

MORTGAGE RECORD No. 79

the purchase money shall have been received by the Trustee; or

(c) The Company shall have paid to the Trustee the principal amount of and accrued interest upon all bonds outstanding hereunder when the same shall become due whether by lapse of time, by call for redemption, or by declaration, and an amount sufficient to pay all charges and expenses of the Trustee; then and in every such case the moneys deposited with or held by the Trustee shall without further act be deemed forthwith to be set aside and reserved for the benefit of the holders of bonds and coupons so called for redemption, as mentioned in subparagraph (a) of this Section, or to be set aside and reserved for the benefit of all holders of bonds and coupons then outstanding hereunder, as mentioned in subparagraph (b) and (c) of this Section, as the case may be. Sums so reserved in the hands of the Trustee shall constitute a special trust fund and shall, after deduction of all charges and expenses of the Trustee, be paid out to the holder or holders of the bonds and coupons for which such reservation shall have been made, upon presentation of such bonds or coupons to the Trustee for cancellation if such bonds and coupons be paid in full, or for endorsement if such bonds or coupons be not paid in full, but no interest shall accrue upon such funds so reserved after the reservation thereof and prior to the presentation of such bonds or coupons as aforesaid.

Section 11. The Trustee is hereby irrevocably appointed special agent of the holders of the bonds and vested with full power in their behalf to effect and enforce this Mortgage for their benefit as provided herein; but anything in this Mortgage contained to the contrary notwithstanding, the holders of a majority in principal amount of the bonds then outstanding, in case of any subsisting event of default or of any other event entitling the Trustee to proceed hereunder, shall have the right, from time to time, to direct and control the method and place of conducting, and the times of holding and adjourning, any sale of the mortgaged property or any part thereof, and any and all proceedings by the Trustee for the enforcement of any of the provisions of this Mortgage or for the appointment of a receiver, and any other proceedings taken by virtue of any provisions of this Mortgage, including the right to have withdrawn and discontinued at any stage thereof any proceeding taken hereunder by the Trustee, providing the defaults upon which such proceedings were based have been remedied and made good, but they shall have no right or power to involve the Trustee in any personal liability of any kind to anybody, without first and from time to time indemnifying it to the satisfaction of the Trustee.

The Trustee may, in the discretion of the Trustee and upon the written request of the holders of a majority in principal amount of the bonds then outstanding, waive any default hereunder and its consequences, except a default in the payment of the principal of any bonds when and as the same shall become due and payable by lapse of time, provided that in case of a default in the payment of interest on the bonds or of any sinking fund payment, the default therein shall have been remedied and made good. In case of any such waiver, the Company, the Trustee and the holders of the bonds shall be restored to their former position and rights hereunder, respectively, but such waiver shall not extend to any subsequent or other default or impair any right consequent thereon. The Trustee shall be under no obligation to waive any default and shall not be responsible to anyone for waiving or refraining from waiving any default in accordance herewith.

Section 12. In the event that the Trustee shall receive conflicting or inconsistent requests and indemnity from two or more groups of bondholders, each representing less than a majority in principal amount of bonds then outstanding, the Trustee, in its sole discretion, may determine what, if any action shall be taken.

ARTICLE X.

CONDITIONS ON WHICH TRUSTEE ACCEPTS TRUST.

Section 1. The Trustee, for itself and its successors, accepts the trusts of this Mortgage and agrees to execute them, but only upon the following additional terms and conditions.

(a) The Trustee shall be under no obligation to see to the recording, registry or filing of this Mortgage, and the Trustee may authenticate and deliver bonds issued hereunder before any such recording, registry or filing.

(b) The Trustee shall be entitled to reasonable compensation (which shall not be limited to the compensation of trustees of any express trust as provided by law) for all services rendered by it in the case of the trusts hereby created, and shall have a lien upon the Trust Estate prior to the lien of the bonds secured hereby, for such compensation and for its reasonable expenses and counsel fees. The Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder, from time to time on request of the Trustee, and to indemnify the Trustee against any liability or damages incurred or sustained by it under this Mortgage; and the Trustee shall have a lien upon the Trust Estate prior to the rights and claims of the holders of the bonds secured hereby, for any such liability or damage and the reimbursement thereof.

(c) The Trustee shall be protected in acting upon any notice, request, consent, certificate, bond or other paper or document believed by it to be genuine and to have been signed by the proper party or parties, and any action taken by the Trustee pursuant to this Mortgage upon any notice, request, authority or consent of any person who, at the time of making such request or giving such authority or consent is the owner of any bonds secured hereby, shall be conclusive and binding upon all future owners of the same bond and of all bonds, respectively, issued in exchange therefor or in place thereof.

(d) The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof; nor for the exercise of any discretion or power hereunder, nor for anything whatever in connection with this trust, except wilful misconduct or gross negligence; nor shall the Trustee be accountable for the use by the Company of any bonds authenticated or delivered by the Trustee hereunder or of any of the proceeds of any such bonds. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created which, in its opinion, shall be likely to involve it in expense or liability unless one or more of the holders of the bonds hereby secured shall, as required by the Trustee, furnish it indemnity satisfactory to it against such expense or liability. The Trustee shall not be required to take notice of any default under this Mortgage, and for all purposes it conclusively may assume that there has been no default under this Mortgage, unless and until notified in writing of such default by the holders of at least twenty-five per cent (25%) of the aggregate principal amount of bonds secured hereby then outstanding, nor shall the Trustee be required to take any action in respect of any default unless requested to take such action in respect thereof by an instrument in writing, signed by the holders of not less than twenty-five per cent (25%) of the aggregate principal amount of bonds secured hereby then outstanding, and tendered indemnity satisfactory to it as aforesaid; but the foregoing provisions are intended only for the protection of the Trustee and shall not limit any right or power given to the Trustee by this Mortgage to act in respect of any default, without such notice or request from the bondholders. Except as herein expressly otherwise provided, the Trustee shall not be bound to recognize any person as a bondholder unless or until his bonds are submitted to the Trustee for inspection, if required, and his title, if disputed, established to the satisfaction of the Trustee.

(e) The Trustee may perform its powers and duties by or through, and may select and employ in and about the execution of this trust, attorneys, agents and servants whose reasonable compensation shall be paid by the Company, and in default of such payment shall be a charge upon the Trust Estate and the proceeds thereof, paramount to the rights and claims of the holders of the bonds secured hereby.

(f) The Trustee may, at the expense of the Company, advise with counsel, and any action under this Mortgage taken or suffered in good faith by it in accordance with the opinion of such counsel shall substitute full protection to the Trustee.

(g) It shall be no part of the duty of the Trustee to see to the insuring of any property hereby conveyed or assigned, or to effect such insurance, or to see to the payment of any tax, assessment or other governmental charge which may be levied upon or imposed against it or against the Company, or against the Trust Estate, or against the owners of the said bonds, or, except as in this Mortgage provided, to see to the performance or observance of any of the covenants or agreements hereof on the part of the Company.