

MORTGAGE RECORD 85

subject to the provisions of Section 118, be exercised from time to time and as often as may be deemed expedient by the Trustees or the New York Trustee or by the Bondholders.

All rights of action under this Indenture may be enforced by the Trustees without the possession of any of the Bonds or coupons or the production thereof on the trial or other proceedings, and any suit or proceedings instituted by the Trustees shall be brought in their names.

The New York Trustee shall be entitled and empowered either in its own name and 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 holders of 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 New York 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 New York 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 proceeding, 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 New York Trustee in order to have the respective claims of the holders of the Bonds and coupons against the Company and/or its property allowed in any such proceeding, and to receive payment of or on account of such claims; provided, however, that nothing herein contained shall be deemed to authorize or empower the New York Trustee to consent to or accept or adopt, on behalf of any Bondholder, any plan of reorganization or readjustment of the Company affecting the Bonds.

Section 121. The Trustees shall have power to institute and to maintain such suits and proceedings as they may be advised shall be necessary or expedient to prevent any impairment of the security hereunder by any acts which may be unlawful or in violation of this Indenture, and such suits and proceedings as the Trustees may be advised shall be necessary or expedient to preserve or protect their interests and the interests of the Bondholders in respect of the Trust Estate and in respect of the income, earnings, issues and profits arising therefrom.

Section 122. In case the Trustees or either of them shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustees, then, and in every such case, the Company and the Trustees shall without further act be restored to their former positions and rights hereunder in respect of the Trust Estate, and all rights, remedies and powers of the Trustees shall continue as though no such proceedings had been taken.

Section 123. Anything contained in this Indenture to the contrary notwithstanding, the holders of at least a majority in amount of the Bonds at the time outstanding shall have the right, at any time, by instrument in writing executed and delivered to the Trustees, to direct the method, time and place of conducting all proceedings to be taken for any sale of the Trust Estate or for the foreclosure of this Indenture or for the appointment of a receiver or any other proceedings hereunder; provided, however, that such direction shall not be otherwise than in accordance with law and the provisions of this Indenture, and that the Trustees shall have the right to decline to follow any such direction which in their opinion would be unjustly prejudicial to Bondholders not parties to such direction, but shall be fully protected with respect to any action taken or omitted by them, or either of them, in accordance with such direction.

Section 124. The Company will not at any time insist upon or plead or in any manner whatever claim or take the benefit or advantage of any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Indenture or the absolute sale of the Trust Estate or the possession thereof by any purchaser at any sale made pursuant to any provision hereof, or pursuant to the decree of any court of competent jurisdiction; but the Company, for itself and all who may claim through or under it, so far as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws, and, without limiting the generality of the foregoing, hereby waives appraisalment. The Company, for itself and all who may claim through or under it, waives any and all right to have the property included in the Trust Estate marshalled upon any foreclosure of the lien hereof, and agrees that any court having jurisdiction to foreclose such lien may sell the Trust Estate as an entirety.

If any law in this Section referred to and now in force, of which the Company or its successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this Section.

Section 125. No release under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond or coupon issued hereunder or under or upon any indebtedness hereby secured or arising out of this Indenture, shall be had against any Incorporator, stockholder, officer or director, past, present or future, of the Company or of any predecessor or successor corporation, either directly or through the Company or any such predecessor or successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or by any legal or equitable proceeding or otherwise howsoever. It is expressly agreed and understood that this Indenture and the Bonds and coupons are solely corporate obligations and that no personal liability whatever does or shall attach to or be incurred by the Incorporators, stockholders, officers or directors of the Company or of any predecessor or successor corporation, or any of them, because of the indebtedness represented by the Bonds or coupons, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the Bonds or coupons, or implied therefrom; and that any and all personal liability of every name and nature, either or common law or in equity or by statute or constitution, of every such Incorporator, stockholder, officer or director, is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Bonds and coupons.

ARTICLE TWELVE

EVIDENCE OF RIGHTS OF BONDHOLDERS

Section 130. Any request, consent or other instrument required by this Indenture to be signed and executed by Bondholders may be in any number of concurrent writings of substantially similar tenor and signed or executed by such Bondholders in person or by agent or agents duly appointed in writing. Proof of the execution of any such request or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustees or of the Company, if made in the manner provided in this Article.

Section 131. The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof.