

## MORTGAGE OF REAL ESTATE

statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not in the opinion of such person such condition or covenant has been complied with.

Every request or application by the Company for action by the Corporate Trustee shall be accompanied by an Opinion of Counsel stating that in the signer's opinion, the conditions precedent, if any, to such action, provided for in this Indenture (including any covenants compliance with which constitutes precedent) will, on the delivery to the Corporate Trustee of such Opinion of Counsel and the Resolutions, certified and other documents, if any, specified therein, have been complied with.

SECTION 122. All parties to this Indenture agree, and each holder or owner 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 Indenture, or in any suit against the Trustees or either of them for any action taken or omitted by them, as Trustees, or by it or him, as Trustee, 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 attorney's 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 shall not apply to any suit instituted by the Trustees or either of them, to any suit instituted by any bondholder, or group of bondholders, holding in the aggregate more than ten per centum (10%) in principal amount of the bonds Outstanding (determined as provided in Section 71 hereof), or to any suit instituted by any bondholder for the enforcement of the payment of the principal or interest on any bond, on or after the respective due dates expressed in such bond.

SECTION 123. Subject to the provisions of Article XV and Article XVI hereof, whenever in this Indenture either of the parties hereto is named or referred to (except in subdivision (1) of Section 5 hereof) this shall be deemed to include the successors or assigns of such party, and all the covenants and agreements in this Indenture contained by or on behalf of the Company or by or on behalf of the Trustees shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

Any provisions of this Indenture required to be included herein had this Indenture been qualified under the Trust Indenture Act of 1939 which is applicable to an obligor upon the bonds shall be binding upon any future obligor upon the bonds.

SECTION 124. If any provision of this Indenture limits, qualifies, or conflicts with another provision of this Indenture required to be included herein had this Indenture been qualified under the Trust Indenture Act of 1939, by any of Section 310 to 317, inclusive, of the said Act, such required provisions shall control.

SECTION 125. Wherever reference is made in this Indenture to the Trust Indenture Act of 1939, reference is made to such Act as it was in force on the date of the execution of this Indenture.

SECTION 126. The date of maturity of this Indenture shall be May 1, 2040, and all bonds to be issued hereunder shall mature not later than such date, provided, however, that nothing in this Section shall affect or limit to any extent the right of the Company to issue any bonds secured hereby having a maturity date or dates earlier than May 1, 2040 or affect or limit to any extent any of the rights or remedies of the Trustees or the bondholders to enforce the provisions of this Indenture or of the bonds by foreclosure of this Indenture or otherwise, at any time or times prior to May 1, 2040.

SECTION 127. The titles of the several Articles of this Indenture shall not be deemed to be any part thereof.

SECTION 128. This Indenture shall be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument,

IN WITNESS WHEREOF, on this 29th day of May 1940, CAROLINA POWER & LIGHT COMPANY, PARTY hereto of the first part, has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by its President or one of its Vice-Presidents, and its corporate seal to be attested by its Secretary or one of its Assistant Secretaries for and in its behalf, and Irving Trust Company, one of the parties hereto of the second part, in token of its acceptance of the trust hereby created, has caused its corporate name to be hereunto affixed, and this instrument to be signed and sealed by one of its Vice President and its corporate seal to be attested by one of its Assistant Secretaries, and Frederick G. Herbst, one of the parties hereto of the second part, has for all like purposes hereunto set his hand and affixed his seal, as of the 1st day of May, 1940, all in the City of New York.

CAROLINA POWER & LIGHT COMPANY,  
BY L. V. Sutton  
President.

ATTEST:  
C. J. Curry  
Secretary.