

## MORTGAGE RECORD 85

there may be credited thereon the sums payable out of the net proceeds of such sale to the holder of such Bonds and coupons and claims for interest, subject to the provisions of Section 95, as his ratable share of such net proceeds; and thereupon such purchaser shall be credited, on account of such purchase price, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the Bonds and coupons and claims for interest so used and applied; and at any such sale, any Bondholder or the Trustees, or either of them, may bid for and purchase the property offered for sale, may make payment on account thereof as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability thereon.

**Section 116.** Upon filing a bill in equity or upon other commencement of judicial proceedings by the Trustees, or either of them, to enforce any right under this Indenture, the Trustees, or either of them, shall be entitled to exercise any and all other rights and powers herein conferred and provided to be exercised by the Trustees, or either of them, upon the occurrence of an Event of Default; and, as a matter of right, without notice or demand and without regard to the adequacy of the security for the Bonds, the Trustees or the New York Trustee shall be entitled to the appointment of a receiver of the Trust Estate, and of the tolls, earnings, revenue, rents, issues, profits and other income thereof, with all such powers as the court or courts making such appointment shall confer; but, notwithstanding the appointment of any receiver, the New York Trustee shall be entitled to retain possession and control of, and to collect and receive the income from, any moneys, obligations, evidences of indebtedness, and other securities and property deposited or pledged with it hereunder or agreed or provided to be delivered to or deposited or pledged with it hereunder.

**Section 117.** The Company covenants that

(1) in case default shall be made in the payment of any interest on any Bond when and as the same shall become due and payable, and any such default shall have continued for a period of 30 days, or

(2) in case default shall be made in the payment of the principal of any Bond when and as the same shall become due and payable, whether by the terms thereof or otherwise as herein provided, then, and upon demand of the New York Trustee, the Company will pay to the New York Trustee for the benefit of the holders of the Bonds and coupons in respect of which such default shall be made, the whole amount due and payable on all such Bonds and coupons, for principal and interest, including the redemption price of any Bonds called for redemption, with interest upon the overdue principal and overdue installments of interest at the rate of 8% per annum; and in case the Company shall fail to pay the same forthwith upon such demand, the Trustees, in their own names, and as trustees of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustees shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, and the right of the Trustees to recover such judgment shall not be affected by any entry or sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or the foreclosure of the lien hereof. In case of a sale of the Trust Estate and the application of the proceeds of sale to the payment of the Bonds, the Trustees, in their own names and as trustees 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 Trustees shall in any manner or to any extent affect the lien of the Trustees upon the Trust Estate or any part thereof or any rights, powers or remedies of the Trustees, or either of them, 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 Trustees, or either of them, under this Section 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 Trustees, or either of them, 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 95) according to the amounts due and payable upon such Bonds and coupons, respectively, at the date fixed by the New York Trustee for the distribution of such moneys.

**Section 118.** 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 Trustees 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 Trustees to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in their own names; and

(c) said holders shall have tendered to the Trustees security and indemnity satisfactory to the New York Trustee against the costs, expenses and liabilities to be incurred by compliance with such request, if the Trustees are entitled, under the provisions of Paragraph (a) of Section 137, to such security and indemnity; and

(d) the Trustees shall have refused or omitted to comply with such request for a period of 90 days after such written request shall have been filed with, and said tender of indemnity (if the Trustees are entitled thereto as aforesaid) shall have been made to, the Trustees.

Such notification, request and tender of indemnity (if the Trustees are entitled thereto as aforesaid) are hereby declared, in every case, at the option of the Trustees, 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, 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 to enforce any provision of this Indenture 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 (subject to the provisions of Section 95).

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 and interest on the Bonds to the respective holders thereof, or affect or impair the right of action, which is also absolute and unconditional, of such holders to enforce such payment; 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 Trustees or the request of the holders of other Bonds, may individually enforce payment of the Bond so designated, by any appropriate proceedings.

**Section 119.** Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or either of them, 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 120.** No delay or omission of the Trustees, or either of them, or of any holder of Bonds to exercise any right or power arising upon the happening of any Event of Default shall impair any 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 to the Trustees, or either of them, or to the Bondholders, may,