

DOUGLAS COUNTY

according to their tenor, and the due and punctual performance of all the covenants of this Indenture to be kept or performed by the Company or such of said covenants as the Trustees shall deem essential or desirable for the security of the bonds; and provided further that the property of the other corporation with which the Company shall consolidate or merge or to which all or substantially all the mortgaged property shall be conveyed, shall not be subject to any lien (other than the lien of current taxes) which after such consolidation, merger or conveyance will be prior to the lien of this Indenture on the property owned by such other corporation, unless the amount of obligations outstanding under and secured by such prior lien shall not exceed seventy per centum of the value of the property of such other corporation and unless the net earnings, determined as provided in Section 5 of Article 11 of this Indenture, derived from the operation of the property of such other corporation during a period of twelve consecutive calendar months ending within sixty days next preceding the date of such consolidation, merger or conveyance shall have been at least twice the interest charges for one year on all obligations outstanding under and secured by such prior lien at the time of such consolidation, merger or conveyance, except obligations for the payment or redemption of which the necessary funds shall have been deposited with the trustee under such prior lien or with the Trustee hereunder.

SECTION 2. In case the Company shall be consolidated with or merged into any other corporation, or in case all, or substantially all, the mortgaged property shall be conveyed or transferred to any other corporation, the corporation resulting from such consolidation, or into which the Company shall have been merged, or which shall have received a conveyance or transfer, as aforesaid (such corporation being hereinafter called the successor corporation), may thereafter issue bonds under this Indenture, provided it shall first execute and deliver to the Trustees an indenture satisfactory to the Trustees whereby the successor corporation (1) shall convey to the Trustees upon the trusts herein declared, but subject to any outstanding liens and encumbrances, all the property which it shall own at the date of the conveyance and all which it may thereafter acquire, except property of a character similar to that of the Company which is excluded from the lien of this Indenture, and (2) shall adopt this Indenture as its own and shall assume and agree to pay the principal of and the interest on the bonds issued or to be issued hereunder and secured hereby in accordance with the provisions of said bonds and coupons and this Indenture, and (3) shall assume and agree to perform and fulfill all the terms, covenants and conditions of this Indenture binding upon the Company. Upon the execution and delivery of such indenture, the successor corporation shall succeed to and be substituted for the Company under this Indenture with the same effect as if it had been named herein as the mortgagor corporation, and may thereafter, subject to all the terms, conditions and restrictions in this Indenture prescribed, issue bonds hereunder to the extent and for the purposes herein provided with respect to the issuance of bonds by the Company and may also issue any bonds which the Company was entitled to issue but had not issued hereunder. All the bonds so issued shall in all respects have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this Indenture. Upon the execution and delivery by such successor corporation of the indenture in this section above mentioned, all bondable property owned by it at and immediately prior to the time when it shall become such successor corporation (excluding the bondable property received from the Company), shall within the meaning of the provisions of Article 11 of this Indenture, be deemed to be purchased property acquired by such successor corporation, at the date upon which it shall become such successor corporation, for or on account of the cost or value of which bonds may be issued hereunder subject to the conditions, and upon compliance with the provisions, of said Article 11.

The Trustees may receive an opinion of counsel as conclusive evidence that such indenture complies with the foregoing conditions and provisions of this section.

SECTION 3. Every such successor corporation shall possess, subject to the terms and conditions of this Indenture, and may from time to time exercise, each and every right and power of the Company, in the name of such successor corporation or otherwise; and any act, proceeding, resolution or certificate by any of the terms of this Indenture required or provided to be done, taken or performed, or made or executed, by any board or officer of the Company shall and may be done, taken and performed, or made and executed, with like force and effect, by the corresponding board or officer of any such successor corporation.

ARTICLE XV

Concerning the Trustees

The Trustees accept the trusts hereby created but only upon the following terms and conditions, to all of which the holders of the bonds at any time outstanding by their acceptance thereof agree:

SECTION 1. Wherever any of the expressions "Trustees," "Trustee" or "Co-Trustee" is used in this Indenture, or in the bonds or coupons, such expression shall be held to include and mean the Trustees, the Trustee or the Co-Trustee (as the case may be) for the time being under the terms of this Indenture, whether the original or some successor or substitute. In case the Trustee hereunder shall become legally consolidated or merged with any other corporation, the corporation resulting from such consolidation or merger shall thereby become and be the Trustee under this Indenture. The Trustees shall not be responsible for the correctness of any of the recitals or representations in this Indenture or in said bonds contained (except in respect of the executed certificates of the Trustee endorsed on such bonds) all of which shall be taken as recitals by the Company alone, or with respect to the application or use of bonds delivered to the Company pursuant to the terms hereof, or with respect to the disposition of the proceeds of the bonds secured hereby. It shall be no part of the duty of the Trustees to see to the execution, acknowledgment or recording of this Indenture or any supplemental instrument as a mortgage or conveyance of real or personal estate, all liability in this regard being by the terms hereof expressly assumed by the Company, or to do any other act which may be suitable and proper to be done to make this Indenture or any supplemental instrument a lien, or to continue, extend or supplement such lien, or for giving notice of the existence of such lien; nor shall the Trustees have any responsibility as to the legality or validity of this Indenture, nor as to the amount or extent of the security afforded by the property hereby conveyed or purported to be conveyed, nor as to the legality, value, validity or priority of any bonds issued hereunder, nor as to the performance by the Company of any of its covenants or obligations hereunder. It shall be no part of the duty of the Trustees to see to the insurance of any part of the property hereby mortgaged, or to effect insurance themselves, or to require the deposit with them, or either of them, of insurance policies, or to pay or keep themselves advised as to the payment of rents, taxes or assessments of or upon any of the mortgaged property; but the Trustees, or either of them, may, in their discretion, and at the expense of the Company, do any or all of such matters or things, or require the same to be done. The Trustees, or either of them, may select and employ, in and about the execution of any of the duties incumbent upon them hereunder, suitable agents and attorneys, and the Trustees shall not be answerable for any act, default or misconduct of any such agent or attorney appointed in pursuance hereof if such agent or attorney shall have been selected with reasonable care; nor shall the Trustees be otherwise responsible or accountable under any circumstances whatsoever except for their wilful misconduct or gross negligence. Neither trustee hereunder shall be held liable for any neglect, omission or wrongdoing of the other. The Trustees shall be under no obligation or duty to perform any act hereunder or to institute, appear in or defend any suit in respect hereof until indemnified to their satisfaction nor unless requested so to do in writing by the holders of not less than twenty-five per centum (25%) in principal