

MORTGAGE RECORD 88

(b) the Trustee shall be under no duty to record, register, file, or re-record, or cause to be recorded, registered, filed, or re-recorded this or any supplemental indenture or other instrument of further assurance which it may hereafter receive as herein provided, or to procure any supplemental indenture or any further, other or additional instrument of further assurance or to give notice to anyone of the existence of the lien of this Indenture or of any such other indenture or instrument;

(c) the Trustee shall be under no obligation to see to the delivery to it of any obligations or evidences of indebtedness or other securities required to be delivered to it hereunder, or to see that any of the property hereby intended to be conveyed or assigned is properly and legally subjected to the lien hereof. The Trustee need not take any action to secure the conveyance to or deposit with it of any property acquired by the Company after the date of the execution hereof;

(d) the Trustee shall be under no duty to procure or renew, or under any liability for the failure of the Company to procure or renew, insurance, or to keep itself informed or advised as to procurement of any or all insurance, or as to the payment of premiums thereon; nor shall the Trustee be responsible for any insurer;

(e) the Trustee shall be under no duty or liability in respect of any tax, assessment or other governmental charge which may be levied, assessed or imposed against the Company or the Trustee or the holders of the Bonds by reason of their interest in the mortgaged property, or against the mortgaged property, nor shall the Trustee be under any duty to pay or to see to the payment of any such tax or to take any notice of any assessment thereof or to give any notice thereof to the holders of the Bonds or to any other person or to the payment of any rents or other charges or liens upon the trust property, at any time, or upon any part thereof. The Trustee may, however, in its discretion, do, perform or observe, or cause to be done, performed or observed, all or any of the matters or things, and all or any of the terms, covenants, or conditions of the Company to be performed or observed, in this Indenture set forth; provided, however, that no such action by the Trustee shall relieve the Company from any consequence of any failure upon its part itself to have performed or observed or caused to have been performed or observed, any term, covenant or condition hereunder, by it to be performed or observed;

(f) the Trustee shall be under no responsibility or duty with respect to the disposition of the Bonds or the application of the proceeds thereof or of any moneys paid to the Company under any of the provisions hereof;

(g) the Trustee may execute any of the trusts or powers hereof and perform any duty hereunder either itself or by or through its attorneys, agents or employees, nor shall it be responsible or accountable for any act, default neglect or misconduct of any such attorneys, agents or employee, if reasonable care shall have been exercised in their appointment and retention, or for the exercise of any discretion or power hereunder, or for anything whatsoever in connection with this trust except his or its own willful default or gross negligence;

(h) the Trustee may, at the expense of the Company, advise with legal counsel, who may be counsel to the Company, to be selected and employed by it, and the Trustee shall not be liable for any action taken or suffered by it in good faith in accordance with the opinion of such counsel;

(i) the Company shall pay to the Trustee, from time to time on demand a reasonable compensation for all services rendered by the Trustee hereunder (which shall not be limited to the compensation of trustee of any express trust as provided by law), and also all reasonable expenses, charges, counsel fees and other disbursements and those of its agents, attorneys and employees incurred in the administration and execution of the trusts hereby created, and the Company agrees to indemnify and save the Trustee against any liability of damages which it may incur or sustain in the exercise and performance of any of its powers and duties hereunder. All such rights to compensation, reimbursements and indemnification shall include interest at the rate of six per cent (6%) per annum from the time of creation, shall be payable on demand, and the Trustee shall have a lien for such compensation, expenses and indemnity on the mortgaged property and the proceeds thereof prior to the lien of the Bonds and coupons;

(j) the Trustee shall not be personally liable for any debt contracted or for any expenditure made by it in operating the business of the Company or for any damage to persons or property or for any salary or non-fulfillment of any contract during any period in which the Trustee 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 Trustee as security and indemnification against any such liability;

(k) the Trustee shall be under no duty or obligation to perform any act hereunder or to appear in, institute or defend any suit in respect hereof, or of the mortgaged property, unless requested so to do by the holders of at least 25% in amount of the Bonds then outstanding and unless also one or more of the holders of the Bonds shall, as often as required by the Trustee, furnish it with indemnity satisfactory to the Trustee against all expense and liability. The Trustee shall not be required to ascertain or inquire as to the performance of any of the covenants or agreements herein contained on the part of the Company. The Trustee shall not be required to take notice, or be deemed to have knowledge, of any default hereunder, and may for all purposes conclusively assume that there has been no default under this Indenture, unless and until notified in writing of such default by the holders of at least 10% in amount of the Bonds then outstanding;

(l) the Trustee 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 it to be genuine and to have been signed by the proper party or parties or by a person or persons authorized to act on its behalf. The Trustee may receive a certificate signed by the Secretary or an Assistant Secretary of the Company under the corporate seal of the Company, as sufficient 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. 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 right of the Trustee to take or refrain from taking any action under this Indenture, may be accepted by the Trustee as conclusive evidence of the facts therein stated, and shall constitute full protection to the Trustee for any action taken or omitted to be taken by it in reliance thereon;

(m) the Trustee shall not be under any duty to examine into or pass upon the validity or genuineness of any securities at any time pledged and deposited hereunder, and the Trustee shall be entitled to assume that any 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;

(n) the Trustee may buy, hold, sell or deal in the Bonds and coupons issued hereunder and other securities of the Company or of any corporation in which the Company may be interested, or may engage in or be interested in any financial or other transaction with the Company, or any corporation in which the Company may be interested, and the Trustee may act as depository, trustee, transfer agent, registrar or agent for the Company or for any committee or other body, firm or corporation in respect of any bonds, notes or other securities whether or not issued pursuant hereto, all with the same rights as though it were not Trustee hereunder.

Specifically and without limiting the generality of the foregoing, the Company or any corporation in which the Company may be interested shall be entirely free to borrow from time to time and at any time from any bank or trust company that may at the time be Trustee hereunder, and any bank or trust company which may at the time be Trustee hereunder, shall be entirely free to lend at any time and from time to time to the Company or to any corporation in which the Company may be interested on a secured or unsecured basis and all upon such terms and conditions generally as may be agreed upon between such borrower and such lender, and such lender shall have the right freely to enforce all remedies available to it at law or in equity or in bankruptcy for the collection of any such loan, all as fully and to the same extent as though such lender were not the Trustee hereunder; and

(o) if the Company shall fail to perform any of the covenants contained in Article Five hereof, the Trustee may, in its uncontrolled discretion, at any time and from time to time, make advances to effect performance of the same on behalf of the Company, but the Trustee shall not be under any obligation so to do;