

DOUGLAS COUNTY

or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the whole of the mortgaged property, including all real and personal property, shall be sold in one parcel and as an entirety unless the holders of a majority in amount of the Bonds then outstanding shall in writing request the Trustee to cause said property to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request, or unless such sale as an entirety is impracticable or improper, in the opinion of counsel for the Trustee, by reason of some statute or rule of law or other cause. The Company agrees that the personal property hereby mortgaged, pledged, and/or assigned need not be in view of those who attend the sale, any rule of law or statute to the contrary being hereby expressly waived. No demand for performance or personal notice of such sale shall be necessary.

SECTION 8.08. In case of any sale of the mortgaged property under the terms of this Indenture, the principal of and accrued interest on all the Bonds then outstanding, if not previously due, shall immediately become due and payable, anything in the Bonds or in this Indenture to the contrary notwithstanding.

SECTION 8.09. The purchase money, proceeds and avails of any such sale, whether made under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which may then be held by the Trustee or be payable to it under any of the provisions of this Indenture as part of the trust estate, shall be applied as follows:

First. to the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all charges, expenses and liabilities incurred, and all advances made by the Trustee in managing and maintaining the mortgaged property or in executing any trust or power hereunder, and to the payment of all taxes, assessments or liens prior to the lien of this Indenture, except any taxes, assessments or prior liens subject to which such sale shall have been made;

Second. to the payment of the whole amount then due and unpaid upon the Bonds then outstanding, for principal and interest, with interest on the overdue principal and/or installments of interest at the rate borne by the Bonds; and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the Bonds, then to the payment of such principal and interest, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest, ratably according to the aggregate of such principal and the accrued and unpaid interest, subject, however, to the provisions of Section 5.02 hereof; and

Third. the surplus, if any, shall be paid to the Company, its successors or assigns, or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

SECTION 8.10. In case of any sale as aforesaid of the mortgaged property or any part thereof, whether under the power of sale herein granted or pursuant to judicial proceedings, any purchaser shall be entitled, for the purpose of making settlement or payment for the property purchased to use and apply any Bonds then outstanding and any matured and unpaid coupons and claims for interest, in order that there may be credited thereon the sums payable out of the net proceeds of such sale to the holder of such Bonds and coupons and claims for interest, subject to the provisions of Section 5.02 hereof, as his ratable share of such net proceeds; and thereupon such purchaser shall be credited, on account of such purchase price, with the portion of such net proceeds that shall be applicable to the payment of, and that shall have been credited upon, the Bonds and coupons and claims for interest so used and applied; and at any such sale, any Bondholder may bid for and purchase such property, may make payment on account thereof as aforesaid, and upon compliance with the terms of sale, may hold, retain and dispose of such property without further accountability therefor.

SECTION 8.11. Upon the written request of the holders of at least 25% in amount of the Bonds then outstanding, in case of the happening of any event of default, if the same shall not have been remedied, it shall be the duty of the Trustee, upon being indemnified as hereinafter provided, to take all needful steps for the protection and enforcement of its rights and the rights of the holders of the Bonds hereunder, and to exercise the power of entry or of sale herein conferred, or both or to take appropriate judicial proceedings, as the Trustee, being advised by counsel, shall deem most expedient in the interest of the holders of the Bonds.

SECTION 8.12. Upon filing a bill in equity or upon other commencement of judicial proceedings by the Trustee to enforce any right under this Indenture, the Trustee shall be entitled to exercise the right of entry and shall be entitled to exercise also any and all other rights and powers herein conferred and provided to be exercised by the Trustee, upon the occurrence of an event of default; and as a matter of right, the Trustee shall be entitled to the appointment of a receiver of the mortgaged property, and of the tolls, earnings, revenue, rents, issues, profits and other income thereof, with all such powers as the court or courts making such appointment shall confer, but notwithstanding the appointment of any receiver, the Trustee shall be entitled to retain possession and control of any money, obligations, evidences of indebtedness, shares of stock and other securities and property deposited or pledged with it hereunder or agreed or provided to be delivered to or deposited or pledged with it hereunder.

SECTION 8.13. The Company covenants that

- (1) in case default shall be made in the payment of any installment of interest on any Bond when and as the same shall become due and payable, and such default shall have continued for a period of 60 days or
 - (2) in case default shall be made in the payment of the principal of any Bond when and as the same shall become due and payable, whether by the terms thereof or otherwise as herein provided,
- then, and upon demand of the Trustee, the Company will pay to the Trustee for the benefit of the holders of the Bonds and coupons then outstanding, the whole amount due and payable on all such Bonds and coupons, for principal and interest, including the redemption price of any Bonds called for redemption, with interest upon the overdue principal and installments of interest at the rate borne by the Bonds, and in case the Company shall fail to pay the same forthwith upon such demand, the Trustee, in its own name, and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the lien of this Indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Indenture or the foreclosure of the lien hereof. In case of a sale of the trust estate and the application of the proceeds of sale to the payment of the Bonds, the Trustee, in its own name and as trustee of an express trust, shall be entitled to enforce payment, of, and to receive, all amounts then remaining due and unpaid upon any and all of the Bonds and coupons then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the same remaining unpaid with interest. No recovery of any such judgment by the Trustee shall in any manner or to any extent affect the lien of the Trustee upon the trust estate or any part thereof or any rights, powers or remedies of the Trustee hereunder or any rights, powers or remedies of the holders of the Bonds; but such lien, rights, powers and remedies shall continue unimpaired as before.

All moneys collected by the Trustee under this Section 8.13 shall be applied as follows:

First. to the payment of the costs and expenses of the proceedings resulting in the collection of such moneys, including counsel fees, and of the charges, expenses and liabilities incurred and all advances made by the Trustee in theretofore managing and maintaining the trust estate or in executing any trust or power hereunder; and

Second. to the payment of the amounts then due and unpaid upon the Bonds and coupons, in respect of which for the benefit of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 5.02 hereof) according to the amounts due and payable upon such Bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several Bonds and coupons, and notation of such payment thereon if partly paid, and surrender thereof if fully paid.

SECTION 8.14. No holder of any Bond or coupon issued hereunder shall have any right to institute any suit, action or proceeding at law or in equity for the foreclosure of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or for any other remedy hereunder, unless

- (a) such holder shall have previously given to the Trustee written notice of the occurrence of an event of default, as hereinbefore provided; and
- (b) the holders of at least 25% in amount of the Bonds then outstanding shall have filed a written