

ing in its own name; nor unless also one or more such holders shall have offered to the Trustee adequate security, funds and indemnity, satisfactory to the Trustee from time to time, against the cost, expenses and liabilities which might be incurred by the Trustee by reason of such action, suit or proceedings; nor unless also the Trustee shall have refused or neglected beyond a reasonable time to act in respect of such event of default. Such notice, request, offer of security, funds and indemnity and (if required by the Trustee) proof of ownership are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the appointment of a receiver, or for any other remedy hereunder; it being understood, intended and agreed that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the rights of the Trustee or of any other Bondholder under this Indenture by his or their action, or to seek or obtain priority over or preference to any other such holder, 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 and maintained in the manner herein provided and for the ratable and common benefit of all holders of the then outstanding Bonds similarly situated.

For the enforcement of the foregoing provisions of this section 2, and for the protection of their rights thereunder, each and every holder of Bonds, and the Trustee, shall be entitled to such relief as can be given either at law or in equity; but no provision of this section 2, or of this Indenture, or of the Bonds, shall be construed to limit or affect any discretion or power given by any provision of this Indenture to the Trustee to determine whether or not the Trustee shall take action in respect of any default without such notice, request, offer of security, funds, indemnity or proof of ownership, or to affect any other discretion or power of the Trustee.

Nothing, however, in this Article VI, or elsewhere in this Indenture, or in the Bonds or coupons, shall affect or impair the obligation of the Company, which is unconditional and absolute, to pay, at the maturity therein and herein expressed, the principal of and interest on the Bonds to the respective holders of the Bonds and coupons and claims for interest at such maturity.

ARTICLE VII.

Concerning the Trustee.

Section 1. The Trustee accepts and agrees to execute the trusts of this Indenture upon and only upon and subject to the terms and conditions of this Indenture, to all of which the Company and the Bondholders agree by the issue, acceptance and holding of the Bonds, expressly including, but without limiting the foregoing or other provisions hereof protecting the Trustee and without limiting any power or discretion of the Trustee hereunder, the following:

Subsection A. The Trustee may execute and perform any and all of its trusts, powers or duties hereunder by or through or upon the advice of such officers, employees, attorneys (in fact or at law), counsel, engineers, accountants and other agents, consultants, experts and persons, whether individuals, firms or corporations, as shall from time to time be deemed by the Trustee to be competent and be selected, approved, employed, retained or consulted by the Trustee, whether or not disinterested and whether retained or employed by the Trustee, the Company or otherwise. The Trustee shall in no event be held liable for any neglect, act, omission or wrongdoing of any agent, consultant, expert or person, provided reasonable care has been exercised in his or its selection; and the Trustee shall be without any liability whatsoever but shall be completely protected in respect of any action or omission to act taken or suffered by it or them in good faith in accordance with any decision or advice of such counsel or other consultants, experts or persons. Any such action or omission shall bind and be conclusive upon the Bondholders and the Company.

Subsection B. The Trustee shall be entitled to, and is authorized to pay out of the Trust Property, reasonable compensation (which shall not be limited by any provision of law in respect of the compensation of a trustee of an express trust), for its own services and for the services of all its agents, consultants, experts and persons, and shall be entitled out of the Trust Property, and from holders of Bonds as herein provided, to reimbursement and indemnity, and to be put in funds, from time to time and whenever required by the Trustee, for all advances and disbursements, expenditures, damages, loss, cost, expenses and liabilities made or to be made, or incurred or to be incurred, by the Trustee and by its agents, consultants, experts and other persons, directly or indirectly, in connection with the trusts, powers and duties hereunder, together with interest thereon at the rate of six per cent. (6%) per annum, unless in a particular instance, or particular instances, a different rate shall be expressly agreed upon by the Company and by the Trustee, all of which are a part of the obligations of the Company secured by this Indenture; and the Trustee shall be entitled to priority of payment for such compensation, reimbursement, indemnity, funds and interest and shall have a lien therefor upon any and all money and property at any and all times constituting any part of the Trust Property, prior to the rights and claims thereto of the holders of the Bonds.

Subsection C. The Trustee shall be exempt from giving any bond or security unless ordered by a court of competent jurisdiction for cause shown. The Trustee shall be fully protected and under no liability or responsibility whatever:

(1) for accepting (as conclusive proof, in favor of the Trustee and as against the Company, the Bondholders and all other persons, of any fact or matter purporting to be therein evidenced or contained upon or by reason of which the Trustee may be required or permitted or may deem it expedient to act or abstain from acting) and for acting or abstaining from acting upon:

(a) any notice, authorization, order, direction, resolution, vote, or other instrument, communication or action purporting to be by the Company, or by its officers, directors or agents, in any form or executed or evidenced in any manner required or permitted by any of the provisions hereof relating thereto; or (if in any instance no form thereof or no method of executing or evidencing the same is herein designated) any instrument, communication or action purporting to be by the Company, or by its officers, directors or agents, embodied either in an instrument or writing, satisfactory to the Trustee, executed or certified in the name of the Company by its president and its secretary or its treasurer, or in any other form or executed or evidenced in any other manner deemed satisfactory by the Trustee;

(b) any certificate, report, evidence, opinion, communication, instrument, document or paper specified in, or required or permitted by, any of the provisions hereof, or which the Trustee may in its discretion require and secure either in addition to any evidence or paper elsewhere herein designated or (in the event that the Trustee in its discretion shall determine in any instance that the expense of obtaining any evidence or paper elsewhere herein designated would be prohibitive and that the requisite facts and conditions can in the opinion of the Trustee otherwise be determined and established with reasonable certainty and safety) in lieu of any evidence or paper elsewhere herein designated;

(c) any assignment, transfer, resolution, vote, notice, request, consent, appointment, certificate, statement, report, order, affidavit, opinion, letter, telegram, insurance policy or binder, or other evidence, opinion, communication, instrument, document or paper believed by the Trustee to be by or from any person therein stated (or believed by the Trustee) to be familiar with the facts therein stated and to be genuine and correct, and to have been made, signed, sent, executed or certified by a proper party;

(2) for the authorization, validity, execution, truth, accuracy or sufficiency, or for the facts purported to be stated in or the other contents, of any evidence, opinion, consent, communication, instrument, document or paper referred to in the last three preceding sub-clauses, or elsewhere in this Indenture;

(3) for any discretion it may exercise, for any opinion, approval or satisfaction it may express or withhold, for any determination or other decision it may make or for any action it may take or abstain from taking, not expressly inconsistent with the provisions of this Indenture, if, unless herein otherwise expressly provided for, based upon any request from holders of not less than a majority in principal amount of the Bonds, outstanding at the time, or, as regards any particular series, if, based upon any request from holders of not less than a majority in principal amount of Bonds of such series outstanding at the time, or upon any evidence, facts or circumstances specified in any of the provisions hereof relating to action by the Trustee hereunder; or obtained by the Trustee in addition to such provisions, or (if in any instance no method is elsewhere herein designated for obtaining any evidence, or determining any fact or the happening of any circumstance, or the basis for any decision, opinion, consent, approval, satisfaction, determination, decision, action or abstaining from acting) if based upon any evidence, facts or circumstances deemed sufficient by the Trustee in its discretion;

(4) for the consequences of any oversight or for any error of judgment or for any mistake of fact or law, or for anything which it may do or refrain from doing in good faith, or believing it to be within the discretion or power conferred by this Indenture, or for any of its acts or omissions in connection with any of its trusts, powers and duties under this Indenture, except only (a) for money received and not paid out, but held by it hereunder, or (b) for loss or damage resulting from its own gross negligence or its own wilful acts, neglects and defaults constituting a breach of trust knowingly and intentionally committed by it in bad faith.

Subsection D. The Trustee makes no covenant or representation and shall not be responsible:

(1) as to or for the authorization, validity, making, execution, delivery, priority or sufficiency of the Bonds or coupons issued and to be issued hereunder, or of this Indenture, or the title created hereby, or the existence, extent or adequacy of the security hereof or of the Trust Property,

or the title thereto or description thereof, or the conveyance, assignment, transfer, pledge or delivery of property to the Trustee under this Indenture; or

(2) as to or for any of the recitals, statements or representations contained in this Indenture or in or on the Bonds or coupons (except only the certificate upon the Bonds that they are issued hereunder), all of which (except as aforesaid) are and shall be taken as made by the Company only and shall not be construed as made by the Trustee; or

(3) as to or for any acknowledgment, delivery, stamping, recording, registration, renewal, filing or refiling, or for giving any notice, of this Indenture or for procuring any further, other or additional instruments, assignments, transfers, or conveyances, but may certify and deliver the Bonds as hereinbefore provided immediately upon its execution of this Indenture.

Subsection E. The Trustee shall be under no liability, obligation, responsibility or duty:

(1) to obtain or examine any certificate, account, balance sheet, financial statement or other paper or other information required or provided by any of the provisions of this Indenture to be delivered or furnished to or filed with the Trustee by the Company, or to examine the property or affairs of the Company, or to take any action in respect of such information, property or affairs unless notified, requested and indemnified as provided in sub-clause (5) of this subsection E, and elsewhere in this Indenture, or to ascertain, inquire into or see to the disposition or application of the Bonds or the proceeds therefrom, or, unless notified, requested and indemnified as aforesaid, the performance or observance by the Company of any duty, condition, covenant, obligation or agreement of the Company under any of the provisions of this Indenture; or

(2) to pay or provide for or against, or keep itself informed as to the payment of or provision for or against, rents, insurance or the collection or adjustment of any insurance in case of loss, or income or profits, property, excise, franchise or other taxes, or charges, assessments, liens, encumbrances, fines or penalties, imposed upon the Trust Property or the Company or its income or property, or upon the Trustee or the holders of the Bonds or upon any money or property at any time constituting any part of the Trust Property, or otherwise as to the maintenance of the benefits or protection of this Indenture; but the Trustee, in case of any default in respect thereof by the Company (but subject to the provisions hereinbefore contained for contesting the same upon the conditions hereinbefore specified), may in its discretion pay and discharge any such rents, insurance premiums, taxes, charges, assessments, liens, encumbrances, fines and penalties, or effect, collect or adjust such insurance, or advance, pay or apply any other sums, the payment or application of which is incumbent on the Company hereunder and remains unpaid or unapplied as and when payable or applicable, and may take an assignment, to be held by it as additional security for its protection and the protection and benefit of the Bondholders, of each and every claim against or obligation of the Company so paid or discharged by the Trustee; but no such advance, payment or application, no such taking of an assignment, and no such effecting, collecting or adjusting of insurance, by the Trustee, shall constitute a waiver of any default by the Company, nor extend to any other default, nor affect or impair any right or remedy consequent upon such or any other default; and the Trustee may require the Company to keep it fully informed and advised as to the performance and observance of all the duties, covenants, obligations and agreements aforesaid and as to the condition of the Trust Property and of the Company's operations; or

(3) to recognize as a holder of any of the Bonds secured hereby any person, firm or corporation claiming to be such holder, unless and until such person, firm or corporation shall, if required by the Trustee, exhibit the Bonds which he, they or it claim to hold and/or furnish the Trustee with proof of ownership satisfactory to the Trustee; or

(4) to take notice or be deemed to have knowledge or notice of any default under this Indenture or the Bonds issued hereunder, but may conclusively assume that no such default has occurred, unless and until it shall have been specifically notified in writing of such default by the holders of not less than either, whichever is the lesser, ten per cent. (10%) in principal amount of the Bonds then outstanding or twenty-five per cent. (25%) in principal amount at the time outstanding of any particular series if more than one series be outstanding hereunder, in respect of which such default shall exist; or

(5) to take any action in respect of any such default or towards the execution or enforcement of any trusts, powers, covenants or provisions of this Indenture or of the Bonds, or to institute, appear in, conduct, defend or continue any suit or other proceedings, or to incur expense or liability, unless and until the Trustee is furnished with proof of ownership, as aforesaid, and the Trustee is notified, as aforesaid, and specifically requested in writing so to do by the holders of not less than either, whichever is the lesser, fifteen per cent. (15%) in principal amount of the Bonds then outstanding or twenty-five per cent. (25%) in principal amount at the time outstanding of any particular series if more than one series be outstanding hereunder, in respect of which such default shall exist, and unless and until the Trustee, if in its opinion such action may tend to involve it in any expense or liability, shall be put in funds, secured and indemnified to its full satisfaction, from time to time and as often as requested by the Trustee, from and against any and all loss, cost, expense, outlays, fees and other reasonable advances and expenses, disbursements, liabilities and damages for which in its judgment it may become involved, liable or responsible in or on account of carrying out any request or demand made upon it; but, subject only to the provisions of section 5 of Article V, no provision of this Indenture or of the Bonds shall prevent the Trustee from acting, in its discretion, without notice, request, proof of ownership, funds, security or indemnity.

Subsection F. The Trustee, either individually or in a representative or fiduciary capacity, and its officers, agents and employees, may acquire, hold and dispose of Bonds issued under this Indenture, or may act as depository or trustee for, or as a members of, any committee or body of Bondholders, all to the same extent and with the same rights and effect as though it were not Trustee.

Subsection G. No director, officer, attorney, employee, or other agent or person consulted or employed by the Trustee shall under any circumstances be personally liable for any debt contracted, liability incurred or damage suffered in connection with the execution and performance of any of the trusts, powers or duties of the Trustee under this Indenture nor for any matter or thing except his own gross negligence or his own individual acts, neglects and defaults constituting a breach of trust knowingly and intentionally committed by him in bad faith.

Subsection H. Pending the application as herein provided of any moneys in the hands of the Trustee the disposition of which at the time is not otherwise provided for under any of the provisions hereof, the Trustee may deposit all or any part of such moneys in its banking department on a certificate of deposit or otherwise to its credit as Trustee hereunder and in such event, unless otherwise herein provided, shall allow interest on any such moneys so deposited at the current rate or rates, if any, from time to time paid by it on similar deposits of like nature over like periods of time. Interest so allowed, when not otherwise provided herein in respect of any moneys so deposited, shall be paid to the Company so long as the Trustee shall have received no notice that the Company is in default hereunder, subject, however, at all times to the payment of the Trustee's expenses, disbursements, liabilities and compensation.

Subsection I. In accepting the conveyance and assignment to it of the Trust Property, whether property, franchises, rights, leases, contracts, agreements, licenses, permits, or whatever it may be, and whether under this Indenture or some indenture supplemental hereto, the Trustee acts solely as Trustee hereunder and not in its individual capacity. The Trustee shall not be individually liable for any debts contracted, or for damages to persons, or for property injured or damaged, or for salaries, or for non-fulfillment of contracts or for any other cause during any period in which the Trustee or its agent may be in possession of or managing the property of the Company as herein provided, but all persons having any debts or claims for damages, for salaries, for non-fulfillment of contract, or for any other cause whatever, shall look only to the Trust Property for the payment and satisfaction thereof; and the Trustee shall be compensated and indemnified out of the Trust Property for any such debts, claims or liabilities which the Trustee or its agents may pay or discharge or incur.

The Trustee and its agents shall not be liable by reason of entry into possession of the Trust Property, or any part thereof, to account for anything except actual receipts, or be liable for any loss on realization, or for any other liability, default or omission for which a trustee in possession might be liable, except only for losses resulting from its bad faith.

Subsection J. The Trustee shall have the power from time to time and at all times to institute and to maintain such suits, actions and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security hereunder by any acts (of the Company or of others) which are in violation of this Indenture or unlawful, or to preserve and protect the interests of the Trustee and the security and interest of the Bondholders in respect of the Trust Property or any of it, or in respect of the income, interest, dividends, earnings, rents, issues and interest of the Bondholders in respect of the Trust Property or any of it, or in respect of the income, interest, dividends, earnings, rents, issues and interest thereof, including (but not hereby limiting the foregoing general power) power to institute and maintain suits, actions, or proceedings to restrain the enforcement of, or compliance with, or observance of, any legislative or other governmental enactment, rule or order on the ground that the same is unconstitutional or otherwise invalid if such enforcement, compliance or observance would in the opinion of the Trustee impair the security hereunder or be prejudicial to the interests of the Trustee or the Bondholders.

Subsection K. The Trustee may construe any of the provisions of this Indenture in so far as the same may appear to be ambiguous or in conflict with any other provisions hereof; and any construction of any such provisions hereof by the Trustee in good faith, shall be binding upon the Company and the Bondholders.