee.

Nothing, however, in this Article VI or elsewhere in this Indenture, or in the Bonds or coupons, shall affect or impair the obligation of the Company, which is unconditional and absolute, to pay, at the maturities therein and herein expressed, the principal of and interest on the Bonds to the respective holders of the Bonds and coupons at such maturities.

ARTICLE VII Concerning the Trustee.

Section 1. The Trustee accepts and agrees to execute the trusts of this Indenture upon and only upon and subject to the terms and conditions of this Indenture, to all of which the Company and the Bondholders agree by the issue, acceptance and holding of the Bonds, expressly including, but without limiting the foregoing or other provisions hereof protecting the Trustee and without limiting any power or discretion of the Trustee hereunder the following:

Subsection A. The Trustee shall be exempt from giving any bond or security unless ordered by a court of competent jurisdiction for cause shown. The Trustee may consult with, and may execute and perform any and all of its trusts, powers or duties hereunder by or through or upon the advice of, such officers, employees, attorneys (in fact or at law), counsel, engineers, accountants and other agents, consultants, experts and persons, whether individuals, firms or corporations, as shall from time to time be deemed by the Trustee to be competent and be selected, approved, employed, retained or consulted by the Trustee, whether or not disinterested (unless and to the extent that any provision hereof expressly requires that they be independent), and (unless as aforesaid) whether retained or employed by the Trustee the Company or otherwise. The Trustee shall in no event be held liable for any neglect, act, omission or wrong-doing of any agent, consultant, expert or person provided reasonable care has been exercised in his or its selection; and the Trustee shall be without any liability whatsoever but shall be completely protected in respect of any action or omission to act taken or suffered by it or them in good faith in accordance with any decision or advice of such counsel or other consultants, experts or persons. Any such action or omission shall bind and be conclusive upon the Bondholders and the Company.

Subsection B. The Trustee shall be entitled to, and is authorized to pay out of the Mortgaged Property, reasonable compensation (which shall not be limited by any provision of law in respect of the compensation of a trustee of an express trust), for its own services and for the services of all its agents, consultants, experts and persons in connection with the trusts hereof, and shall be entitled out of the Mortgaged Property, and from holders of Bonds as herein provided, to reimbursement and indemnity, and to be put in funds, from time to time and whenever required by the Trustee, for all advances and disbursements, expenditures, damages, loss, cost, expenses and liabilities made or to be made, or incurred or to be incurred, by the Trustee and by its agents, consultants, experts and other persons, directly or indirectly in connection with the trusts, powers and duties hereunder, together with interest thereon at the rate of six per cent (6%) per annum, unless in a particular instance, or particular instances, a different rate shall be expressly agreed upon by the Company and by the Trustee; all of which are a part of the obligations of the Company secured by this Indenture; and the Trustee shall be entitled to priority of payment for such compensation, reimbursement, indemnity funds and interest and shall have a lien therefor upon any and all money and property at any and all times constituting any part of the Mortgaged Property, and any proceeds thereof, prior to the rights and claims thereto of the holders of the Bonds.

Subsection C. The Trustee shall be fully protected and under no liability or responsibility whatever:

(1) for accepting (as conclusive proof in favor of the Trustee and as against the Company the Bondholders send all other persons, of any fact or matter purporting to be therein evidenced or contained upon or by reason of which the Trustee may be required or permitted or may deem it expedient to act or abstain from acting) and for acting or abstaining from acting upon:

(a) any notice, authorization, order, direction resolution, vote or other instrument, communication or action purporting to be by the Company or by its officers, directors or agents, in any form or executed or evidenced in any manner required or permitted by any of the provisions hereof relating thereto, or (if in any instance no form thereof or no method of executing or evidencing the same is herein designated) embodied either in an instrument or writing, satisfactory to the Trustee, executed or certified in the name of the Company by its President and either its secretary or its