

MORTGAGE RECORD 85

part thereof, or upon the income thereof; and, that within three months after the same shall accrue, it will pay, or cause to be discharged, or will make adequate provision for the satisfaction or discharge, of all lawful claims and demands of mechanics, laborers and others, which, if unpaid, might by law be given precedence to this Indenture as a lien or charge upon the mortgaged property or any part thereof, or the income thereof; provided, that the Railroad Company shall not be required to pay any such debt, lien or charge so long as it shall, in good faith, by appropriate legal proceedings, contest the validity thereof or the amount thereof unless thereby, in the judgment of the Trustee, the security afforded by this Indenture will be materially impaired or endangered. Should the Railroad Company fail to pay or cause to be discharged or make adequate provision to discharge any such claims or demands, the Trustee may, without prejudice to any of its rights hereunder by reason of such default, pay and discharge or make adequate provision to satisfy and discharge the same and shall have a lien upon the trust estate (which term, wherever used herein, shall mean and include, unless the context shall otherwise require, the mortgaged property and any cash or securities at the time held by the Trustee hereunder, except cash deposited for the payment of the principal of and the premium or interest on any of the Bonds) prior to the lien of the Bonds for any advances made by it for that purpose.

SECTION 5. The Railroad Company, from time to time, will pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges (the lien whereof would be prior to the lien hereof) lawfully imposed upon the trust estate or upon any part thereof, or upon the income and profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect of the trust estate or the income thereof, so that the lien and priority of this Indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the bondholders; provided, however, that the Railroad Company shall not be required to pay any such taxes, assessments or governmental charges so long as, in good faith, the validity thereof or the amount thereof shall be contested by appropriate legal proceedings, unless thereby, in the judgment of the Trustee, the security afforded by this Indenture will be materially impaired or endangered; and provided further, that the Railroad Company shall not be required to pay any such taxes, assessments or governmental charges on property it has abandoned pursuant to permission granted by the Interstate Commerce Commission or other governmental body, if any, having jurisdiction; and provided further, that the Railroad Company shall not be required to pay any such taxes, assessments or governmental charges on property it has abandoned where no governmental body has jurisdiction if the property abandoned is no longer necessary for the maintenance or operation of the lines of railroad subject to the lien of this Indenture. Should the Railroad Company fail to pay any such tax, assessment or governmental charge, the Trustee may, without prejudice to any of its rights hereunder by reason of such default, pay and discharge the same and shall have a lien upon the trust estate prior to the lien of the Bonds for any advances made by it for that purpose.

SECTION 6. Subject to the provisions of Article Ten hereof, the Railroad Company shall and will diligently preserve all the rights and franchises to it granted and upon it conferred, and shall and will, at all times, maintain, preserve and keep its railroads and every part thereof in good working order and condition and will, from time to time, make all needful and proper repairs, renewals and replacements thereto. The Railroad Company will at all times preserve, extend and renew its corporate existence for all the purposes of this Indenture.

SECTION 7. The Railroad Company covenants and agrees that there shall be at all times subject to the lien of this Indenture (subject only to the prior lien of the First Mortgage of the Railroad Company and to any prior lien under an equipment trust agreement, equipment purchase contract or other similar arrangement) rolling stock sufficient (with rolling stock owned by others and used by the Railroad Company in the usual course of its interchange with other railroads) properly to transport all of the freight and passenger traffic over the lines of railroad subject to the lien hereof; provided, however, that (1) nothing herein contained shall require the Railroad Company to acquire or to subject to the lien hereof refrigerator cars, tank cars or other types of rolling stock if it is now, or may hereafter be, the practice of the Railroad Company to use rolling stock of such types owned by others for all or the major part of its requirements; and (2) for the purpose of this covenant, rolling stock jointly owned by the Railroad Company and others shall be deemed to be subject to the lien of this Indenture if the interest of the Railroad Company therein is subject to such lien. The Railroad Company covenants that at all times it will maintain, preserve and keep in good condition, ordinary wear and tear excepted, the rolling stock now or hereafter subject to the lien hereof; provided, however, that any of such rolling stock may be abandoned, retired or otherwise disposed of in accordance with the provisions of Section 5 of Article Ten hereof.

SECTION 8. The Railroad Company covenants and agrees that it will not issue, negotiate, sell or dispose of any Bond hereby secured contrary to the provisions of this Indenture and the agreements in that behalf herein contained.

SECTION 9. The Railroad Company covenants and agrees that it will do, execute, acknowledge and deliver, or it will cause to be done, executed, acknowledged and delivered all and every such further acts, deeds, transfers and assurances for the better assuring, conveying and confirming unto the Trustee all and singular the mortgaged property as the Trustee or the holders of a majority in amount of the Bonds secured hereby and then outstanding shall reasonably require for better accomplishing the provisions and purposes of this Indenture, and for securing payment of the principal and interest of the Bonds intended to be hereby secured.

SECTION 10. In case the railroad Company shall hereafter create any mortgage or deed of trust upon the trust estate, or any part thereof, such mortgage or deed of trust shall be, and shall be expressed to be, subject to the prior lien of this Indenture.

ARTICLE SEVEN. REMEDIES OF TRUSTEE AND BONDHOLDERS.

SECTION 1. If one or more of the following events, in this Indenture called events of default, shall happen, that is to say:

- (a) default shall be made in the payment of any instalment of interest on any of the Bonds when and as the same shall become payable, as therein and herein expressed, and such default shall continue for ninety days; or
- (b) default shall be made in the payment of the principal of any of the Bonds when the same shall become due and payable, either by the terms thereof or otherwise as in this Indenture provided; or
- (c) default shall be made in the payment of any instalment of the sinking fund provided by Article Five hereof and such default shall continue for ninety days; or
- (d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Railroad Company, its successors or assigns, in the Bonds or in this Indenture contained, and such default shall continue for ninety days after written notice, specifying such default and requiring the same to be remedied, shall have been given by the Trustee, which shall give such notice on the written request of the holders of ten per cent. in principal amount of the Bonds at the time outstanding; or
- (e) an event of default as defined in the First Mortgage shall occur thereunder and be continuing; or
- (f) an order shall be made for the appointment of a receiver of the Railroad Company or of the trust estate or the major part thereof and such receiver shall not have been discharged within ninety days; or pursuant to any bankruptcy, insolvency or debtor relief proceeding, a court of competent jurisdiction shall have taken jurisdiction of the property of the Railroad Company and such proceeding shall not have been dismissed within ninety days; or
- (g) the Railroad Company shall apply for or consent to the appointment of a receiver for itself or its property or the major part thereof or shall make an assignment for the benefit of creditors or shall state or admit in writing that it is insolvent or unable to meet its debts as they mature and desires to