

MORTGAGE RECORD 85

such bondholders or their attorneys in fact duly authorized; but until a new trustee shall be appointed by the bondholders as herein authorized, the Railroad Company by an instrument executed by order of its Board of Directors, may appoint a trustee to fill such vacancy. Any trustee appointed under any of the provisions of this Article, in succession to The Chase National Bank of the City of New York, or in succession to any other successor, shall be a trust company organized under the laws of the State of New York, or a corporation organized as a national banking association under the laws of the United States of America, and shall do business in the Borough of Manhattan, in the City and State of New York and shall have a capital and surplus aggregating at least Five Million Dollars (\$10,000,000) if there be such a trust company or corporation able and willing to act. After any such appointment by the Railroad Company, it shall publish notice of such appointment at least once in each of four successive calendar weeks in a newspaper printed in the English language and of general circulation in the Borough of Manhattan, City of New York, and any new trustee or trustees so appointed by the Railroad Company shall immediately and without further act be superseded by a new trustee or trustees appointed in the manner above provided by the holders of a majority in amount of the Bonds, if such appointment by such bondholders be made prior to the expiration of twelve months after the completion of such publication of notice.

Any successor trustee appointed hereunder shall execute, acknowledge and deliver to the Railroad Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with all the estates, interests, properties, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named as trustee herein; but nevertheless, on the written request of the Railroad Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, interests, properties, rights, powers and trusts of the trustee so ceasing to act; and, upon request of any such successor trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such estates, interests, properties, rights, powers and trusts. All the conveyances and instruments hereinbefore provided for shall be at the cost of the Railroad Company and its successors.

SECTION 6. At any time or times, in order to conform to any legal requirement, the Railroad Company and the Trustee shall have power to appoint, and shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more persons or corporations, approved by the Trustee, either to act as co-trustee or co-trustees of all or any of the property subject to the lien hereof, jointly with the Trustee originally named herein, or any successor trustee, or to act as separate trustee or trustees of any such property, and in either case with such powers and authority, not inconsistent herewith, as may be specified in the instrument of appointment.

ARTICLE TWELVE.

POSSESSION UNTIL DEFAULT - DEFERANCE CLAUSE.

SECTION 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the Bonds at any time outstanding, or of some part of such interest or principal, or until some one or more of the events of default specified in clauses (c), (d), (e), (f) or (g) of Section 1 of Article Seven hereof shall have happened, the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this Indenture, other than bonds, certificates of stock, cash and other property now or hereafter assigned, pledged or deposited, hereunder, and to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the tolls, earnings, income, rents, issues and profits of such property (as well as of such bonds, stock, cash and other property so assigned, pledged or deposited hereunder, except as otherwise provided in Article Five hereof).

The Railroad Company covenants and agrees that from such income, after payment of the operating and maintenance expenses of the mortgaged property embraced in the trust estate, taxes, the interest maturing on other bonds or obligations secured by mortgage or other instrument prior in lien to this Indenture upon the trust estate, and other proper prior charges, the interest maturing upon the Bonds shall first be paid, and such income whether before or after the happening of an event of default and whether the mortgaged premises be operated by the Railroad Company or by the Trustee under any power reserved under this Indenture, or by a receiver or trustee appointed by any court at the instance of the Railroad Company or of the Trustee or of any mortgagee, stockholder, creditor or other person interested in the Railroad Company and having the right to apply for such appointment, shall be primarily pledged and applied, subject only as otherwise in this Indenture specifically provided, to the payment of the principal and interest of the Bonds.

SECTION 2. If, when the Bonds shall become due and payable, the Railroad Company shall well and truly pay or cause to be paid the whole amount of the principal and interest due upon all of the Bonds and coupons then outstanding, or shall provide for the payment of such Bonds and coupons by depositing with the Trustee the entire amount due or to become due thereon for principal and interest, or shall at any time cause all of the Bonds and coupons then outstanding to be extinguished and surrender the same to the Trustee for cancellation, and also shall pay or cause to be paid all other sums payable hereunder by the Railroad Company, then and in that case at the election of the Railroad Company, all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Railroad Company, and the estate, right, title and interest of the Trustee shall thereupon cease, determine and become void, and the Trustee in such case, on written demand of the Railroad Company, and at the Railroad Company's cost and expense, shall cancel this Indenture and enter satisfaction thereof upon the records, and shall assign and transfer or cause to be assigned and transferred and shall deliver or cause to be delivered to or on the order of the Railroad Company all personal property and moneys then held by the Trustee hereunder, other than any moneys deposited with it under this Section 2. Anything hereinabove to the contrary notwithstanding, upon any satisfaction of this Indenture the holders of Bonds and coupons shall look solely to the Railroad Company for the performance of any covenant of the Railroad Company with respect to any reimbursement for taxes.

ARTICLE THIRTEEN.

CONSOLIDATION, MERGER, SALE AND LEASE.

SECTION 1. Nothing in this Indenture or in any Bond shall prevent the Railroad Company from taking over the property of any corporation, or shall prevent the consolidation with the Railroad Company of any corporation, or shall prevent the merger into the Railroad Company of any corporation, or shall prevent any merger of the Railroad Company into any corporation, or shall prevent the sale by the Railroad Company of the mortgaged property as an entirety, or substantially as an entirety, to any other corporation; provided, that any such consolidation or merger or sale shall be on such terms as to preserve and not to impair the lien or security of this Indenture or any of the rights and powers of the Trustee or of the holders of the Bonds; and provided, that any successor corporation formed by such consolidation, or the corporation into which the Railroad Company shall be merged, shall, as a part of such consolidation or merger, expressly assume the due and punctual payment of the principal and interest of all the Bonds and the performance of all the covenants and conditions of this Indenture, and shall execute and deliver to the Trustee a proper indenture in form satisfactory to the Trustee, whereby such successor corporation formed by such consolidation, or the corporation into which the Railroad Company shall be merged, shall so assume the due and punctual payment of the principal and interest of all the Bonds and the performance of all the covenants and conditions of this Indenture; and provided that, as a condition of any such sale of the mortgaged property of the Railroad Company as an entirety, or substantially as an entirety, the corporation to which such property shall be sold as an entirety, or substantially as an entirety, shall, as a part of the purchase price thereof, expressly assume the due and punctual payment of the principal and interest of all the Bonds and the performance of all the covenants and conditions of this Indenture, and shall, simultaneously with the delivery to it of such conveyance, execute and deliver to the Trustee a proper indenture in form satisfactory to the Trustee, whereby such purchasing corporation shall so assume the due and punctual payment of the principal and interest of all the Bonds and the performance of