

Article XV
Section 17

226

however, or for any other remedy hereunder, unless (a) such holder previously shall have delivered to the Trustees written notice that one or more Events of Default, which default or defaults shall be specified in such notice, has occurred and is continuing, and (b) the holders of not less than 25% in principal amount of the then Outstanding Bonds shall have requested the Trustees in writing and shall have afforded to them reasonable opportunity either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in their own names, and (c) one or more holders of Bonds shall have offered to the Trustees adequate security and indemnity, satisfactory to them, against the costs, expenses and liabilities to be incurred therein or thereby, nor unless the Trustees shall have refused or neglected to act on such notification, request and offer of indemnity for at least 30 days; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustees, to be conditions precedent to the exercise of the powers and trusts of the Mortgage and to any action or cause of action for foreclosure, including the appointment of a receiver or trustee, or for any other remedy hereunder; it being understood and intended that no holder of any Bond or coupon shall have any right in any manner whatsoever by his action to affect, disturb or prejudice the lien of the Mortgage or to enforce any right hereunder, except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had or maintained in the manner herein provided, and for the equal benefit of all holders of the Outstanding Bonds and coupons.

Nothing contained in this Section 17 or elsewhere in the Mortgage or in the Bonds or in the coupons shall affect or impair the obligation of the Company to pay the principal of, premium if any, and interest on the Bonds to the respective holders of the Bonds and to the respective holders of the

coupons, as provided in such Bonds, nor affect or impair the right of action at law, which is also absolute and unconditional, of such holders to collect such payment.

SECTION 18. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees or the Bondholders is intended to be exclusive of any other remedy or remedies, but each and every such remedy shall be cumulative; and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity.

SECTION 19. No delay of the Trustees or of any Bondholder in exercising any right or power accruing upon any default continuing as aforesaid and no omission to exercise any such right or power shall in any manner constitute a waiver of such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein; and every power and remedy given by this Article XV to the Trustees, or to any Bondholder, may be exercised from time to time, and as often as may be deemed expedient by the Trustees or by such Bondholder, respectively.

SECTION 20. The Trustees shall have power, but shall be under no duty, to institute and maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or governmental enactment, rule or order that they may be advised and believe is unconstitutional, or otherwise invalid, if the enforcement of, or compliance with, or observance of, such enactment, rule or order would, in the judgment of the Trustees, impair the security hereunder or be prejudicial to the Trustees or to the Bondholders.

SECTION 21. The holders of a majority in aggregate principal amount of the Outstanding Bonds shall have the right to direct the time, method, and place of conducting any pro-

Article XV
Sections 21, 22 and 23

227

ceeding for any remedy available to the Trustees, or the exercise or non-exercise of any trust or power conferred on the Trustees. Except as provided in Section 4 of this Article XV, the holders of a majority in aggregate principal amount of the Outstanding Bonds may on behalf of the holders of all the Bonds waive any past default hereunder and its consequences other than an Event of Default specified in clauses (a), (b), (c) or (d) of Section 2 of this Article XV. In the case of any such waiver, the Company, the Trustees and the Bondholders shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

SECTION 22. All parties to the Mortgage agree, and each holder of any Bond by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Mortgage, or in any suit against the Trustees for any action taken or omitted by them as Trustees, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 22 shall not apply to any suit instituted by the Trustees, to any suit instituted by any Bondholder or group of Bondholders holding more than 10% in aggregate principal amount of the Outstanding Bonds, or to any suit instituted by any Bondholder for the enforcement of the payment of the principal of or interest on any Bond, or after the due date expressed in such Bond.

SECTION 23. To the extent that any provision of this Article XV may be invalid or unenforceable under any applicable law with respect to any of the mortgaged property, such provision shall be deemed inoperative and inapplicable.

Article XVI

228

ARTICLE XVI

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, DIRECTORS
AND OFFICERS

The Mortgage and the Bonds and coupons are solely corporate obligations. No recourse shall be had for the payment of the principal of, premium if any, or interest on any Bond, or for any claim based thereon or on any coupon appurtenant thereto, or because of the creation of the indebtedness represented thereby, or otherwise in respect thereof, or based on or in respect of the Mortgage, against any past, present or future incorporator, stockholder, officer or director of the Company, as such, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise; all such liability, by the acceptance of such Bond and as part of the consideration for the issuance thereof, being expressly waived and released.