

MORTGAGE RECORD 85

by them, or either of them, in operating the business of the Company or for any damage to persons or property or for any salary or nonfulfillment of any contract during any period in which the Trustees, or either of them, shall manage the property of the Company or any part thereof, upon entry as herein provided, and the Trust Estate is hereby charged with a paramount lien in favor of the Trustees and each of them as security and indemnification against any such liability.

(n) The Trustees shall not be required, save as herein specifically provided, to ascertain or inquire as to the performance of any of the covenants or agreements herein contained on the part of the Company. Except as provided in Paragraph (a) of this Section, the Trustees shall be under no obligation or duty, in case of an Event of Default, to exercise any of the remedies given to them or either of them under this Indenture or to appear in, institute or defend any suit in respect hereof, or of the Trust Estate, unless requested so to do by the holders of at least 25% in amount of the Bonds then outstanding. Notwithstanding any other provision of this Indenture, the Trustees or either of them shall be under no obligation or duty to exercise any remedies given to them or either of them under this Indenture (other than to give written notice of an Event of Default or to declare the principal of all Bonds outstanding hereunder and the interest accrued thereon immediately due and payable pursuant to Section 105) or to appear in, institute or defend any suit in respect hereof, or of the Trust Estate, if the payment within a reasonable time of the costs, expenses and liabilities to the Trustees, and each of them, which may be incurred in taking such action in suit, in the opinion of counsel to the Trustees, reasonably assured to the Trustees and each of them by the security afforded to them by the terms of this Indenture, unless and until the Trustees and each of them shall receive reasonable security and indemnity against such costs, expenses and liabilities.

(o) The Trustees, and each of them, may rely upon and shall be protected in acting upon any notice, resolution, request, consent, order, certificate, report, opinion, statement, Bond, obligation, appraisal or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties or by a person or persons authorized to act on his or their behalf. The Trustees, or either of them, may accept a certificate signed by the Secretary (or an Assistant Secretary) of the Company, under the corporate seal, as conclusive evidence that any resolution has been duly adopted by the Board of Directors of the Company and/or that the same is still in full force and effect, and such certificate shall constitute full protection to the Trustees for any action taken or omitted to be taken by them, or either of them, in reliance thereon. Except as otherwise expressly provided in this Indenture, a Certificate of the Company, as to the existence or non-existence of any fact pertinent to the rights of the Trustees, or either of them, to take or refrain from taking any action under this Indenture, may be accepted by the Trustees, or either of them, as conclusive evidence of the facts therein stated, and shall constitute full protection to the Trustees for any action taken or omitted to be taken by them, or either of them, in reliance thereon.

(p) Neither of the Trustees shall be under any duty to examine into or pass upon the validity or genuineness of any obligations or other securities at any time pledged and deposited hereunder, and the Trustees shall be entitled to assume that any obligations or other securities presented for pledge and deposit hereunder are genuine and valid and what they purport to be, and that any endorsement or assignment thereon is genuine and legal.

(q) Either Trustee may act as depositary for the Company or any committee formed to protect the rights of holders of Bonds or any other securities of the Company or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the holders of a majority in amount of the Bonds at the time outstanding.

Section 136. If either of the Trustees shall in its individual capacity be or become a creditor, directly or indirectly, secured or unsecured, of the Company, within four months prior to a default (as defined by the Trust Indenture Act of 1939) or subsequent to such a default, then, unless and until such default shall be cured, such Trustee shall set apart and hold in a special account for the benefit of itself individually and of the holders of the Bonds and coupons secured by this Indenture, such amounts and such property as may be prescribed by subdivision (a) of Section 311 of the Trust Indenture Act of 1939, in the manner therein set forth; provided, however, that no such duty to set apart or hold in a special account shall be imposed upon such Trustee by reason of a creditor relationship arising from any situation or circumstance described in Clauses (1) to (5), inclusive, of subdivision (b) of said Section; and, if such Trustee shall be required to account, any funds and property held in such special account and the proceeds thereof shall be apportioned between such Trustee and the holders of the Bonds and coupons secured by this Indenture in such manner as is provided in said Act.

If either Trustee has or acquired any conflicting interest as defined by the Trust Indenture Act of 1939, such Trustee shall within 90 days after ascertaining it has such conflicting interest either eliminate such conflicting interest or resign in the manner herein provided. For the purpose of determining whether or not either Trustee has or shall acquire any conflicting interest and the respective rights and obligations of such Trustee, the Company and the holders of the Bonds and coupons in respect of any such conflicting interest, this Indenture shall be deemed to contain each and every provision which would have been required or permitted to be inserted herein pursuant to subsection (b) of Section 310 of the Trust Indenture Act of 1939, as the same existed on the date of this Indenture, had this Indenture been qualified thereunder.

Subject to the foregoing provisions of this Section, either Trustee may acquire and hold Bonds and coupons secured by this Indenture and otherwise deal with the Company in the same manner and to the same extent and with like effect as though it were not a Trustee hereunder.

As is provided in the Trust Indenture Act of 1939, the Trustees shall transmit to the holders of the Bonds secured by this Indenture and to any regulatory body having jurisdiction pursuant to said Act, and to such other persons as are prescribed in said Act to the extent and in the manner provided in said Act or in the rules, regulations or orders of any regulatory body having jurisdiction pursuant to said Act, such reports as may be prescribed by said Act or such rules, regulations or orders. For the purpose of determining the nature, character and frequency of reports by the Trustees to the Bondholders, this Indenture shall be deemed to contain each and every provision which would have been required or permitted to be inserted herein pursuant to Section 313 of the Trust Indenture Act of 1939, as the same existed on the date of this Indenture, had this Indenture been qualified thereunder.

Section 139. The New York Trustee may at any time resign and be discharged from the trusts created by this Indenture by giving written notice thereof to the Company (and to the Missouri Trustee) and thereafter publishing notice thereof, specifying a date when such resignation shall take effect, once a week for three successive calendar weeks in one newspaper of general circulation published in the Borough of Manhattan, City and State of New York, in each instance upon any day of the week in any such newspaper, and such resignation shall take effect upon the day specified in such notice unless previously a successor trustee shall have been appointed by the Bondholders or the Company as hereinafter provided in which event such resignation shall take effect immediately upon the appointment of such successor trustee.

The Missouri Trustee may at anytime resign and be discharged from the trusts created by this Indenture by giving written notice thereof to the Company (and to the New York Trustee) at least 30 days prior to the effective date thereof, or such shorter time as may be accepted by the Company as sufficient notice.

The Trustees, or either of them, may be removed at any time by an instrument or concurrent instruments in writing signed by the holders of at least a majority in amount of the Bonds then outstanding.

Section 140. In case at any time the Missouri Trustee shall resign or be removed or otherwise become incapable of acting, a successor to such Missouri Trustee may be appointed by the New York Trustee and the Company by an instrument in writing executed by them jointly, or in case any of the Events of Default specified in Section 105 shall have happened and shall not have been remedied, the New York Trustee