

MORTGAGE RECORD 85

proceeds of sale to the payment of the Bonds, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment of, and to receive, all amounts then remaining due and unpaid upon any and all of the Bonds and coupons then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the same remaining unpaid, with interest. No recovery of any such judgment by the Trustee shall in any manner or to any extent affect the lien of the Trustee upon the trust estate or any part thereof or any rights, powers or remedies of the Trustee hereunder or any rights, powers or remedies of the holders of the Bonds; but such lien, rights, powers and remedies shall continue unimpaired as before.

All moneys collected by the Trustee under this Section 8.13 shall be applied as follows:

First, to the payment of the costs and expenses of the proceedings resulting in the collection of such moneys, including counsel fees, and of the charges, expenses and liabilities incurred and all advances made by the Trustee in theretofore managing and maintaining the trust estate or in executing any trust or power hereunder; and

Second, to the payment of the amounts then due and unpaid upon the Bonds and coupons, in respect of which or for the benefit of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 5.02 hereof) according to the amounts due and payable upon such Bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several Bonds and coupons, and notation of such payment thereon if partly paid, and surrender thereof if fully paid.

SECTION 8.14. No holder of any Bond or coupon issued hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the foreclosure of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder unless:

(a) such holder shall have previously given to the Trustee written notice of the occurrence of an event of default, as hereinbefore provided; and

(b) the holders of at least 25% in amount of the Bonds then outstanding shall have filed a written request with the Trustee and shall have afforded to it a reasonable opportunity to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; and

(c) said holders shall have offered to the Trustee security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred by compliance with such request; and

(d) the Trustee shall have refused or omitted to comply with such request within a reasonable time;

and such notification, request and offer of indemnity are hereby declared, in every case, at the option of the Trustee, to be conditions precedent to any action or cause of action for foreclosure or for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder it being understood and intended that no one or more holders of Bonds or coupons shall have any right in any manner whatever by his or their action to affect or to disturb or prejudice the lien of this Indenture 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 equal benefit of all holders of the outstanding Bonds and coupons;

PROVIDED, HOWEVER, that nothing in this Indenture or in the Bonds or in the coupons contained shall affect or impair the obligation of the Company, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of the Bonds to the respective holders thereof at the times and places in the Bonds expressed, or affect or impair the right of action, which is also absolute and unconditional, of such holders to enforce such payment; and provided, further, that, in case of the designation for redemption of a part but not all of the Bonds, the holder of any Bond so designated, without reference to the Trustee or the request of the holders of other Bonds, may individually enforce payment of the Bond so designated, by any appropriate proceedings.

SECTION 8.15. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or to the holders of Bonds is intended to be exclusive of any other remedy but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

SECTION 8.16. No delay or omission of the Trustee or of any holder of Bonds to exercise any right or power accruing upon the happening of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Article Eight to the Trustee or to the Bondholders, subject to the provisions of Section 8.14 hereof, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

All rights of action under this Indenture may be enforced by the Trustee without the possession of any of the Bonds or coupons or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its own name and any recovery shall be for the ratable benefit of the holders of the Bonds and coupons then outstanding.

The Trustee shall be entitled and empowered either in its own name or as trustee of an express trust, or as attorney-in-fact for the holders of the Bonds and the holders of the coupons, or in any one or more such capacities, to file such proof of debt, amendment of proof of debt, claim, petition or other document as may be necessary or advisable in order to have the claims of the Trustee and of the holders of the Bonds and of the coupons allowed in any equity receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or other similar proceedings relative to the Company or its creditors. The Trustee is hereby irrevocably appointed (and the successive respective holders of the Bonds and of the coupons by taking and holding the same shall be conclusively deemed to have so appointed the Trustee) the true and lawful attorney-in-fact of the respective holders of the Bonds and coupons, with authority to make or file in the respective names of the holders of the Bonds and/or coupons, or on behalf of all the holders of the Bonds and/or coupons as a class (subject to deduction from any such claim of the amounts of any claims filed by any of the holders of the Bonds and/or coupons themselves), any proof of debt, amendment of proof of debt, claim, petition or other document in any such proceedings and to receive payment of any sums becoming distributable on account thereof, and to execute any other papers and documents and do and perform any and all acts and things for and on behalf of such holders of the Bonds and/or coupons, as may be necessary or advisable in the opinion of the Trustee in order to have the claims of the Trustee and/or the holders of the Bonds and coupons against the Company and/or its property allowed in any such proceedings, and to receive payment of or on account of such claims.

SECTION 8.17. The Trustee shall have power to institute and to maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security hereunder by any acts of the Company or of others, which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders in respect of the mortgaged property and in respect of the income, earnings, issues and profits arising therefrom, including power to institute and to maintain suits or proceedings to restrain the enforcement or observance of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement or observance of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Bondholders or of the Trustee.