

MORTGAGE RECORD 85

for a period of not more than two (2) years from the date of such acquisition, to the extent that such securities included in such estate do not exceed twenty-five per cent. (25%) of such voting securities and twenty-five per cent. (25%) of any such class of security.

Promptly after May 15 in each calendar year, such trustee shall make a check of its holdings of securities of the type mentioned in this Paragraph (9) in any of the above-mentioned capacities as of such May 15. Furthermore, if the Corporation fails to make payment in full of principal or interest due on any bonds outstanding under this Indenture when and as such principal or interest becomes due and payable, and such failure continues for thirty (30) days thereafter, such trustee shall make a similar prompt check of its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such thirty (30) day period, and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by such trustee, with sole or joint control over such securities vested in it, shall be considered as though beneficially owned by such trustee, for the purposes of Paragraphs (6), (7) and (8) of this section.

The specification of percentages in Paragraphs (5) to (9), inclusive, of this Section 4 of Article XI shall not be construed as indicating that ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of Paragraphs (3) or (7) of this section.

Definition of Certain Terms Used in This Section 4.

For the purposes of Paragraphs (6), (7), (8) and (9) above, the following provisions shall be applicable:

(A) The terms "security" and "securities" shall include only such securities as are generally known as corporate securities but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies, or banking firms, or any certificate of interest or participation in any such note or evidence of indebtedness;

(B) An obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty (30) days or more and shall not have been cured; and

(C) A trustee shall not be deemed the owner or holder of any of the following:

(i) Any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default, as above defined; or

(ii) Any security which it holds as collateral security, under this Indenture, irrespective of any default under this Indenture; or

(iii) Any security which it holds as agent for collection, or as custodian, escrow agent or depository, or in any similar representative capacity.

The percentages of voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

(A) A specified percentage of the voting securities of such trustee, the Corporation or any other person referred to in this Section (each of whom is referred to as a "person" in this paragraph and in the following paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holder of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(B) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(C) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(D) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(1) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(2) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(3) Securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise;

(4) Securities held in escrow if placed in escrow by the issuer thereof; provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(E) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges, provided, however, that, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes, and provided, further, that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

For the purposes of this Section, the term "voting security" means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a person, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a person; the term "director" means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated; the term "executive officer" means the president, every vice-president, every trust officer, the cashier, the secretary, and the treasurer of a corporation, and any individual customarily performing similar functions with respect to any organization whether incorporated or unincorporated, but shall not include the chairman of the board of directors; and the term "underwriter" when used with reference to an obligor upon the bonds means every person, who, within three (3) years prior to the time as of which the determination is made, has purchased from such obligor with a view to, or has sold for such obligor in connection with, the distribution of any security of such obligor outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

Section 5. Preferential Collection of Claims against Corporation under Certain Circumstances.

(A) Subject to the provisions of subsection (B) of this Section 5, if any trustee under this Indenture (whether the Trustee or any separate trustee or trustees or co-trustees appointed as provided in this Article XI) shall be, or shall become, a creditor, directly or indirectly, secured or unsecured, of the Corporation or any other obligor upon any bonds issued under this Indenture at any time hereafter, within four months prior to default as defined in the last paragraph of this subsection (A), 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 and registered owners of all bonds issued hereunder at the time outstanding:

(1) An amount equal to any and all reductions in the amount due and owing upon any claims as such creditor in respect of principal or interest, effected after the beginning of such four months' period and valid as against the Corporation or such other obligor and its other creditors, except any reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subsection or from the exercise of any right of set-off which such trustee could have exercised if a petition in bankruptcy had been filed by or against the Corporation or such other obligor upon the date of such default; and