

Art. XIII, §§13.01, 13.02

ARTICLE XIII**Possession, Use and Release of Mortgaged
and Pledged Property**Company's
possession
and enjoyment

SECTION 13.01. Unless one or more Defaults shall have occurred and be continuing, the Company shall be suffered and permitted to possess, use and enjoy the Mortgaged and Pledged Property (except such cash as is expressly required to be deposited with the Trustee and except, to the extent not herein otherwise provided, such securities as are expressly required to be deposited with the Trustee), and to receive, use and dispose of the tolls, rents, revenues, issues, earnings, income, products and profits thereof, with power in the ordinary course of business, freely and without let or hindrance on the part of the Trustee or of the bondholders, except as herein otherwise expressly provided to the contrary, to exercise any and all rights under choses in action, contracts, franchises and claims.

What Company may
do without release
or consent by Trustee

SECTION 13.02. Unless the Company is in default in the payment of the interest on any of the bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the Company may at any time and from time to time, without any release or consent by, or report to, the Trustee:

(1) Sale of
machinery,
equipment, tools,
etc.

(1) sell or otherwise dispose of, free from the Lien of this Indenture, any machinery, apparatus, equipment, frames, towers, poles, wire, pipe, tools, implements, or furniture, or any other fixtures or personalty, then subject to the Lien hereof, which shall have become old, inadequate, obsolete, worn out, unfit, unadapted, unserviceable, undesirable or unnecessary for use in the operations of the Company upon replacing the same by, or substituting for the same, machinery, apparatus, equipment, frames, towers, poles, wire, pipe, tools, implements, or furniture, or any other fixtures or personalty, of at least equal value to that of the property sold or otherwise disposed of and subject to the Lien hereof, subject to no liens prior hereto except liens to which the property sold or otherwise disposed of was subject;

(2) Cancellation,
etc. of right of
way grants

(2) cancel or make changes or alterations in or substitutions of any and all right of way grants; and

(3) Surrender or
modification of
franchises

(3) surrender or assent to the modification of any right, power, franchise, license, governmental consent or permit under which it may be operating, provided that, in the opinion of the Board of

Directors (such opinion to be stated in a Resolution to be filed with the Trustee), any such surrender or modification which affects the Mortgaged and Pledged Property is necessary or desirable in the conduct of the business of the Company.

SECTION 13.03. Unless the Company is in default in the payment of the interest on any bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the Company may obtain the release of any of the Mortgaged and Pledged Property, except cash then held by the Trustee (provided, however, that Qualified Lien Bonds deposited with the Trustee shall not be released except as provided in Article X hereof and Class "A" Bonds deposited with the Trustee shall not be released except as provided in Article XIV hereof and obligations secured by purchase money mortgage deposited with the Trustee shall not be released except as provided in Section 13.06 hereof), and the Trustee shall release all its right, title and interest in and to the same from the Lien hereof upon the application of the Company and receipt by the Trustee of the following:

Release of property
by Trustee

Requirements:

(1) an Officers' Certificate complying with the requirements of Section 22.05 hereof and describing in reasonable detail the property to be released and requesting such release, and stating that the Company is not in default in the payment of the interest on any bonds then Outstanding hereunder and that no Default has occurred and is continuing;

(1) Officers'
Certificate

(2) an Engineer's Certificate, made and dated not more than ninety (90) days prior to the date of such application, stating:

(2) Engineer's
Certificate

(a) that the Company has sold, leased, granted an interest in, exchanged, dedicated or disposed of, or intends or has agreed to sell, lease, grant an interest in, exchange, dedicate or dispose of, or that a governmental body or agency has lawfully ordered the Company to divest itself of, the property to be released;

(b) the fair value and the Cost (or as to Property Additions constituting Funded Property of which the fair value to the Company at the time the same became Funded Property was less than the Cost as determined pursuant to Section 1.04 hereof, then such fair value in lieu of Cost), in the opinion of the signers, of the property (or securities) to be released;

(c) the Cost (or as to Property Additions of which the fair value to the Company at the time the same became Funded

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Property was less than the Cost as determined pursuant to Section 1.04 hereof, then such fair value in lieu of Cost), in the opinion of the signers, of any portion thereof (which shall be specified) that is Funded Property;

(d) that (except in any case where a governmental body or agency has lawfully ordered the Company to divest itself of such property) such release is in the opinion of the signers desirable in the conduct of the business of the Company;

(e) the amount of cash and/or principal amount of obligations secured by purchase money mortgage received or to be received for any portion of said property sold to any Federal, State, County, Municipal or other governmental bodies or agencies or public corporations, districts or authorities; and

(f) that in the opinion of the signers such release will not impair the security under this Indenture in contravention of the provisions hereof;

(3) Consideration

(3) an amount in cash to be held by the Trustee as part of the Mortgaged and Pledged Property, equivalent to the amount, if any, by which the Cost (or as to Property Additions constituting Funded Property of which the fair value to the Company at the time the same became Funded Property was less than the Cost as determined pursuant to Section 1.04 hereof, then such fair value in lieu of Cost) of the property to be released, as specified in the Engineer's Certificate provided for in subdivision (2) above, exceeds the aggregate of the following items:

(a) the principal amount, subject to the limitations stated below in this subdivision (3), of any obligations delivered to the Trustee, to be held as part of the Mortgaged and Pledged Property, consisting of obligations secured by purchase money mortgage upon the property released;

(b) the Cost or fair value to the Company (whichever is less) of any Property Additions made the basis of the application which are not then Funded Property (after making any deductions and any additions pursuant to the provisions of Section 1.04 hereof) as shown by a further Engineer's Certificate (made and dated no more than ninety (90) days prior to the date of such application) delivered to the Trustee; provided, however, that Property Additions acquired, made or constructed within ninety

(90) days prior to the date of such application for release, or subsequently thereto, may, at the option of the Company, not have deducted therefrom the deductions nor added thereto the additions pursuant to Section 1.04 hereof;

(c) the aggregate principal amount of bonds to the authentication and delivery of which the Company shall be entitled under the provisions of Sections 5.04 or 6.01 hereof, by virtue of compliance with all applicable provisions of said Sections 5.04 or 6.01, as the case may be (except as hereinafter in this Section otherwise provided); provided, however, that (except as hereinafter in this Section otherwise provided) the application for such release shall operate as a waiver by the Company of such right to the authentication and delivery of such bonds on the basis of which right such property is released and to such extent no such bonds may thereafter be authenticated and delivered hereunder, and any bonds or Qualified Lien Bonds which have been made the basis of any such right to the authentication and delivery of bonds so waived shall be deemed to have been made the basis of the release of such property;

(d) the principal amount, subject to the limitations stated below in this subdivision (3), of any obligations secured by purchase money mortgage upon the property to be released and/or any amount in cash, that is evidenced to the Trustee by a certificate of the trustee or other holder of a Qualified Lien or a lien (other than a Class "A" Mortgage) prior hereto, as the case may be, to have been received by it in accordance with the provisions of such Qualified Lien or lien prior hereto in consideration for the release of such property or any part thereof from such Qualified Lien or lien prior hereto;

(e) the aggregate principal amount of any bonds Outstanding under this Indenture delivered to the Trustee; and

(f) any taxes and expenses incidental to such sale, exchange, dedication or disposal;

provided, however, that (i) no obligations secured by purchase money mortgage upon any property being released from the Lien hereof

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shall be used as a credit in any application for such release unless all obligations secured by such purchase money mortgage shall be delivered to the Trustee or to the trustee or other holder of a Qualified Lien or lien prior hereto; (ii) in case the total principal amount of obligations secured by purchase money mortgage upon property being released shall exceed seventy-five per centum (75%) of the fair value of such property, as specified in the Engineer's Certificate provided for in subdivision (2) above, the aggregate credit which may be used pursuant to clause (a) and clause (d) of this subdivision (3) in respect of such obligations shall not exceed seventy-five per centum (75%) of the fair value of the property to be released, as specified in such Engineer's Certificate; and (iii) no obligations secured by purchase money mortgage shall be used as a credit in any application for the release of property hereunder, if the aggregate credit in respect of such obligations to be used by the Company pursuant to clause (a) and clause (d) of this subdivision (3) plus the aggregate credits used by the Company pursuant to said clause (a) and clause (d) in all applications for the release of property theretofore released from the Lien hereof on the basis of purchase money obligations theretofore delivered to and then held by the Trustee or the trustee or other holder of a Qualified Lien or lien prior hereto shall, immediately after the release then being applied for, exceed fifteen per centum (15%) of the aggregate principal amount of bonds at such time Outstanding under this Indenture;

(4) Opinion of
Counsel on
Property Additions

(4) in the case where the release is on the basis of Property Additions, an Opinion of Counsel as required by Section 5.06(7) hereof;

(5) Opinion of
Counsel on purchase
money mortgage, etc.

(5) in case any obligations secured by purchase money mortgage upon the property to be released are included in the consideration for such release and are delivered to the Trustee or to the trustee or other holder of a Qualified Lien or a lien prior hereto in connection with any release of such property, an Opinion of Counsel stating that, in his or her or their opinion, such obligations are valid obligations enforceable in accordance with their terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of mortgagees' and other creditors' rights and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law), and that the purchase money mortgage securing the same is sufficient

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to afford a valid purchase money lien upon the property to be released, subject to no lien prior thereto except Excepted Encumbrances and such liens, if any, as shall have existed thereon just prior to such release as Qualified Liens or liens prior to the Lien of this Indenture;

(6) in case the Trustee is requested to release any franchise, an Opinion of Counsel stating that in his or her or their opinion such release will not impair to any material extent the right of the Company to operate any of its remaining properties; and

(6) Opinion of Counsel if franchise to be released

(7) an Opinion of Counsel complying with the requirements of Section 22.05 hereof.

(7) Opinion of Counsel on conditions and covenants

All purchase money obligations and the mortgages securing the same delivered to the Trustee pursuant to this Section shall be duly assigned to the Trustee. The Company shall cause any such purchase money mortgage and the assignment thereof to be promptly recorded and filed in such place or places as shall be required by law in order fully to preserve and protect the security afforded thereby and shall furnish to the Trustee an Opinion of Counsel stating that in the opinion of such counsel such purchase money mortgage and the assignment thereof have been properly recorded and filed so as to make effective the lien intended to be created thereby. Should any re-recording or re-filing be necessary at any time or from time to time, the Company shall likewise cause the same to be duly effected and shall, in each case, furnish to the Trustee an Opinion of Counsel similar to the foregoing. The Trustee shall deliver to the Company any purchase money mortgage and/or assignment thereof whenever required for the purpose of recording or filing or re-recording or re-filing, as evidenced by an Opinion of Counsel, and the same shall be promptly returned to the Trustee when such purposes shall have been accomplished.

In case the release of property is, in whole or in part, based upon Property Additions (as permitted under the provisions of clause (b) of subdivision (3) of this Section), the Company shall, subject to the provisions of said clause (b), comply with all applicable provisions of this Indenture (including but not limited to the furnishing of the Engineer's Certificate provided for in subdivision (3) of Section 5.06 hereof and, in case the provisions of subdivision (4) of Section 5.06 hereof are applicable, the Independent Engineer's Certificate provided for in said subdivision (4) of Section 5.06 hereof) as if such Property Additions were made the

Conditions if release based on Property Additions; bonds retired hereunder, etc.

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basis of an application for the authentication and delivery of bonds thereon (equivalent in principal amount to seventy per centum (70%) of the fair value of that portion of the property to be released which is to be released on the basis of such Property Additions, as shown by the Engineer's Certificate in subdivision (2) of this Section provided for), and in case the release of property is in whole or in part based upon the right to the authentication and delivery of bonds (as permitted under the provisions of clause (c) of subdivision (3) of this Section) the Company shall comply with all applicable provisions of Section 5.04 or Section 6.01 hereof, as the case may be, relating to such authentication and delivery, except that in no such case shall the Company be required to comply with any earnings requirement or to deliver to the Trustee any Resolution, Officers' Certificate, Net Earning Certificate or Opinion of Counsel provided for in subdivisions (1), (2), (6) and (8) of Section 5.06 hereof; provided, however, that the Cost of any Property Additions received or to be received by the Company in whole or in part as consideration in exchange for the property to be released shall for all purposes of this Indenture be deemed to be the amount stated in the Engineer's Certificate provided for in subdivision (2) of this Section to be the fair value of the property to be released (a) plus the amount of any cash and the fair value of any other consideration, further to be stated in such Engineer's Certificate, paid and/or delivered or to be paid and/or delivered by, and the amount of any obligations assumed or to be assumed by, the Company in connection with such exchange as additional consideration for such Property Additions or (b) less the amount of any cash and the fair value to the Company of any other consideration, which shall also be stated in such Engineer's Certificate, received or to be received by the Company in connection with such exchange in addition to such Property Additions.

Valuation of
property subject to
Qualified Lien or
prior lien

For all purposes of this Article XIII, the fair value of property subject to a Qualified Lien shall be determined as if such property were free of such Qualified Lien and the fair value of property subject to a lien prior to the Lien hereof, which has not theretofore or is not then to become a Qualified Lien shall be the fair value thereof less the principal amount of any obligations secured by such lien thereon if it will thereafter cease to be a lien on any property subject to the Lien hereof.

Property Additions
made basis of release
of unfunded property
do not become
Funded Property

Notwithstanding any of the other provisions of this Indenture,

(A) to the extent that any property to be released is not Funded Property and the Property Additions made the basis of such release

shall (as evidenced by a statement to such effect in an Engineer's Certificate) never previously have been used as the basis of the release of property under the provisions of clause (b) of subdivision (3) of this Section or as the basis of the withdrawal of cash under subdivision (1) of Section 13.06 or under a Qualified Lien, said Property Additions shall not have the status of Funded Property except to the extent of any amount which shall, at the time such Property Additions were made the basis of such release, have been deducted from the Cost or fair value of such Property Additions pursuant to the provisions of clause (A) of Section 1.04 hereof less any amount which shall then have been added thereto pursuant to the provisions of clause (B) of said Section 1.04, and except to the extent of any amount which shall then have been deducted in respect of Qualified Liens on such Property Additions pursuant to the provisions of Section 5.04 hereof, and

(B) to the extent that any property released shall not have been Funded Property just prior to its release,

Provisions re release
of certain property
which is not
Funded Property

(i) any Property Additions made the basis of such release of property shall not be deemed to be Funded Property except to the extent of any amount which shall, at the time such Property Additions were made the basis of such release, have been deducted from the Cost or fair value of such Property Additions pursuant to the provisions of clause (A) of Section 1.04 hereof less any amount which shall then have been added thereto pursuant to the provisions of clause (B) of said Section 1.04, and except to the extent of any amount which shall then have been deducted in respect of Qualified Liens on such Property Additions pursuant to the provisions of Section 5.04 hereof, and

(ii) any waiver of the right to the authentication and delivery of bonds made the basis of such release of property shall be revoked and cease to be effective and shall no longer be deemed to have been made, if the Company shall within two years after the release of such property file with the Trustee such Officers' Certificates, Engineer's Certificates, Independent Engineer's Certificates, Opinions of Counsel and other papers (other than any Resolution, Net Earning Certificate or Opinion of Counsel such as is described in subdivisions (1), (6) and (8) of Section 5.06 hereof) as under the provisions of Article V hereof

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would entitle the Company, on the basis of Property Additions acquired, made or constructed subsequent to the application for the release of such property, to the authentication and delivery of bonds (equal in principal amount to seventy per centum (70%) of the fair value of such property so released), and the inclusion of such subsequently acquired Property Additions in any such Officers' Certificate, Engineer's Certificate, Independent Engineer's Certificate, Opinion of Counsel or other papers shall not make such subsequently acquired Property Additions Funded Property.

Any bonds Outstanding under this Indenture deposited with the Trustee pursuant to the provisions of subdivision (3)(e) of this Section shall forthwith be cancelled by the Trustee, and any Qualified Lien Bonds deposited with the Trustee pursuant to the provisions of this Section shall be held by the Trustee subject to the provisions of Article X hereof and any moneys and/or obligations secured by purchase money mortgage and/or other property and/or the proceeds of any thereof and/or substitutes therefor received by the Trustee under this Section shall be held as part of the Mortgaged and Pledged Property and such moneys and/or obligations secured by purchase money mortgage shall be paid over, withdrawn, used or applied, in the manner, to the extent, and for the purposes and subject to the conditions provided in Section 13.06 hereof.

Substituted property
to become subject to
Lien hereof

Any property acquired by the Company by exchange or purchase to take the place of any property released under any provisions of this Article shall forthwith and without further conveyance become subject to the Lien of and be covered by this Indenture as a part of the Mortgaged and Pledged Property, subject to no lien except Class "A" Mortgages, Qualified Liens and Excepted Encumbrances and any liens existing thereon just prior to the acquisition thereof.

Release of property
which is not
Funded Property

SECTION 13.04. Unless the Company is in default in the payment of the interest on any bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the Company may obtain the release of any of the Mortgaged and Pledged Property which is not Funded Property, except cash then held by the Trustee (provided, however, that Qualified Lien Bonds deposited with the Trustee shall not be released except as provided in Article X hereof and Class "A" Bonds deposited with the Trustee shall not be released except as provided in

Article XIV hereof and obligations secured by purchase money mortgage deposited with Trustee shall not be released except as provided in Section 13.06 hereof, and the Trustee shall release all its right, title and interest in and to the same from the Lien hereof upon application of the Company and receipt by the Trustee of the following (in lieu of complying with the requirements of Section 13.03 hereof):

Requirements:

(1) An Officers' Certificate stating that the Company has sold, leased, granted an interest in, exchanged, dedicated or disposed of, or intends to sell, lease, grant an interest in, exchange, dedicate, or dispose of, or that governmental body or agency has lawfully ordered the Company to divest itself of, certain property (which property shall be described in such certificate in reasonable detail) that is not Funded Property and stating the consideration, if any, received or to be received therefor, and requesting the release thereof from the Lien of this Indenture; and stating that such property has not theretofore been funded; that such release is in the opinion of the signers desirable in the conduct of the business of the Company; and that the Company is not, to the knowledge of the signers, in default in the performance of any of the terms or covenants of this Indenture; and that in the opinion of the signers all conditions precedent provided for in this Indenture relating to the release of the property in question have been complied with;

(1) Officers' Certificate

(2)(a) An Engineer's Certificate, made and dated not more than ninety (90) days prior to the date of such application, (x) stating, in the opinion of the signers, the then fair value of the property to be released (which property shall be described in such certificate in reasonable detail) without deduction for any liens on such property; and (y) stating that, in the opinion of the signers, such release will not impair the security under this Indenture in contravention of the provisions of this Indenture;

(2) Engineer's Certificate

(b) In the case the fair value of such property to be released and of all other property released from the Lien of this Indenture since the commencement of the then current calendar year, as shown by certificates filed pursuant to Article XIII hereof, is ten per centum (10%) or more of the aggregate principal amount of bonds Outstanding at the time of the application then being made, an Independent Engineer's Certificate stating in substance, the then fair value, in the opinion of the signers, of the property to be released, without deduction for any lien on such property; and that such release, in the

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opinion of the signers, will not impair the security under this Indenture in contravention of the terms of this Indenture; provided, however, that no Independent Engineer's Certificate need be delivered to the Trustee in the case of any release of property if the fair value thereof, as shown by the certificate filed pursuant to paragraph (a) of this subdivision (2), is less than Twenty-five Thousand Dollars (\$25,000) or less than one per centum (1%) of the aggregate principal amount of bonds at the time Outstanding;

(3) Further
Engineer's
Certificate

(3) A further Engineer's Certificate, made and dated not more than ninety (90) days prior to the date of such application, stating, in the opinion of the signers, that the aggregate principal amount of bonds to be Outstanding under this Indenture immediately after such release shall not exceed seventy per centum (70%) of the aggregate fair value of the then Funded Property of the Company; and

(4) Opinion of
Counsel

(4) An Opinion of Counsel to the effect that all conditions precedent provided for in this Indenture relating to the release of the property in question have been complied with and, in case the Trustee is requested to release any franchise, that such release will not impair to any material extent the right of the Company to operate any of its remaining properties.

Release of certain
unimproved real
estate upon request
of Company

SECTION 13.05. Unless the Company is in default in the payment of the interest on any bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the Trustee shall whenever from time to time requested by the Company (such request to be evidenced by an Officers' Certificate) and without requiring compliance with any of the provisions of Section 13.03 hereof, release from the Lien hereof all the right, title and interest of the Trustee in and to any real estate unimproved for use in the conduct of the business of the Company, provided the Company has sold, exchanged, dedicated or disposed of such real estate, or has agreed to sell, exchange, dedicate or dispose of such real estate, or, as evidenced by such Officers' Certificate, has authorized its officers to endeavor to sell such real estate, and provided the aggregate fair value of the interest of the Company in such real estate so released without such compliance in any calendar year shall not exceed the greater of Five Million Dollars (\$5,000,000) or three per centum (3%) of the bonds Outstanding hereunder on the date of such release. Prior to the granting of any such release, there shall be delivered to the Trustee an Engineer's

Requirements:

(1) Engineer's
Certificate

Certificate stating the fair value of the property to be released and that in the opinion of the signers the release thereof will not impair the security under this Indenture in contravention of the provisions hereof and setting forth any other facts required to be known by the Trustee as a condition precedent to any act by the Trustee under this Section. The Company covenants that on or before March 1st of each year it will deposit with the Trustee, to be dealt with in the manner provided in Section 13.06 hereof, the net consideration, if any, received by it upon the sale or other disposition of all such real estate so released during the previous calendar year (to the extent that the same shall not have been paid or delivered to the trustee or other holder of a Class "A" Mortgage or a Qualified Lien or another lien prior to the Lien of this Indenture in accordance with the provisions thereof and an Officers' Certificate to that effect shall have been furnished to the Trustee), or if no consideration be received therefor or results therefrom the Company will so deposit the fair value thereof. Any cash paid over to the Trustee hereunder may thereafter be withdrawn, used or applied in the manner, to the extent and for the purposes and subject to the conditions provided in Section 13.06 hereof. For the purposes hereof the term "unimproved for use in the conduct of the business of the Company" shall include not only vacant lands but parcels of real estate (and all buildings, fixtures and other improvements thereon) that are not used or usable in the Company's operations or are surplus to its needs.

(2) Deposit of consideration

"unimproved for use in the conduct of the business of the Company"

SECTION 13.06. Unless the Company is in default in the payment of the interest on any bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, any Funded Cash received by the Trustee shall be held by the Trustee and such cash and any cash which may be applied as in this Section provided,

Withdrawal, use or application of money received by Trustee for releases

(1) may be withdrawn from time to time by the Company to the extent of the Cost or the fair value to the Company (whichever is less) of Property Additions not then Funded Property (after making any deductions and additions pursuant to the provisions of Section 1.04 hereof); provided, however, that no such withdrawal of cash representing the proceeds of insurance on or the release of property or securities or payment of or on account of obligations secured by purchase money mortgages may be based in whole or in part upon Property Additions acquired, made or constructed more than five years prior to the last day of the calendar month immediately

(1) Withdrawal on basis of Property Additions

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preceding the receipt by the Trustee of such cash, and provided further, that Property Additions acquired, made or constructed within ninety (90) days prior to the date of the receipt by the Trustee of such cash representing the proceeds of insurance on or the release of property (including securities and other personal property, if any), or payment of or on account of obligations secured by purchase money mortgages, or subsequent to such receipt of cash, may, at the option of the Company, not have deducted therefrom the deductions nor added thereto the additions pursuant to Section 1.04 hereof;

(2) Withdrawal on basis of right to issue bonds

(2) may be withdrawn from time to time by the Company in an amount equal to the principal amount of each bond or fraction of a bond to the authentication and delivery of which the Company shall be entitled under the provisions of Section 5.04 or Section 6.01 hereof, by virtue of compliance with all applicable provisions of said Section 5.04 or Section 6.01, as the case may be (except as hereinafter in this Section otherwise provided); provided, however, that (except as hereinafter in this Section otherwise provided) the application for such withdrawal of cash shall operate as a waiver by the Company of such right to the authentication and delivery of each such bond or fraction thereof, on the basis of which right such cash is withdrawn, and any bonds or Qualified Lien Bonds which have been made the basis of any such right to the authentication and delivery of bond(s) or fraction of a bond so waived shall be deemed to have been made the basis of the withdrawal of such cash;

(3) Applied to purchase bonds

(3) may, upon the request of the Company, be used by the Trustee for the purchase of bonds issued hereunder in accordance with the provisions of Section 12.05; or

(4) Applied to retire or redeem bonds

(4) may, upon the request of the Company, be applied by the Trustee to the payment at maturity of any bonds issued hereunder or to the redemption of any bonds issued hereunder which are, by their terms, redeemable, of such series as may be designated by the Company, such redemption to be in the manner and as provided in Article XII hereof.

Conditions upon which moneys will be paid out

Such moneys shall, from time to time, be paid out or used or applied by the Trustee, as aforesaid, upon the request of the Company evidenced by a Resolution, and upon receipt by the Trustee of an Officers' Certificate stating that the Company is not in default in the payment of the interest on any bonds then Outstanding hereunder and that no Default has

occurred and is continuing. In case the withdrawal of cash is, in whole or in part, based upon Property Additions (as permitted under the provisions of clause (1) of this Section), the Company shall, subject to the provisions of said clause (1), comply with all applicable provisions of this Indenture (including but not limited to the furnishing of the Engineer's Certificate provided for in subdivision (3) of Section 5.06 hereof and, in case the provisions of subdivision (4) of Section 5.06 hereof are applicable, the Independent Engineer's Certificate provided for in said subdivision (4) of Section 5.06 hereof) as if such Property Additions were made the basis of an application for the authentication and delivery of bonds thereon equivalent in principal amount to seventy per centum (70%) of the cash to be withdrawn on such basis; or in case the withdrawal of cash is, in whole or in part, based upon the right to the authentication and delivery of bonds (as permitted under the provisions of clause (2) of this Section) the Company shall comply with all applicable provisions of Section 5.04 or 6.01 hereof, as the case may be, relating to such authentication and delivery; except that in no such case shall the Company be required to comply with any earnings requirement or to deliver to the Trustee any Resolution, Officers' Certificate, Net Earning Certificate or Opinion of Counsel such as is described in subdivisions (1), (2), (6) and (8) of Section 5.06 hereof.

Notwithstanding any of the other provisions of this Indenture,

(a) to the extent that any cash to be withdrawn under the provisions of this Section or of a Qualified Lien represents the proceeds of property that was not Funded Property released, taken by eminent domain or damaged or destroyed by fire or represents payment on account of principal of, or consideration for the release of, obligations secured by purchase money mortgage which shall have been deposited with the Trustee or with the trustee or other holder of a Qualified Lien as the basis of the release of property that was not Funded Property, and the application for the withdrawal of such cash is based upon Property Additions (which shall never previously have been used as the basis of the withdrawal of cash under subdivision (1) of this Section or under a Qualified Lien or as the basis of the release of property under the provisions of clause (b) of subdivision (3) of Section 13.03 hereof, as evidenced by a statement to such effect in an Engineer's Certificate), then such Property Additions shall not have the status of Funded Property,

When Property
Additions made basis
of withdrawal do not
become Funded
Property

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except to the extent of any amount which shall, at the time such Property Additions were made the basis of such withdrawal of cash, have been deducted from the Cost or fair value of such Property Additions pursuant to the provisions of clause (A) of Section 1.04 hereof less any amount which shall then have been added thereto pursuant to the provisions of clause (B) of said Section 1.04, and except to the extent of any amount which shall then have been deducted in respect of Qualified Liens on such Property Additions pursuant to Section 5.04 hereof, and

When cash withdrawn
does not represent
Funded Property

(b) to the extent that any cash withdrawn, used or applied under the provisions of this Section or of a Qualified Lien shall have represented the proceeds of property that was not Funded Property released, taken by eminent domain or damaged or destroyed by fire or shall have represented payment on account of principal of, or consideration for the release of, obligations secured by purchase money mortgage which shall have been deposited with the Trustee or the trustee or other holder of a Qualified Lien as the basis of the release of property that was not Funded Property,

(i) such cash shall no longer be deemed to be, or to have been at the time of such withdrawal, use or application, Funded Cash;

(ii) any Property Additions made the basis of such withdrawal of cash shall not be deemed to be Funded Property except to the extent of any amount which shall, at the time such Property Additions were made the basis of such withdrawal of cash, have been deducted from the Cost or fair value of such Property Additions pursuant to the provisions of clause (A) of Section 1.04 hereof less any amount which shall then have been added thereto pursuant to the provisions of clause (B) of said Section 1.04, except to the extent of any amount which shall then have been deducted in respect of Qualified Liens on such Property Additions pursuant to Section 5.04 hereof; and

(iii) any waiver of the right to the authentication and delivery of bonds, made the basis of such withdrawal of cash, shall be revoked and cease to be effective and shall no longer be deemed to have been made, if the Company shall, within two years after the withdrawal, use or application of such cash, file with the Trustee such Officers' Certificates, Engineer's Certificates, Independent Engineer's Certificates, Opinions of Counsel and other papers (other than any

§13.06

Resolution, Net Earning Certificate or Opinion of Counsel such as is described in subdivisions (1), (6) and (8) of Section 5.06 hereof) as, under the provisions of Article V hereof, would entitle the Company, on the basis of Property Additions acquired, made or constructed subsequent to the receipt by the Trustee or the trustee or other holder of a Qualified Lien of such cash, to the authentication and delivery of bonds equal in principal amount to seventy per centum (70%) of such cash so withdrawn, used or applied, and the inclusion of such subsequently acquired Property Additions in any such Officers' Certificate, Engineer's Certificate, Independent Engineer's Certificate, Opinion of Counsel or other papers shall not make such subsequently acquired Property Additions Funded Property.

Any obligation secured by purchase money mortgage received or to be received by the Trustee under any of the provisions of this Indenture in consideration of the release of any property may be released at any time upon payment by the Company to the Trustee of all or the unpaid portion of the principal of such obligation; provided, however, at any time after the Trustee shall have received on account of the principal of any obligations secured by purchase money mortgage on a specified property (from the Company, the obligor or otherwise), an amount in cash equal to the aggregate principal amount of such obligations to the extent made the basis of a credit in the application for the release from the Lien hereof of such property, the Trustee shall deliver to the Company on the written request of an Authorized Executive Officer of the Company, and the Secretary or an Assistant Secretary or an Authorized Financial Officer of the Company, the purchase money mortgage on such property and all obligations secured thereby then held by the Trustee including, but not limited to, any such obligations delivered to the Trustee as required by subdivision (3) of Section 13.03 hereof but not used as a credit thereunder.

Release of purchase
money mortgage
obligations

The principal of and interest on any such obligations secured by purchase money mortgage held by the Trustee shall be collected by the Trustee as and when the same become payable. Unless the Company is in default in the payment of the interest on any of the bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the interest received by the Trustee on any such obligations shall be paid over to the Company, and any payments received by the Trustee on account of the principal of any such obligations in excess of the amount of credit used by the Company in respect of such

Trustee shall collect
purchase money
mortgage obligations

§§13.06, 13.07

obligations upon the release of any property from the Lien hereof shall also be paid over to the Company.

The Trustee shall have and may exercise all the rights and powers of an owner of such obligations and of all substitutions therefor and, without limiting the generality of the foregoing, may collect and receive all insurance moneys payable to it under any of the provisions thereof and apply the same in accordance with the provisions thereof, may consent to extensions thereof at a higher or lower rate of interest, may join in any plan or plans of voluntary or involuntary reorganization or readjustment or rearrangement and may accept and hold hereunder new obligations, stocks or other securities issued in exchange therefor under any such plan. Any discretionary action which the Trustee may be entitled to take in connection with any such obligations or substitutions therefor shall be taken, so long as no Default shall exist, in accordance with the request of the Company, evidenced by a Resolution, and during the existence of a Default in its own discretion.

Cancellation or retention by Trustee of certain bonds

Any bonds issued under this Indenture received by the Trustee pursuant to the provisions of this Section shall forthwith be cancelled by the Trustee and any Qualified Lien Bonds deposited with the Trustee, pursuant to the provisions of this Section shall be held by the Trustee subject to the provisions of Article X hereof.

Release of property taken by eminent domain or purchased by governmental body

SECTION 13.07. Should any of the Mortgaged and Pledged Property (or any interest therein) be taken by exercise of the power of eminent domain or be sold to an entity possessing the power of eminent domain under a threat to exercise the same, and should the Company not elect to obtain the release of such property or interest pursuant to other provisions of this Article XIII, the Trustee shall, upon request of the Company evidenced by an Officers' Certificate, release from the Lien hereof all its right, title and interest in and to the property so taken or sold, or subordinate the Lien hereof to the interest so taken or sold, upon being furnished with an Opinion of Counsel to the effect that such property or interest has been taken by exercise of the power of eminent domain or has been sold under threat of an exercise of such power. Such Opinion of Counsel shall be accompanied by an Officers' Certificate stating the amount of net proceeds received or to be received for such property or interest so taken or sold and the amount so stated shall be deemed to be the fair value of such property or interest for the purpose of subdivision (b) of Section 19.13 hereof. On or before March 1st of each

Opinion of Counsel

Officers' Certificate

Application of proceeds

year, an amount equal to the net proceeds of all property so taken or sold during the previous calendar year (which proceeds shall, in either event, be required to be entirely in the form of cash) shall be paid over to the Trustee (unless the same shall have been paid or delivered to the trustee or other holder of a Class "A" Mortgage or a Qualified Lien or lien prior hereto, in accordance with the provisions thereof and a certificate of such trustee or other holder to that effect shall have been furnished to the Trustee), and (if paid over to the Trustee hereunder) may thereafter be withdrawn, used or applied in the manner, to the extent and for the purposes and subject to the conditions provided in Section 13.06 hereof.

SECTION 13.08. In case the Mortgaged and Pledged Property shall be in the possession of a receiver or trustee, lawfully appointed, the powers hereinbefore conferred upon the Company with respect to the sale or other disposition of the Mortgaged and Pledged Property or the withdrawal of cash may be exercised, with the approval of the Trustee, by such receiver or trustee, notwithstanding the Company may be in default and any request, certificate, appointment or approval made or signed by such receiver or trustee for such purposes shall be as effective as if made by the Company or its Board of Directors or any of its officers or appointees in the manner herein provided; and if the Trustee shall be in possession of the Mortgaged and Pledged Property under any provision of this Indenture, then such powers may be exercised by the Trustee in its discretion notwithstanding that the Company may be in default.

If property in hands
of receiver or trustee

Notwithstanding the existence of a default in the payment of interest on any bonds Outstanding hereunder or the existence of a Default, the Trustee, in its discretion, may release from the Lien hereof any part of the Mortgaged and Pledged Property or permit the withdrawal of cash, upon compliance with the other conditions specified in this Article in respect thereof.

Release of property
or withdrawal of
cash in the discretion
of Trustee

No purchaser in good faith of property purporting to have been released hereunder shall be bound to ascertain the authority of the Trustee to execute the release, or to inquire as to any facts required by the provisions hereof for the exercise of this authority; nor shall any purchaser or grantee of any property or rights permitted by this Article to be sold, granted, exchanged, dedicated or otherwise disposed of, be under obligation to ascertain or inquire into the authority of the Company to make any such sale, grant, exchange, dedication or other disposition.

Purchaser in good
faith not put on
inquiry

§§13.09, 13.10

Release based
on release from
Class "A" Mortgage

SECTION 13.09. In lieu of the other provisions for the release of Mortgaged and Pledged Property provided in this Indenture, unless the Company is in default in the payment of the interest on any bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing, the Company may in the alternative obtain the release of any of the Mortgaged and Pledged Property which is subject to the lien of a Class "A" Mortgage (except cash, Qualified Lien Bonds, Class "A" Bonds or obligations secured by purchase money mortgage) by delivery to the Trustee of the Officers' Certificate provided for in subdivision (1) of Section 13.03 hereof, the Engineer's Certificate provided for in subparagraphs (a), (b), (d) and (f) of subdivision (2) of Section 13.03 hereof, the Opinion of Counsel provided for in subdivision (7) of Section 13.03 hereof and a copy of a release of such Mortgaged and Pledged Property from the lien of a Class "A" Mortgage executed by the trustee of such Class "A" Mortgage.

Quitclaim of
property not subject
to Lien

SECTION 13.10. In case the Company has sold, exchanged, dedicated or disposed of, or intends or has agreed to sell, exchange, dedicate or dispose of, or a governmental body or agency has lawfully ordered the Company to divest itself of, any property of a character excepted from the Lien hereof, or the Company desires to disclaim or quitclaim title to property to which the Company does not purport to have title, the Trustee shall, from time to time, execute such instruments of disclaimer or quitclaim as may be appropriate upon receipt by the Trustee of the following:

(1) an Officers' Certificate complying with the requirements of Section 22.05 hereof and describing in reasonable detail the property to be disclaimed or quitclaimed; and

(2) an Opinion of Counsel complying with the requirements of Section 22.05 hereof and stating the signer's opinion that such property is not subject to the Lien hereof or required to be subject thereto by any of the provisions hereof; and stating that the execution of such disclaimer or quitclaim is appropriate.

ARTICLE XIV**Discharge of Class "A" Mortgage**

SECTION 14.01. At the option of the Company as evidenced by a written request signed by an Authorized Executive Officer of the Company, and by the Secretary or an Assistant Secretary or an Authorized Financial Officer of the Company, and accompanied (a) by an Opinion of Counsel to the effect that upon satisfaction of the Class "A" Mortgage the Lien of this Indenture will constitute a lien on substantially all of the property formerly subject to the lien of such Class "A" Mortgage (except such property as is excepted from the Lien hereof) subject to no lien prior or equal to the Lien of this Indenture except Qualified Liens and Excepted Encumbrances and (b) by an Officers' Certificate to the effect that no Class "A" Bonds are Outstanding under such Class "A" Mortgage other than the Class "A" Bonds held hereunder and that promptly upon such surrender the Class "A" Mortgage will be satisfied pursuant to the terms thereof, the Trustee shall surrender for cancellation to the trustee under such Class "A" Mortgage all Class "A" Bonds issued under said Class "A" Mortgage then held by the Trustee.

Discharge of
Class "A" Mortgage

ARTICLE XV**Remedies of Trustee and Bondholders Upon Default**

SECTION 15.01. The following events are hereby defined for all purposes of this Indenture (except where the term is otherwise defined for specific purposes) as "Defaults":

"Defaults"

(a) Failure to pay the principal of any bond hereby secured when the same shall become due and payable, whether at maturity, as therein expressed, or by declaration or otherwise;

(b) Failure to pay interest upon any bond hereby secured for a period of sixty (60) days after such interest shall have become due and payable;

(c) Failure to pay interest upon or principal (whether at maturity, as therein expressed, or by declaration, or otherwise) of any Outstanding Qualified Lien Bonds continued beyond the period of grace, if any, specified in the Qualified Lien securing the same;

(d) Failure to pay any installment of any fund required to be applied to the purchase or redemption of any of the bonds hereby

§15.01

secured for a period of sixty (60) days after the same shall have become overdue and payable;

(e) The expiration of a period of ninety (90) days following the entry of a decree or order by a court having jurisdiction in the premises for relief in respect of the Company under the Federal Bankruptcy Act or any other applicable Federal or State law of a similar nature, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of or for the Company or for all or substantially all of its property, or ordering the winding up or liquidation of its affairs unless during such period such decree, order or appointment of a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official shall be vacated or shall be stayed on appeal or otherwise or shall have otherwise ceased to continue in effect;

(f) The commencement by the Company of a voluntary case, or the institution by it of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization, arrangement or relief under the Federal Bankruptcy Act or any other applicable Federal or State law of a similar nature, or the consent or acquiescence by it to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or for all or substantially all of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action;

(g) The expiration of a period of ninety (90) days after the receipt by the Company of a written demand (citing this provision) from the Trustee or (with copy to the Trustee) from the holders of fifteen per centum (15%) in principal amount of the bonds at the time Outstanding hereunder (determined as provided in Section 15.07 hereof) that the Company perform a specified covenant or agreement contained herein or in any indenture supplemental hereto or in any bond secured hereby, which specified covenant or agreement the Company shall have failed to perform prior to the mailing of such notice, unless

§§15.01, 15.02

the Company during such period shall have performed such specified covenant or agreement or, if such covenant or agreement cannot reasonably have been performed during such period, then the Company shall have commenced and be diligently pursuing such performance. The Trustee may, and, if requested in writing so to do by the holders of a majority in principal amount of the bonds then Outstanding, shall, make such demand;

(h) The existence of any "Default", as defined under the Pacific Mortgage, or the existence of any "Default", as defined under the Utah Mortgage, or the existence of any default under another Class "A" Mortgage, which then permits the declaration of the principal of all of the bonds secured by such Class "A" Mortgage and the interest accrued thereupon due and payable;

provided that with respect to subdivisions (c) and (h) of this Section 15.01, if such default or Default, as the case may be, under such Qualified Lien or Class "A" Mortgage shall be remedied or cured by the Company or waived by the holders of such indebtedness, then the Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action upon the part of either the Trustee or any of the holders; and provided, further, that, subject to the provisions of Sections 19.01 and 19.02 hereof, the Trustee shall not be charged with knowledge of any such default or Default, as the case may be, unless written notice thereof shall have been given to the Trustee by the Company, by a holder or an agent of the holder of any such indebtedness, by a trustee then acting under any Qualified Lien or Class "A" Mortgage under which such default or Default, as the case may be, shall have occurred, or by the holders of not less than twenty-five per centum (25%) in aggregate principal amount of all the bonds then outstanding.

SECTION 15.02. The Trustee shall, within ninety (90) days after the occurrence thereof, give to the bondholders and any trustee under a Class "A" Mortgage, in the manner and to the extent provided in subdivision (c) of Section 19.13 hereof, notice of all defaults known to the Trustee, unless such defaults shall have been cured before the giving of such notice (the term "defaults" for the purposes of this Section being hereby defined to be the events specified in subdivisions (a), (b), (c), (d), (e), (f), (g) and (h) of Section 15.01 hereof not including any periods of grace provided for in said subdivisions) but in the case of any default as specified

Notice of defaults

§§15.02, 15.03

in subdivision (g) of Section 15.01 hereof, no such notice shall be given until at least sixty (60) days after the occurrence thereof; provided that, except in the case of default in the payment of the principal of or interest on any of the bonds hereby secured, or in the payment of any installment of any fund required to be applied to the purchase or redemption of any of the bonds hereby secured, the Trustee shall be protected in withholding such notice if and so long as the board of directors, executive committee, or a trust committee of directors and/or Responsible Officers, of the Trustee in good faith determine that the withholding of such notice is not detrimental to the interests of the bondholders.

Declaration of
principal and
accrued interest due
upon Default

SECTION 15.03. Upon the occurrence of a Default, the Trustee may, and upon the written request of the holders of a majority in principal amount of the bonds then Outstanding (determined as provided in Section 15.07 hereof) shall, and the holders of twenty-five per centum (25%) in principal amount of the bonds at the time Outstanding hereunder may, by notice in writing given to the Company (and to the Trustee if such notice be given by the bondholders), unless prior to such declaration all covenants with respect to which Default shall have occurred, shall have been fully performed or cured and all indebtedness secured hereby (other than expenses and charges of the Trustee), except the principal of any bonds not then due by their terms (other than by such declaration) and except interest accrued on such bonds since the last interest payment date, shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto, declare the principal of all of the bonds hereby secured and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable; subject, however, to the right of the holders of a majority in principal amount of all Outstanding bonds, by written notice to the Company and to the Trustee, thereafter to annul such declaration and destroy its effect at any time before any sale hereunder, if, before any such sale, all covenants with respect to which a Default shall have occurred shall be fully performed or cured, and all other indebtedness secured hereby except the principal of any bonds not then due by their terms (other than by such declaration) and except interest accrued on such bonds since the last interest payment date, shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto.

Holders of majority
of bonds may annul
declaration

§§15.04, 15.05

SECTION 15.04. Upon the occurrence of one or more Defaults, the Company upon demand of the Trustee, shall (if at the time such action shall be lawful) forthwith surrender to the Trustee the actual possession of, and (if at the time such action shall be lawful) the Trustee, by such officer or agent as it may appoint, may take possession of, all the Mortgaged and Pledged Property (with the books, papers and accounts of the Company) and hold, operate and manage the same, and from time to time make all needful repairs and such extensions, additions and improvements as to the Trustee shall seem wise; and receive the tolls, rents, revenues, issues, earnings, income, products and profits thereof, and out of the same pay all proper costs and expenses of so taking, holding, managing and operating the same, including reasonable compensation to and expenses of the Trustee, its agents and counsel, and any charges of the Trustee hereunder, and any taxes and assessments and other charges prior to the Lien of this Indenture which the Trustee may deem it wise to pay, and all expenses of such repairs, extensions, additions and improvements, and apply the remainder of the moneys so received by the Trustee, subject to the provisions of Section 15.12 hereof with respect to extended, transferred or pledged coupons or claims for interest, first to the payment of the installments of interest which are due and unpaid, in order of their maturity, and next, if the principal of any of said bonds is due, to the payment of the principal and accrued interest thereon pro rata without any preference or priority whatever, except as aforesaid. Whenever all that is due upon such bonds and installments of interest and under any of the terms of this Indenture shall have been paid and all Defaults cured, the Trustee shall surrender possession to the Company, its successors or assigns; the same right of entry, however, to exist upon any subsequent Default.

Trustee may take possession of and operate property

Application of income

When Trustee shall surrender possession to Company

SECTION 15.05. Upon the occurrence of one or more Defaults, the Trustee, by such officer or agent as it may appoint, with or without entry, may, if at the time such action shall be lawful, sell all the Mortgaged and Pledged Property as an entirety, or in such parcels as the holders of a majority in principal amount of the bonds Outstanding hereunder (determined as provided in Section 15.07 hereof) shall in writing request, or in the absence of such request, as the Trustee may determine, at public auction, at some convenient place in the City of Portland, Oregon, or such other place or places as may be required by law, having first given notice of such sale by publication in at least one Daily Newspaper of general circulation in the City of Portland, Oregon (if there be such a Daily

Power to sell all Mortgaged and Pledged Property

Notice by publication

§§15.05, 15.06, 15.07

Newspaper), once preceding such sale, to be made not less than twenty (20) days prior to the date of such sale, and by like publication in at least one Daily Newspaper of general circulation in the Borough of Manhattan, the City of New York, New York, and any other notice which may be required by law, and from time to time may (to the extent permitted by law) adjourn such sale in their discretion by announcement at the time and place fixed for such sale without further notice, and upon such sale may make and deliver to the purchaser or purchasers a good and sufficient instrument or instruments of conveyance, assignment or transfer for the same, which sale shall, to the extent then permitted by law, be a perpetual bar, both at law and in equity, against the Company and all persons, firms and corporations lawfully claiming or who may claim by, through or under it.

Judicial proceedings

SECTION 15.06. In case of the breach of any of the covenants or conditions of this Indenture, the Trustee shall have the right and power to take appropriate judicial proceedings for the enforcement of its rights and the rights of the bondholders hereunder. In case of a Default, the Trustee may either after entry, or without entry, proceed by suit or suits at law or in equity to enforce payment of the bonds then Outstanding hereunder and to foreclose this Indenture and to sell the Mortgaged and Pledged Property under the judgment or decree of a court or courts of competent jurisdiction.

Remedies cumulative

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the bondholders), is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Delay, etc. no waiver of rights

No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver of any such Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Waiver of Default not to extend to subsequent Default

No waiver of any Default, whether by the Trustee or by the bondholders, shall extend to or shall affect any subsequent Default or shall impair any rights or remedies consequent thereon.

Bondholders may direct proceedings

SECTION 15.07. The holders of not less than a majority in principal amount of the bonds at the time Outstanding hereunder may direct the

§§15.07, 15.08

time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and this Indenture and that, subject to the provisions of Section 19.01 and 19.02 hereof, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall by Responsible Officers determine that the action or proceeding so directed would involve the Trustee in personal liability or be unjustifiably prejudicial to nonassenting bondholders or that it will not be sufficiently indemnified for any expenditures in any action or proceeding so directed.

For the purposes of this Section and of Sections 9.06, 15.01, 15.03, 15.05, 19.02, 19.14, 19.15, 21.02, 21.06, 21.10 and 22.06 hereof, and for the purpose of waiving, in accordance with any of the provisions of Section 21.07 hereof, any past Default of the Company and the consequences thereof, in determining whether the holders of the required percentage of the principal amount of bonds have concurred or participated in any direction or consent, (a) bonds for the purchase of which money in the necessary amount shall have been deposited with or shall then be held by the Trustee with irrevocable direction to apply the same to the purchase thereof shall be deemed Outstanding and (b) bonds owned by the Company, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company (unless all bonds at the time Outstanding hereunder are then so owned), shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction or consent, only bonds which the Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this paragraph, if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such bonds and that the pledgee is not a person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

Situations when
bonds owned by
Company and certain
other bonds to be
disregarded

SECTION 15.08. In case of a Default, and upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under this Indenture, the Trustee shall be entitled, as a matter of right (to the extent that such

Appointment of
receiver

§§15.08, 15.09, 15.10, 15.11

right is enforceable under applicable law), to the appointment of a receiver or receivers of the Mortgaged and Pledged Property, and of the tolls, rents, revenues, issues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer, whether or not the Mortgaged and Pledged Property shall be adequate to satisfy the bonds then Outstanding.

All bonds to become
due and payable
upon sale of property

SECTION 15.09. Upon any sale being made either under the power of sale hereby given or under judgment or decree in any judicial proceedings, for the foreclosure or otherwise for the enforcement of this Indenture, the principal of all bonds then secured hereby, if not previously due, shall become and be immediately due and payable.

Purchase by
bondholder at sale
of property

Bonds as part of
purchase price

SECTION 15.10. Upon any sale made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this Indenture, any bondholder or bondholders may bid for and purchase the Mortgaged and Pledged Property or any part thereof and upon compliance with the terms of sale may hold, retain and possess and dispose of such property in his, her, their or its own absolute right without further accountability, and any purchasers at any such sale may, in paying the purchase money, turn in any of the bonds Outstanding hereunder and coupons or claims for interest outstanding hereunder in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon, subject, however, to the provisions of Section 15.12 hereof with respect to extended, transferred or pledged coupons or claims for interest. Said bonds and coupons, in case the amounts so payable thereon shall be less than the amount due thereon, shall be returned to the holders thereof after being appropriately stamped to show partial payment.

Receipt of Trustee
or sale officer as
discharge to
purchaser

SECTION 15.11. Upon any sale made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Indenture, the receipt of the Trustee or of the officer making such sale shall be a sufficient discharge to the purchaser or purchasers at any sale for his, her, its or their purchase money and such purchaser or purchasers, his, her, its or their assigns or personal representatives, shall not, after paying such purchase money and receiving such receipt of the Trustee or of such officer therefor, be obliged to see to the application of such purchase

§§15.11, 15.12

money, or be in anywise answerable for any loss, misapplication or non-application thereof.

Any sale made either under the power of sale hereby given or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Indenture shall, if and to the extent then permitted by law, operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Company of, in and to the property so sold, and be a perpetual bar both at law and in equity against the Company, its successors and assigns and against any and all persons, firms or corporations claiming or who may claim the property sold, or any part thereof, from, through or under the Company, its successors or assigns.

Effect of sale on
rights of Company

SECTION 15.12. The proceeds of any sale made either under the power of sale hereby given, or under judgment or decree in any judicial proceedings for the foreclosure or otherwise for the enforcement of this Indenture, together with any other amounts of cash which may then be held by the Trustee, as part of the Mortgaged and Pledged Property, shall be applied, as follows:

Disposition of
proceeds of sale

Order of
application:

First.—To the payment of all taxes, assessments, governmental charges, Qualified Liens and liens prior to the Lien of this Indenture, except those subject to which such sale shall have been made, and of all the costs and expenses of such sale, including reasonable compensation to and expenses of the Trustee, its agents and its attorneys, and of all other sums payable to the Trustee hereunder (and any predecessor Trustee) by reason of any expenses or liability incurred (in good faith and without negligence by the Trustee) or advances made in connection with the management or administration of the trusts hereby created in accordance with Section 19.09 hereof;

(1) Taxes, etc.,
compensation of
Trustee

Second.—To the payment in full of the amounts then due and unpaid for principal, premium and interest upon the bonds then secured hereby; and in case such proceeds shall be insufficient to pay in full the amounts so due and unpaid, then to the payment thereof ratably, without preference or priority as to principal, premium or interest, or of any installment of interest over any other installment of interest; provided, however, that if the time for the payment of any coupon or claim for interest upon any of the bonds secured hereby shall have been extended (except pursuant to action taken

(2) Principal and
interest

§§15.12, 15.13

under Article XXI hereof) by or with the consent of the Company, or if any thereof at or after maturity shall have been transferred or pledged separate from the bond to which they relate, such coupons or claims for interest shall not be entitled in case of Default hereunder to the benefit or security of this Indenture except after the prior payment in full of the principal and premium, if any, of all bonds issued hereunder and then secured hereby and of all coupons and claims for interest on such bonds the payment of which has not been so extended, or not so transferred or pledged; but the foregoing provisions of this paragraph Second shall not be applicable to any coupon or claim for interest the time for the payment of which shall have been extended, if such extension be pursuant to a plan proposed by the Company to all holders of any one or more series of bonds then Outstanding and accepted by and binding upon the holder of such coupon or claim for interest; and

(3) Surplus to
Company

Third.—Any surplus thereof remaining to the Company, its successors or assigns or to, him, her, them or it whosoever may be lawfully entitled to receive the same.

Waiver of advantage
of any appraisalment,
valuation, stay,
extension or
redemption laws and
rights to marshal
assets

SECTION 15.13. In case of a Default, to the extent that such rights may then lawfully be waived, neither the Company nor anyone claiming through or under it shall or will set up, claim, or seek to take advantage of any appraisalment, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged and Pledged Property may be situated, in order to prevent or hinder the enforcement or foreclosure of this Indenture, or the absolute sale of the Mortgaged and Pledged Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, but the Company, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may so do, the benefit of all such laws and all right of appraisalment and redemption to which it may be entitled under the laws of any State where any of the Mortgaged and Pledged Property may be situated. The Company, for itself and all who may claim through or under it, waives, to the extent that it lawfully may do so, any and all right to have the estates comprised in the security intended to be created hereby marshalled upon any foreclosure of the Lien hereof, and agrees that any court having jurisdiction to foreclose such Lien may sell the Mortgaged and Pledged Property as an entirety.

§15.14

Section 15.14. The Company covenants that if default shall be made in the payment of the principal of any bond hereby secured when the same shall become payable, whether by the maturity of said bond or otherwise or in the case of a default in the payment of the interest on any bond for a period of sixty (60) days after such interest shall have become due and payable, then upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the bonds and coupons then secured hereby, the whole amount due and payable on all such bonds and coupons for principal, premium, if any, and interest, with interest, upon the overdue principal at the same rate borne by the bonds which are overdue.

Payment of principal
and interest by
Company

In the case of a default in payment of the principal of any bond, when the same shall become due and payable, or in the case of a default in the payment of the interest on any bond for a period of sixty (60) days after such interest shall have become due and payable, the Trustee may recover judgment, in its own name and as trustee of an express trust, against the Company for the whole amount of such principal, interest and any premium remaining unpaid together with interest upon the overdue principal at the same rate borne by the bonds which are overdue.

Trustee may recover
judgment

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the bondholders allowed in any judicial proceedings relative to the Company or its creditors, or its property. In case of any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting the Company or its property, the Trustee, irrespective of whether the principal of the bonds shall then be due and payable and irrespective of whether the Trustee shall have made any demand for such payment, shall be entitled and empowered either in its own name or as trustee of an express trust or as attorney-in-fact for the holders of the bonds and coupons, or in any one or more of such capacities, to file a proof of claim for the whole amount of principal and interest (with interest upon such overdue principal at the same rate borne by the bonds which are overdue) which may be or become owing and unpaid in respect of the bonds and for any additional amount which may be or become payable by the Company hereunder, without regard to or deduction for any amount which may have been or which may thereafter be received, collected or realized by the Trustee from or out of the Mortgaged and Pledged Property or any part thereof or from or out of the proceeds thereof or any part thereof; but nothing in this Indenture contained shall

Proofs of claim

§§15.14, 15.15

authorize the Trustee to accept or consent to any composition or plan of reorganization on behalf of any bondholder.

Judgment may be
taken by Trustee

Lien of Indenture
not to be affected
by judgment or levy
of execution thereon

Application of
moneys collected
by Trustee

The Trustee, to the extent permitted by law, shall be entitled to sue and recover judgment and/or to file and prove such claim as aforesaid either before or after or during the pendency of any proceedings for the enforcement of the Lien of this Indenture upon the Mortgaged and Pledged Property, and in case of a sale of any of the Mortgaged and Pledged Property and of the application of the proceeds of sale to the payment of the debt hereby secured, 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 the bonds and coupons then Outstanding hereunder, for the benefit of the holders thereof, and the Trustee shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee and no levy of any execution upon any such judgment upon any of the Mortgaged and Pledged Property or upon any other property shall in any manner or to any extent affect the Lien of this Indenture upon the Mortgaged and Pledged Property or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of said bonds, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected or received by the Trustee under this Section shall be applied by it first, to the payment of its expenses, disbursements and compensation and the expenses, disbursements and compensation of its agents and attorneys, and, second, toward payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without preference or priority of any kind (subject to the provisions of Section 15.12 hereof with respect to extended, transferred or pledged coupons and claims for interest), 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, with interest upon overdue principal at the same rate borne by the bonds which are overdue, upon presentation of the several bonds and coupons and upon stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Possession of bonds
unnecessary in
action by Trustee

SECTION 15.15. All rights of action (including the right to file proofs of claim) under this Indenture or under any of the bonds or coupons may

be enforced by the Trustee without the possession of any of the bonds or coupons or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, and any recovery of judgment shall be for the equal benefit of the holders of the Outstanding bonds and coupons, subject to the provisions of Section 15.12 hereof with respect to extended, transferred or pledged coupons and claims for interest.

In any proceeding brought by the Trustee (including also any proceeding involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), such Trustee shall be held to represent all the holders of the bonds and coupons secured by this Indenture and it shall not be necessary to make such holders of the bonds and coupons parties to any such proceedings.

Bondholders not
necessary parties
to action

SECTION 15.16. No holder of any bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder unless such holder shall have previously given to the Trustee written notice of a Default, nor unless also the holders of twenty-five per centum (25%) in principal amount of the bonds then Outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name and shall have offered to the Trustee security and indemnity satisfactory to the Trustee against the costs, expenses and liabilities to be incurred thereby without negligence or bad faith, and the Trustee shall have declined to take such action or shall have failed so to do within sixty (60) days thereafter; it being understood and intended that no one or more holders of the bonds or coupons shall have any right in any manner whatsoever to affect, disturb or prejudice the Lien of this Indenture by his, her, its or their action 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 equal benefit of all holders of Outstanding bonds and coupons. Such notification, request and offer of indemnity are hereby declared, at the option of the Trustee, but subject to the provisions of Sections 19.01 and 19.02 hereof, to be conditions precedent to the execution by it of the powers and trusts of this Indenture and to the exercise by it of any action or cause of action or remedy hereunder.

Right of bondholders
to institute legal
proceedings

§§15.16, 15.17; Art. XVI, §16.01

Right of bondholders
to enforce payment
not to be impaired

Notwithstanding any other provision of this Indenture, the right of any holder of any bond to receive payment of the principal of and interest on such bond, on or after the respective due dates expressed in such bond, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder.

Waiver of periods
of grace

SECTION 15.17. The Company may waive any period of grace provided for in this Article.

If proceedings
abandoned, Trustee
and Company
restored to former
position and rights

In case the Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Company and the Trustee shall be restored to their former positions and rights hereunder with respect to the Mortgaged and Pledged Property, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE XVI

Evidence of Rights of Bondholders and Ownership of Bonds

Execution of
instruments by
bondholders

Proof of execution

SECTION 16.01. Any request, declaration or other instrument, which this Indenture may require or permit to be signed and executed by the bondholders, may be in any number of concurrent instruments of similar tenor, and shall be signed or executed by such bondholders in person or by an attorney appointed in writing. Proof of the execution of any such request or other instrument, or of a writing appointing any such attorney, or of the holding by any person of the bonds or coupons appertaining thereto, shall be sufficient (subject, in so far as the Trustee is concerned, to the provisions of Section 19.01 and Section 19.02 hereof) for any purpose of this Indenture (except as otherwise herein expressly provided) if made in the following manner:

(a) Notary's
certificate

(a) The fact and date of the execution by any person of such request or other instrument or writing may be proved by a witness or by a certificate acknowledged before a Notary Public or other officer authorized to take acknowledgments;

(b) Certificate of
trust company,
bank, etc.

(b) The amount of bonds transferable by delivery held by any person executing such request or other instrument as a bondholder,

and the series and serial numbers thereof, held by such person, and the date of his, her or its holding the same, may be proved by a certificate executed by any trust company, bank, banker or other depository wherever situated, if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate. The Trustee may nevertheless in its discretion require further proof in cases where it deems further proof desirable. The ownership of registered bonds shall be proved by the registry books.

Any request, consent or vote of the owner of any bond shall bind all future holders and owners of said bond or any bond issued in exchange or substitution for said bond in respect of anything done or suffered by the Company or the Trustee in pursuance thereof.

Consent or vote
binding on future
bondholder

SECTION 16.02. The Company and the Trustee (or any agent of the Company or the Trustee) may deem and treat the bearer of any temporary or coupon bond Outstanding hereunder, which shall not at the time be registered as to principal as hereinbefore authorized, and the bearer of any coupon for interest on any such bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, whether or not such bond or coupon shall be overdue, for the purpose of receiving payment thereof or on account thereof and for all other purposes, and neither the Company nor the Trustee shall be affected by any notice to the contrary.

Ownership of
temporary or coupon
bonds

The Company and the Trustee (and their agents) may, subject to the provisions of this Indenture providing for the use of a record date in certain cases, deem and treat the person in whose name any fully registered bond Outstanding hereunder shall be registered upon the books of the Company, as herein authorized, as the absolute owner of such bond for the purpose of receiving payment of or on account of the principal of and interest on such bond and for all other purposes, and they may deem and treat the person in whose name any coupon bond shall be so registered as to principal as the absolute owner thereof for the purpose of receiving payment of or on account of the principal thereof and for all other purposes, except to receive payment of interest represented by outstanding coupons; and all such payments so made to any such registered owner, or upon his, her or its order, shall be valid and effectual to satisfy and discharge the liability upon such bond to the

Ownership of
registered bonds

§16.02; Art. XVII, §17.01

Inspection of bonds

extent of the sum or sums so paid, and neither the Company nor the Trustee shall be affected by any notice to the contrary. Neither the Company nor the Trustee (or their agents) shall be bound to recognize any person as the holder of a bond Outstanding under this Indenture unless and until his, her or its bond is submitted for inspection, if required, except as may otherwise be provided by regulations made under Section 21.03 hereof, and his, her or its title thereto satisfactorily established, if disputed.

ARTICLE XVII

Immunity of Incorporators, Subscribers to the Capital Stock, Shareholders, Officers and Directors

No recourse clause

SECTION 17.01. No recourse under or upon any obligation, covenant or agreement contained in this Indenture (including any indenture supplemental hereto) or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator or any past, present or future subscriber to the capital stock, shareholder, officer or director of the Company or of any predecessor or successor corporation, as such, either directly or through the Company or any predecessor or successor corporation, under any rule of law, statute or constitution or by the enforcement of any assessment or by any legal or equitable proceeding or otherwise; it being expressly agreed and understood that this Indenture and the obligations hereby secured are solely corporate obligations, and that no such personal liability shall attach to, or be incurred by, such incorporators, subscribers to the capital stock, shareholders, officers or directors of the Company or of any predecessor or successor corporation, or any of them, as such, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the bonds or coupons hereby secured, or implied therefrom, and that any and all such personal liability of every name and nature, and any and all such rights and claims against every such incorporator, subscriber to the capital stock, shareholder, officer or director, as such, whether arising at common law or in equity, or created by rule of law, statute, constitution or otherwise, are expressly released and waived as a condition of, and as part of the consideration for, the execution of this Indenture and the issue of the bonds and interest obligations secured hereby.

ARTICLE XVIII**Effect of Merger, Consolidation, Etc.**

SECTION 18.01. Nothing in this Indenture shall prevent any consolidation of the Company with, or merger of the Company into, any corporation having corporate authority to carry on any of the businesses mentioned in the first sentence of Section 1.04 hereof, or any conveyance, transfer or lease, subject to the Lien of this Indenture, of all or substantially all of the Mortgaged and Pledged Property as an entirety to any corporation lawfully entitled to acquire or lease or operate the same; provided, however, and the Company covenants and agrees, that such consolidation, merger, conveyance, transfer or lease shall be upon such terms as fully to preserve and in no respect to impair the Lien or security of this Indenture, or any of the rights or powers of the Trustee or the bondholders hereunder; and provided, further, that any such lease shall be made expressly subject to immediate termination by the Company or by the Trustee at any time during the continuance of a Default, and also by the purchaser of the property so leased at any sale thereof hereunder, whether such sale be made under the power of sale hereby conferred or under judicial proceedings; and provided, further, that, upon any such consolidation, merger, conveyance or transfer, or upon any such lease the term of which extends beyond the date of maturity of any of the bonds secured hereby, the due and punctual payment of the principal and interest of all said bonds according to their tenor and the due and punctual performance and observance of all the covenants and conditions of this Indenture to be kept or performed by the Company shall be expressly assumed by an instrument in writing executed and delivered to the Trustee by the corporation formed by such consolidation or into which such merger shall have been made, or acquiring all or substantially all the Mortgaged and Pledged Property as an entirety, as aforesaid, or by the lessee under any such lease the term of which extends beyond the date of maturity of any of the bonds secured hereby.

Company may merge,
consolidate, etc.,
upon certain terms

No impairment
of Lien

Assumption of
obligation

SECTION 18.02. In case the Company, as permitted by Section 18.01 hereof, shall be consolidated with or merged into any other corporation or shall convey or transfer, subject to the Lien of this Indenture, all or substantially all the Mortgaged and Pledged Property as an entirety, the successor corporation formed by such consolidation, or into which the Company shall have been merged, or which shall have received a

Right of successor
corporation

§18.02

Execution of
indenture

conveyance or transfer as aforesaid—upon executing with the Trustee and causing to be recorded an indenture whereby such successor corporation shall assume and agree to pay, duly and punctually, the principal of and interest on the bonds issued hereunder in accordance with the provisions of said bonds and coupons and this Indenture, and shall agree to perform and fulfill all the covenants and conditions of this Indenture to be kept or performed by the Company—shall succeed to and be substituted for the Company with the same effect as if it had been named herein, and shall have and may exercise under this Indenture the same powers and rights as the Company, and (without in anywise limiting or impairing by the enumeration of the same the scope and intent of the foregoing general powers and rights) such successor corporation thereafter may cause to be executed, authenticated and delivered, either in its own name or in the name of PacifiCorp, as its name is now or shall then exist, in respect of property of the character defined in Section 1.04 hereof as Property Additions, such bonds as could or might have been executed, issued and delivered by the Company had it acquired such property of such character by purchase on or after the date of such consolidation, merger, conveyance or transfer, and had such consolidation, merger, conveyance or transfer not occurred, and upon the order of such successor corporation in lieu of the Company, and subject to all the terms, conditions and restrictions in this Indenture prescribed, concerning the authentication and delivery of bonds, the Trustee shall authenticate and deliver any bonds delivered to it for authentication which shall have been previously signed by the proper officers of the Company, and such bonds as the successor corporation shall thereafter, in accordance with the provisions of this Indenture, cause to be executed and delivered to the Trustee for such purpose, and such successor corporation shall also have and may exercise in respect of the property of such character, and subject to all the terms, conditions and restrictions in this Indenture prescribed applicable thereto, whether as to withdrawal of cash, release of property, or otherwise, the same powers and rights which the Company might or could exercise had it acquired the property of such character by purchase on or after the date of such consolidation, merger, conveyance or transfer, and had such consolidation, merger, conveyance or transfer not occurred. All the bonds so issued or delivered by the Company shall in all respects have the same legal right and security as the bonds theretofore issued or delivered in accordance with the terms of this Indenture as though all of said bonds had been authenticated and delivered at the date of the

Execution of bonds,
etc., on basis of
Property Additions

0131

execution hereof. As a condition precedent to the execution of such successor corporation and the authentication and delivery by the Trustee of any such additional bonds or the withdrawal of cash or release of property, under any of the provisions of this Indenture, on the basis of property of the character defined in this Indenture as Property Additions acquired, made or constructed by the successor corporation or by any corporation with which the Company or any successor corporation may be so consolidated or into which the Company or any successor corporation may be so merged or to which the Company or any successor corporation may make any such conveyance, the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as in this Section provided, or a subsequent indenture, shall contain a conveyance or transfer and mortgage in terms sufficient to subject such property to the Lien hereof; and provided further that the lien created thereby and the lien thereon shall have similar force, effect and standing as the Lien of this Indenture would have if the Company should not be consolidated with or merged into such other corporation or should not convey or transfer, subject to this Indenture, all or substantially all the Mortgaged and Pledged Property as an entirety, as aforesaid, to such successor corporation, and should itself on or after the date of such consolidation, merger, conveyance or transfer, acquire or construct such property, and in respect thereof should request the authentication and delivery of bonds or the withdrawal of cash or the release of property under the provisions of this Indenture.

Proviso

SECTION 18.03. In case the Company, as permitted by Section 18.01 hereof, shall be consolidated with or merged into any other corporation, or shall convey or transfer, subject to the Lien of this Indenture, all or substantially all the Mortgaged and Pledged Property as an entirety as aforesaid, neither this Indenture nor the indenture with the Trustee to be executed and caused to be recorded by the successor corporation as in Section 18.02 hereof provided, shall, unless such indenture shall otherwise provide, become or be or be required to become or be a lien upon any of the properties or franchises then owned or thereafter acquired by the successor corporation (by purchase, consolidation, merger, donation, construction, erection or in any other way) except (a) those acquired by it from the Company, and improvements, extensions and additions thereto and renewals and replacements thereof, (b) the property made and used by the successor corporation as the basis under

Extent of Lien in case of consolidation, etc.; Company consolidated or merged into other corporation

§18.03

any of the provisions of this Indenture for one or more Authorized Purposes, and (c) such franchises, repairs and additional property as may be acquired, made or constructed by the successor corporation (1) to maintain, renew and preserve the franchises covered by this Indenture, or (2) to maintain the property mortgaged and intended to be mortgaged hereunder as an operating system or systems in good repair, working order and condition, or (3) in rebuilding or renewal of property subject to the Lien hereof damaged or destroyed, or (4) in replacement of or substitution for machinery, apparatus, equipment, frames, towers, poles, wire, pipe, tools, implements or furniture, or any other fixtures or personalty, subject to the Lien hereof, which shall have become old, inadequate, obsolete, worn out, unfit, unadapted, unserviceable, undesirable or unnecessary for use in the operation of the property mortgaged and intended to be mortgaged hereunder.

Other corporation
consolidated or
merged into
Company

In case any other corporation shall be merged or consolidated into the Company with the result that the Company shall be the surviving corporation, this Indenture shall not (unless an indenture supplemental hereto shall otherwise provide) become or be required to become or be a lien upon any of the properties or franchises owned by such other corporation at the time of the merger or consolidation, or later improvements, extensions or additions thereto or renewals or replacements thereof, except (a) property made and used by the Company as the basis under any of the provisions of this Indenture for one or more Authorized Purposes, and (b) such franchises, repairs and additional property as may be acquired, made or constructed by the Company (1) to maintain, renew and preserve the franchises covered by this Indenture, or (2) to maintain the property mortgaged and intended to be mortgaged hereunder as an operating system or systems in good repair, working order and condition, or (3) in rebuilding or renewal of property subject to the Lien hereof damaged or destroyed, or (4) in replacement of or substitution for machinery, apparatus, equipment, frames, towers, poles, wire, pipe, tools, implements or furniture, or any other fixtures or personalty, subject to the Lien hereof, which shall have become old, inadequate, obsolete, worn out, unfit, unadapted, unserviceable, undesirable or unnecessary for use in the operation of the property mortgaged and intended to be mortgaged hereunder.

ARTICLE XIX

Concerning the Trustee

SECTION 19.01. The Trustee shall at all times be a bank or trust company eligible under Section 9.03 hereof and have a combined capital and surplus of not less than Five Million Dollars (\$5,000,000) or the foreign currency equivalent thereof. If the Trustee publishes reports of condition at least annually, pursuant to law or to the requirement of any supervising or examining authority referred to in Section 9.03 hereof, then for the purposes of this Section the combined capital and surplus of the Trustee shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

Qualification of
Trustee

The Trustee hereby accepts the trust hereby created. The Trustee undertakes, prior to Default, and after the curing of all such Defaults which may have occurred, to perform such duties and only such duties as are specifically set forth in this Indenture, and in case of such Default (which has not been cured) to exercise such of the rights and powers vested in it by this Indenture, and to use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs. For the purposes of this Section 19.01 and of Section 19.02 hereof a Default shall be deemed cured when the act or omission or other event giving rise to such Default shall have been cured, remedied, terminated or waived.

Acceptance of trust

The Trustee, upon receipt of evidence furnished to it by or on behalf of the Company pursuant to any provision of this Indenture, will examine the same to determine whether or not such evidence conforms to the requirements of this Indenture.

SECTION 19.02. No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

Trustee's liability
generally

(a) prior to Default, and after the curing of all such Defaults which may have occurred, the Trustee shall not be liable except for the performance of such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee but the duties and obligations of the Trustee, prior to Default, and after the curing of all such Defaults which may have occurred, shall be determined solely by the express provisions of this Indenture; and

§§19.02

(b) prior to Default, and after the curing of all such Defaults which may have occurred, and in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions conforming to the requirements of this Indenture; and

(c) no Trustee which is a corporation shall be personally liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of such Trustee unless it shall be proved that such Trustee was negligent in ascertaining the pertinent facts and no Trustee who is an individual shall be personally liable for any error of judgment made in good faith by him or her unless it shall be proved that he or she was negligent in ascertaining the pertinent facts; and

(d) the Trustee shall not be personally liable with respect to any action suffered, taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the bonds at the time Outstanding (determined as provided in Section 15.07 hereof) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture; and

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney, who is not, in either case, an employee of the Trustee, appointed with due care by it hereunder; and

(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the holders of bonds of any series pursuant to this Indenture, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

The provisions of this Section, which have been made specifically applicable to the Trustee, shall apply to the Trustee and, if a separate or co-trustee is appointed pursuant to Section 19.16 hereof, to any separate or co-trustee.

Trustee may act
through agents, etc.

SECTION 19.03. The recitals contained herein and in the bonds shall be taken as the statements of the Company and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the condition, genuineness, validity or value of the Mortgaged and Pledged Property or any part thereof, or as to the title of the Company thereto, or as to the validity or adequacy of the security afforded thereby and hereby, or as to the validity of this Indenture or of the bonds or coupons issued hereunder. The Trustee shall be under no responsibility or duty with respect to the disposition of any bonds authenticated and delivered hereunder or the application of the proceeds thereof or the application of any moneys paid to the Company under any of the provisions hereof.

Recitals herein and
in bonds those
of Company

SECTION 19.04. The Trustee and any separate or co-trustee shall not be personally liable in case of entry by it upon the Mortgaged and Pledged Property for debts contracted or liability or damages incurred in the management or operation of said property.

Trustee
not personally
liable in
case of
entry

The Trustee, any paying agent, bond registrar, or authenticating agent, in its individual or any other capacity, may become the holder, owner or pledgee of bonds or coupons secured hereby and, subject to Sections 19.11 and 19.12 hereof, may otherwise deal with the Company with the same rights it would have if it were not Trustee, paying agent, bond registrar or authenticating agent.

Trustee, etc.
may own
bonds
and coupons

SECTION 19.05. Whenever it is provided in this Indenture that the Trustee shall take any action upon the happening of a specified event or upon the fulfillment of any condition or upon the request of the Company or of bondholders, the Trustee taking such action shall have full power to give any and all notices and to do any and all acts and things incidental to such action.

Trustee's
power to
give notice

SECTION 19.06. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee on the Company shall be deemed to have been sufficiently given or served, for all purposes, by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Company with the Trustee for the purpose of this Section) to the Company at the address given in Section 22.08 hereof.

Notice by
Trustee
to
Company

§§19.07, 19.08

SECTION 19.07. To the extent permitted by Sections 19.01 and 19.02 hereof:

Trustee
protected

(1) The Trustee may rely and shall be protected in acting upon any Resolution, Officers' Certificate, Engineer's Certificate, Independent Engineer's Certificate, Net Earning Certificate, Opinion of Counsel, resolution, certificate, opinion, notice, request, consent, order, appraisal, report, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties; and any request or direction of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate, Resolution or written order given as required by any provision hereof; and

Trustee
may consult
with
counsel

(2) The Trustee may consult with counsel, who may be of counsel to the Company, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee shall not be under any responsibility for the selection, appointment or approval of any expert for any of the purposes expressed in this Indenture, except that nothing in this Section contained shall relieve the Trustee of its obligation to exercise reasonable care with respect to such selection, appointment or approval of independent experts who may furnish opinions or certificates to the Trustee pursuant to any provision of this Indenture.

Nothing contained in this Section shall be deemed to modify the obligation of the Trustee to exercise during the continuance of a Default, the rights and powers vested in it by this Indenture with the degree of care and skill specified in Section 19.01 hereof.

Trustee
need not
segregate
funds

Interest
on funds
with
Trustee

SECTION 19.08. Subject to the provisions of Section 22.03 hereof, all moneys received by the Trustee whether as Trustee or paying agent shall, until used or applied as herein provided, be held in trust for the purposes for which they were paid, but need not be segregated from other funds except to the extent required by law. The Trustee may allow and credit to the Company interest on any moneys received by it hereunder at such rate, if any, as may be agreed upon with the Company from time to time and as may be permitted by law.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or liability is not reasonably assured to it.

SECTION 19.09. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties hereunder of the Trustee, which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust, and the Company will reimburse the Trustee for all appropriate advances made by the Trustee and will pay to the Trustee from time to time its expenses and disbursements (including the reasonable compensation and the expenses and disbursements of its agents and all other persons not regularly in its employ and of its counsel), except to the extent that any such expense or disbursement results from the Trustee's negligence or bad faith. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, liability or expense arising out of or in connection with the acceptance or administration of this Indenture or performance of its duties hereunder, including the costs and expenses of defending against any claim of liability in the premises, except to the extent that any such expense, loss, liability or disbursement results from the Trustee's negligence or bad faith. The obligations of the Company under this Section shall survive the resignation or discharge of the Trustee and the satisfaction and discharge of this Indenture, and to secure such obligations the Trustee shall have (in addition to any other rights under this Indenture) a lien prior to that of the bonds upon the Mortgaged and Pledged Property, including all property and funds held or collected by the Trustee.

Compensation
of Trustee

If, and to the extent that, the Trustee and its counsel and other persons not regularly in its employ do not receive compensation for services rendered, reimbursement of its or their advances, expenses and disbursements, or indemnity, as herein provided, as the result of allowances made in any reorganization, bankruptcy, receivership, liquidation or other proceeding or by any plan of reorganization or readjustment

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of obligations of the Company, the Trustee shall be entitled, in priority to the holders of the bonds, to receive any distribution of any securities, dividends or other disbursements which would otherwise be made to the holders of bonds in any such proceeding or proceedings and the Trustee is hereby constituted and appointed, irrevocably, the attorney-in-fact for the holders of the bonds and each of them to collect and receive, in their name, place and stead, such distributions, dividends or other disbursements, to deduct therefrom the amounts due to the Trustee, its counsel and other persons not regularly in its employ on account of services rendered, advances, expenses, and disbursements made or incurred, or indemnity, and to pay and distribute the balance, pro rata, to the holders of the bonds. The Trustee shall have a lien upon any securities or other considerations to which the holders of bonds may become entitled pursuant to any such plan of reorganization or readjustment of obligations, or in any such proceeding or proceedings; and the court or judge in any such proceeding or proceedings may determine the terms and conditions under which any such lien shall exist and be enforced.

"Trustee"

The term "Trustee" used in this Section includes any predecessor Trustee, provided that the negligence and bad faith of any Trustee shall not affect the rights of any other Trustee under this Section 19.09.

Trustee
may
request
proof
by certificate
signed by
certain
officers

SECTION 19.10. Whenever in the administration of the trusts of this Indenture, prior to a Default, and after the curing of any such Default, the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may to the extent permitted by Sections 19.01 and 19.02 hereof be deemed to be conclusively proved and established by a certificate signed by an Authorized Executive Officer of the Company, and by the Secretary or an Assistant Secretary or an Authorized Financial Officer of the Company and delivered to the Trustee, and such certificate shall be full warrant to the Trustee for any action taken, omitted or suffered by it under the provisions of this Indenture upon the faith thereof.

Action to
be taken by
Trustee
who
becomes
creditor
of Company

SECTION 19.11. (a) Subject to the provisions of subdivision (b) of this Section, if the Trustee shall be or shall become a creditor, directly or indirectly, secured or unsecured, of the Company within four months prior to a default (as defined in the last paragraph of this subdivision), or subsequent to such a default, then, unless and until such default shall be cured, the Trustee shall set apart and hold in a special account for the

benefit of the Trustee individually, the holders of the bonds, and the holders of other indenture securities (as defined in the last paragraph of this subdivision (a))

(1) an amount equal to any and all reductions in the amount due and owing upon any claim as such creditor in respect of principal or interest effected after the beginning of such four months period and valid as against the Company and its other creditors, except any such reduction resulting from the receipt or disposition of any property described in paragraph (2) of this subdivision (a) or from the exercise of any right of setoff which the Trustee could have exercised if a petition in bankruptcy had been filed by or against the Company upon the date of such default; and

(2) all property received in respect of any claim as such creditor, either as security therefor, or in satisfaction or composition thereof, or otherwise, after the beginning of such four months period, or an amount equal to the proceeds of any such property, if disposed of, subject, however, to the rights, if any, of the Company and its other creditors in such property or such proceeds.

Nothing herein contained, however, shall affect the right of the Trustee

Certain
rights of
Trustee
unaffected

(A) to retain for its own account (i) payments made on account of any such claim by any person (other than the Company) who is liable thereon, and (ii) the proceeds of the bona fide sale of any such claim by the Trustee to a third person, and (iii) distributions made in cash, securities, or other property in respect of claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law;

(B) to realize for its own account, upon any property held by it as security for any such claim, if such property were so held prior to the beginning of such four months period;

(C) to realize, for its own account, but only to the extent of the claim hereinafter mentioned, upon any property held by it as security for any such claim, if such claim was created after the beginning of such four months period and such property was received as security therefor simultaneously with the creation thereof, and if the Trustee shall sustain the burden of proving that at the time such property

§19.11

was so received the Trustee had no reasonable cause to believe that a default as defined in the last paragraph of this subdivision (a) would occur within four months; or

(D) to receive payment on any claim referred to in paragraph (B) or (C), against the release of any property held as security for such claim as provided in paragraph (B) or (C), as the case may be, to the extent of the fair value of such property.

For the purposes of paragraphs (B), (C) and (D), property substituted after the beginning of such four months period for property held as security at the time of such substitution shall, to the extent of the fair value of the property released, have the same status as the property released, and, to the extent that any claim referred to in any of such paragraphs is created in renewal of or in substitution for or for the purpose of repaying or refunding any pre-existing claim of the Trustee as such creditor, such claim shall have the same status as such pre-existing claim.

Apportionment
of proceeds
among
Trustee,
bondholders,
etc.

If the Trustee shall be required to account, the funds and property held in such special account and the proceeds thereof shall be apportioned between the Trustee, the bondholders, and the holders of other indenture securities in such manner that the Trustee, the bondholders, and the holders of other indenture securities realize, as a result of payments from such special account and payments of dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, the same percentage of their respective claims, figured before crediting to the claim of the Trustee anything on account of the receipt by it from the Company of the funds and property in such special account and before crediting to the respective claims of the Trustee, the bondholders, and the holders of other indenture securities dividends on claims filed against the Company in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable State law, but after crediting thereon receipts on account of the indebtedness represented by their respective claims from all sources other than from such dividends and from the funds and property so held in such special account. As used in this paragraph, with respect to any claim, the term "dividends" shall include any distribution with respect to such claim, in bankruptcy or receivership or in proceedings for reorganization pursuant to the Federal Bankruptcy Act or applicable

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State law, whether such distribution is made in cash, securities, or other property, but shall not include any such distribution with respect to the secured portion, if any, of such claim. The court in which such bankruptcy, receivership or proceeding for reorganization is pending shall have jurisdiction (i) to apportion between the Trustee, the bondholders, and the holders of other indenture securities, in accordance with the provisions of this paragraph, the funds and property held in such special account and the proceeds thereof, or (ii) in lieu of such apportionment, in whole or in part, to give to the provisions of this paragraph due consideration in determining the fairness of the distributions to be made to the Trustee, the bondholders, and the holders of other indenture securities, with respect to their respective claims, in which event it shall not be necessary to liquidate or to appraise the value of any securities or other property held in such special account or as security for any such claim, or to make a specific allocation of such distributions as between the secured and unsecured portions of such claims, or otherwise to apply the provisions of this paragraph as a mathematical formula.

Any Trustee who has resigned or been removed after the beginning of such four months period shall be subject to the provisions of this subdivision (a) as though such resignation or removal had not occurred. If any Trustee has resigned or been removed prior to the beginning of such four months period, it shall be subject to the provisions of this subdivision (a) if and only if the following conditions exist—

Resigned or
removed
Trustee

(i) the receipt of property or reduction of claim which would have given rise to the obligation to account, if such Trustee had continued as Trustee, occurred after the beginning of such four months period; and

(ii) such receipt of property or reduction of claim occurred within four months after such resignation or removal.

As used in this Section, the term "default" means any failure to make payment in full of the principal of or interest upon the bonds or upon the other indenture securities when and as such principal or interest becomes due and payable; and the term "other indenture securities" means securities upon which the Company is an obligor (as defined in the Trust Indenture Act) outstanding under any other indenture (a) under which the Trustee is also trustee, (b) which contains provisions substantially similar to the provisions of this subdivision (a), and (c) under which a default exists at the time of the apportionment of the funds and property held in said special account.

"default"

§19.11

Certain
creditor
relationships
excluded

(b) There shall be excluded from the operation of subdivision (a) of this Section a creditor relationship arising from—

(1) the ownership or acquisition of securities issued under any indenture, or any security or securities having a maturity of one (1) year or more at the time of acquisition by the Trustee;

(2) advances authorized by a receivership or bankruptcy court of competent jurisdiction or by this Indenture for the purpose of preserving the property subject to the Lien of this Indenture or of discharging tax liens or other prior liens or encumbrances on the trust estate, if notice of such advance and of the circumstances surrounding the making thereof is given to the bondholders as provided in subdivisions (a), (b) and (c) of Section 19.13 hereof with respect to advances by the Trustee as such;

(3) disbursements made in the ordinary course of business in the capacity of trustee under an indenture, transfer agent, registrar, custodian, paying agent, fiscal agent or depositary, or other similar capacity;

(4) an indebtedness created as a result of services rendered or premises rented; or an indebtedness created as a result of goods or securities sold in a cash transaction as defined in the last paragraph of this subdivision (b);

(5) the ownership of stock or of other securities of a corporation organized under the provisions of Section 25(a) of the Federal Reserve Act, as amended, which is directly or indirectly a creditor of the Company; or

(6) the acquisition, ownership, acceptance or negotiation of any drafts, bills of exchange, acceptances or obligations which fall within the classification of self-liquidating paper as defined in the last paragraph of this subdivision (b).

“security”

“cash transaction”

“self-
liquidating
paper”

As used in this Section, the term “security” shall have the meaning assigned to such term in the Securities Act of 1933, as amended and in force on the date of the execution of this Indenture; the term “cash transaction” shall mean any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; the term “self-liquidating paper” shall mean any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the Company for the purpose

of financing the purchase, processing, manufacture, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation; and the term "Trustee" shall include the Trustee, and any separate trustee or co-trustee appointed pursuant to Section 19.16 hereof.

"Trustee"

SECTION 19.12. (a) If the Trustee has or acquires any conflicting interest, as defined by subdivision (d) of this Section, the Trustee shall within ninety (90) days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign by giving written notice to the Company, but such resignation shall not become effective until the appointment of a successor trustee and such successor's acceptance of such appointment. The Company covenants to take prompt steps to have a successor appointed in the manner hereinafter provided in Section 19.15 hereof. Upon giving such notice of resignation, the resigning Trustee shall publish notice thereof in a Daily Newspaper of general circulation in the Borough of Manhattan, The City of New York, New York, and in a Daily Newspaper of general circulation in the City of Portland, Oregon, once, provided, however, that if all bonds then Outstanding shall be registered, no notice need be given except by mail in accordance with subdivision (c) of Section 19.13 hereof. If the resigning Trustee fails to give such notice within ten (10) days after giving written notice of resignation to the Company, the Company shall give such notice.

Effect of
conflicting
interest
on part of
Trustee

(b) In the event that the Trustee shall fail to comply with the provisions of the preceding subdivision (a) of this Section, the Trustee shall within ten (10) days after the expiration of such ninety (90) day period transmit notice of such failure to the bondholders in the manner and to the extent provided in subdivision (c) of Section 19.13 hereof with respect to reports pursuant to subdivision (a) of Section 19.13 hereof.

Notice of
conflict
to bond-
holders

(c) Subject to the provisions of Section 22.06 hereof, any bondholder who has been a bona fide holder of a bond or bonds for at least six months may, on behalf of himself, herself or itself and all others similarly situated, petition any court of competent jurisdiction for the removal of

Bondholder
petition
to remove
Trustee

§19.12

the Trustee and the appointment of a successor if the Trustee fails, after written request therefor by such holder, to comply with the provisions of subdivision (a) of this Section.

**Conflicting
Interest:**

- (1) Trusteeship
under another
indenture of
Company

(d) The Trustee shall be deemed to have a conflicting interest if—

(1) such Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company, are outstanding unless such other indenture is a collateral trust indenture under which the only collateral consists of bonds issued under this Indenture; provided that there shall be excluded from the operation of this paragraph (1) another indenture or indentures under which other securities, or certificates of interest or participation in other securities, of the Company are outstanding, if the Company shall have sustained the burden of proving, on application to the Securities and Exchange Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such under one of such indentures;

- (2) Obligor on
bonds or under-
writer of
Company

(2) the Trustee or any of its directors or executive officers is an obligor upon the bonds or an underwriter for the Company;

- (3) Direct, indirect
or common
control

(3) the Trustee directly or indirectly controls or is directly or indirectly controlled by or is under direct or indirect common control with the Company or an underwriter for the Company;

- (4) Certain employees
in common;
exceptions

(4) the Trustee or any of its directors or executive officers is a director, officer, partner, employee, appointee or representative of the Company, or of an underwriter (other than the Trustee itself) for the Company who is currently engaged in the business of underwriting, except that (A) one individual may be a director and/or an executive officer of the Trustee and a director and/or an executive officer of the Company, but may not be at the same time an executive officer of both the Trustee and the Company; (B) if and so long as the number of directors of the Trustee in office is more than nine, one additional individual may be a director and/or an executive officer of the Trustee and a director of the Company; and (C) the Trustee may be designated by the Company or by any underwriter for the Company to act in the capacity of transfer agent, registrar,

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custodian, paying agent, fiscal agent, escrow agent or depository or in any other similar capacity or, subject to the provisions of paragraph (1) of this subdivision (d), to act as trustee, whether under an indenture or otherwise;

(5) ten per centum (10%) or more of the voting securities of the Trustee is beneficially owned either by the Company or by any director, partner or executive officer thereof, or twenty per centum (20%) or more of such voting securities is beneficially owned, collectively, by any two or more of such persons; or ten per centum (10%) or more of the voting securities of the Trustee is beneficially owned either by an underwriter for the Company or by any director, partner or executive officer thereof, or is beneficially owned, collectively, by any two or more such persons;

(5) Ownership of voting securities of Trustee

(6) the Trustee is the beneficial owner of or holds as collateral security for an obligation which is in default, (A) five per centum (5%) or more of the voting securities or ten per centum (10%) or more of any other class of security of the Company, not including the bonds issued under this Indenture and securities issued under any other indenture under which the Trustee is also trustee, or (B) ten per centum (10%) or more of any class of security of an underwriter for the Company;

(6) Ownership of securities of Company or underwriter of Company

(7) the Trustee is the beneficial owner of, or holds as collateral security for an obligation which is in default, five per centum (5%) or more of the voting securities of any person who, to the knowledge of the Trustee, owns ten per centum (10%) or more of the voting securities of, or controls directly or indirectly or is under direct or indirect common control with, the Company;

(7) Ownership of voting securities of person affiliated with Company

(8) the Trustee is the beneficial owner of or holds as collateral security for an obligation which is in default, ten per centum (10%) or more of any class of security of any person who, to the knowledge of the Trustee, owns fifty per centum (50%) or more of the voting securities of the Company; or

(8) Ownership of any securities of person affiliated with Company

(9) the Trustee owns on May 15 in any calendar year in the capacity of executor, administrator, testamentary or inter vivos trustee, guardian, committee or conservator, or in any other similar capacity, an aggregate of twenty-five per centum (25%) or more of the voting securities or of any class of security, of any person, the beneficial ownership of a specified percentage of which would have

(9) Ownership as executor, etc., of securities of certain persons specified above

§19.12

constituted a conflicting interest under paragraph (6), (7) or (8) of this subdivision (d). As to any such securities of which such Trustee acquired ownership through becoming executor, administrator or testamentary trustee of an estate which included them, the provisions of the preceding sentence shall not apply for a period of two years from the date of such acquisition, to the extent that such securities included in such estate do not exceed twenty-five per centum (25%) of such voting securities or twenty-five per centum (25%) of any such class of security. Promptly after May 15 in each calendar year, the Trustee shall review its holdings of such securities in any of the above-mentioned capacities as of May 15. If the Company fails to make payment in full of principal or interest upon the bonds when and as the same becomes due and payable, and such failure continues for thirty (30) days thereafter, the Trustee shall promptly review its holdings of such securities in any of the above-mentioned capacities as of the date of the expiration of such thirty (30) day period and after such date, notwithstanding the foregoing provisions of this paragraph, all such securities so held by the Trustee with sole or joint control over such securities vested in it, shall, but only so long as such failure shall continue, be considered as though beneficially owned by the Trustee for the purposes of paragraphs (6), (7) and (8) of this subdivision (d).

The specifications of percentages in paragraphs (5) to (9), inclusive, of this subdivision (d) shall not be construed as indicating that the ownership of such percentages of the securities of a person is or is not necessary or sufficient to constitute direct or indirect control for the purposes of paragraph (3) or (7) of this subdivision (d).

For the purposes of paragraphs (6), (7), (8) and (9) of this subdivision (d) only, (A) the terms "security" and "securities" shall include only such securities as are generally known as corporate securities, but shall not include any note or other evidence of indebtedness issued to evidence an obligation to repay moneys lent to a person by one or more banks, trust companies or banking firms or any certificate of interest or participation in any such note or evidence of indebtedness; (B) an obligation shall be deemed to be in default when a default in payment of principal shall have continued for thirty (30) days or more and shall not have been cured; and (C) the Trustee shall not be deemed to be the owner or holder of (i) any security which it holds as collateral security (as trustee or otherwise) for an obligation which is not in default as above defined, or (ii) any security

"security"

"securities"

which it holds as collateral security under this Indenture, irrespective of any default hereunder, or (iii) any security which it holds as agent for collection, or as custodian, escrow agent or depositary, or in any similarly representative capacity.

The percentages of voting securities and other securities specified in this Section shall be calculated in accordance with the following provisions:

Calculation
of percentage
of securities

(aa) A specified percentage of the voting securities of the Trustee, the Company or any other person referred to in this Section (each of whom is referred to as a "person" in this paragraph) means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

"person"

(bb) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(cc) The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

"amount"

(dd) The term "outstanding" means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

"outstanding"

(1) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(2) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(3) Securities pledged by the issuer thereof as security for any obligation of the issuer not in default as to principal or interest or otherwise;

(4) Securities held in escrow if placed in escrow by the issuer thereof;

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provided, however, that any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(ee) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges; provided, however, that, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series of different classes, and provided, further, that, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute the securities of different classes, whether or not they are issued under a single indenture.

Application of
Section to Trustee
and separate or co-
trustee

The provisions of this Section which have been made specifically applicable to the Trustee shall apply to the Trustee, and, if a separate or co-trustee is appointed pursuant to Section 19.16 hereof, to any separate or co-trustee, except that in case of the resignation of a separate or co-trustee such resignation and the appointment of a successor shall (subject to the provisions of subdivision (c) of this Section) be governed by the provisions of Section 19.15 and paragraph (3) of Section 19.16 hereof.

"underwriter"

The term "underwriter" when used with reference to the Company means every person who, within three years prior to the time as of which the determination is made, has purchased from the Company with a view to, or has offered or sold for the Company in connection with, the distribution of any security of the Company outstanding at such time, or has participated or has had a direct or indirect participation in any such undertaking, or has participated or has had a participation in the direct or indirect underwriting of any such undertaking, but such term shall not include a person whose interest was limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

Amendment of
Section at Com-
pany's option based
on amendment of
Trust Indenture Act

If the Trust Indenture Act is amended at any time after the date of this Indenture to change the circumstances under which a Trustee shall be deemed to have a conflicting interest with respect to this Indenture or the bonds of any series or to change any of the definitions in connection therewith, this Section 19.12 may at the Company's option be amended by an indenture supplemental hereto to incorporate such changes.

SECTION 19.13. (a) The Trustee shall transmit within sixty (60) days after May 31 in each year, beginning with the year 1989, to the bondholders as hereinafter in this Section provided, a brief report dated as of such May 31 with respect to

Trustee to transmit
certain reports to
bondholders

(1) its eligibility and its qualifications under Sections 9.03, 19.01 and 19.12 hereof, or in lieu thereof, if to the best of its knowledge the Trustee has continued to be eligible and qualified under such Sections, a written statement to such effect;

(2) the character and amount of any advances (and if such Trustee elects so to state, the circumstances surrounding the making thereof) made by such Trustee as such which remain unpaid on the date of such report, and for the reimbursement of which such Trustee claims or may claim a lien or charge, prior to that of the bonds on the trust estate or on property or funds held or collected by it as Trustee, provided that such Trustee shall not be required (but may elect) to state such advances, if such advances so remaining unpaid aggregate not more than one-half of one per centum ($\frac{1}{2}$ of 1%) of the principal amount of the bonds Outstanding on the date of such report;

(3) the amount, interest rate, and maturity date of all other indebtedness owing by the Company to such Trustee in its individual capacity on the date of such report, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraph (2), (3), (4) or (6) of subdivision (b) of Section 19.11 hereof;

(4) the property and funds physically in the possession of such Trustee on the date of such report;

(5) any release, or release and substitution, of property subject to the Lien of this Indenture (and the consideration therefor, if any) which has not been previously reported; provided, however, that to the extent that the aggregate value as shown by the release papers of any or all of such released properties does not exceed an amount equal to one per centum (1%) of the principal amount of bonds then Outstanding, the report need only indicate the number of such releases, the total value of property released as shown by the release papers, the aggregate amount of cash received and the aggregate value of property received in substitution therefor as shown by the release papers;

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(6) any additional issue of bonds which has not been previously reported; and

(7) any action taken by the Trustee in the performance of its duties under this Indenture which it has not previously reported and which in its opinion materially affects the bonds or the trust estate, except in respect of a Default, notice of which has not been or is to be withheld in accordance with the provisions of Section 15.02 hereof.

(b) The Trustee shall transmit to the bondholders as hereinafter provided a brief report with respect to—

(1) the release, or release and substitution, of property subject to the Lien of this Indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by Sections 9.05, 10.03, 13.03, 13.04, 13.05, 13.06 or 13.07 hereof, is less than ten per centum (10%) of the principal amount of bonds Outstanding at the time of such release, or such release and substitution, such report to be so transmitted within ninety (90) days after such time; and

(2) the character and amount of any advances (and if the Trustee elects so to state, the circumstances surrounding the making thereof) made by the Trustee as such since the date of the last report transmitted pursuant to the provisions of subdivision (a) of this Section (or if no such report has yet been so transmitted, since the date of execution of this Indenture), for the reimbursement of which it claims or may claim a lien or charge prior to that of the bonds on the trust estate or on property or funds held or collected by it as Trustee, and which it has not previously reported pursuant to this paragraph, provided that the Trustee shall not be required (but may elect) to state such advances, if such advances remaining unpaid at any time aggregate not more than ten per centum (10%) of the principal amount of bonds Outstanding at such time, such report to be transmitted within ninety (90) days after such time.

(c) Reports pursuant to this Section shall be transmitted by mail—

(1) to all registered holders of bonds, as the names and addresses of such holders appear upon the registration books of the Company;

Reports to be
transmitted by mail

§§19.13, 19.14

(2) to such holders of bonds as have, within two years preceding such transmission, filed their names and addresses with the Trustee for that purpose; and

(3) except in the case of reports pursuant to subdivision (b) of this Section, to each bondholder whose name and address is preserved at the time by the Trustee, as provided in subdivision (b) of Section 9.10 hereof.

(d) A copy of each such report shall, at the time of such transmission to bondholders, be filed by the Trustee with each stock exchange upon which the bonds are listed and also with the Securities and Exchange Commission. The Company will notify the Trustee of the name and address of each stock exchange on which the bonds are listed.

Filing with stock exchange and Securities and Exchange Commission

(e) The provisions of this Section which have been made specifically applicable to the Trustee shall apply to the Trustee and, if a separate or co-trustee is appointed pursuant to Section 19.16 hereof, to any separate or co-trustee. Notwithstanding any of the provisions of this Section which require any separate or co-trustee, appointed pursuant to Section 19.16 hereof, to transmit reports to the bondholders and to file such reports with each stock exchange upon which the bonds are listed and also with the Securities and Exchange Commission, such separate or co-trustee may, if he, she or it so elects, furnish to the Trustee all information concerning such separate or co-trustee which such separate or co-trustee is required to report, and the Trustee shall transmit and file such information, in accordance with the provisions of this Section, on behalf of such separate or co-trustee.

Application of Section to Trustee and separate or co-trustee

SECTION 19.14. The Trustee may at any time resign and be discharged of the trusts hereby created by giving written notice to the Company specifying the day upon which such resignation shall take effect and thereafter publishing notice thereof, in one Daily Newspaper of general circulation in the Borough of Manhattan, The City of New York, New York, and in one Daily Newspaper of general circulation in the City of Portland, Oregon, once, and such resignation shall take effect upon the day specified in such notice unless previously a successor trustee shall have been appointed by the bondholders or the Company in the manner hereinafter provided in Section 19.15 and in such event such resignation shall take effect immediately on the appointment of such successor trustee; provided, however, that if all bonds then Outstanding shall be registered, no notice need be given except by mail in accordance with

Resignation of Trustee

§§19.14, 19.15

subdivision (c) of Section 19.13 hereof. This Section shall not be applicable to resignations pursuant to Section 19.12 hereof.

Removal of Trustee

Any Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with such Trustee and signed and acknowledged by the holders of a majority in principal amount of the bonds then Outstanding hereunder (determined as provided in Section 15.07 hereof) or by their attorneys-in-fact duly authorized.

Resignation of Trustee upon ineligibility

In case at any time the Trustee shall cease to be eligible in accordance with the provisions of Section 9.03 or Section 19.01 hereof, then the Trustee so ceasing to be eligible shall resign immediately in the manner and with the effect in this Section provided; and, in the event that it does not resign immediately in such case, then it may be removed forthwith by an instrument or concurrent instruments in writing filed with the Trustee so ceasing to be eligible and either (a) signed by an Authorized Executive Officer of the Company with its corporate seal attested by the Secretary or an Assistant Secretary of the Company or (b) signed and acknowledged by the holders of a majority in principal amount of the bonds then Outstanding hereunder (determined as provided in Section 15.07 hereof) or by their attorneys-in-fact duly authorized.

Appointment of successor trustee

SECTION 19.15. In case at any time the Trustee shall resign or shall be removed (unless such Trustee shall be removed as provided in subdivision (c) of Section 19.12 hereof in which event the vacancy shall be filled as provided in said subdivision) or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Trustee or of its property shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, a vacancy shall be deemed to exist in the office of the Trustee, and a successor or successors may be appointed by the holders of a majority in principal amount of the bonds then Outstanding hereunder (determined as provided in Section 15.07 hereof) by an instrument or concurrent instruments in writing signed and acknowledged by such bondholders or by their attorneys-in-fact duly authorized, and delivered to such new Trustee, notification thereof being given to the Company and the retiring Trustee; provided, nevertheless, that until a new Trustee shall be appointed by the bondholders as aforesaid, the Company, by instrument executed by order of its Board of Directors and duly acknowledged by an Authorized Executive Officer of the Company, may appoint a Trustee

to fill such vacancy until a new Trustee shall be appointed by the bondholders as herein authorized. The Company shall give notice of any such appointment made by it in the manner provided in Section 19.14 hereof. Any new Trustee appointed by the Company shall, immediately and without further act, be superseded by a Trustee appointed by the bondholders as above provided, if such appointment by the bondholders be made prior to the expiration of one year after the first giving of notice of the appointment of the new Trustee by the Company.

If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within six months after a vacancy shall have occurred in the office of Trustee, the holder of any bond Outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Bondholder
application for
appointment of
successor trustee

If any Trustee resigns because of a conflict of interest as provided in subdivision (a) of Section 19.12 hereof and a successor has not been appointed by the Company or the bondholders or, if appointed, has not accepted the appointment, within thirty (30) days after the date of such resignation, the resigning Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee.

Application of
resigned Trustee for
appointment of
successor

Any Trustee appointed under the provisions of this Section in succession to the Original Trustee (or in succession to any successor thereof) shall be a bank or trust company eligible under Sections 9.03 and 19.01 hereof and qualified under Section 19.12 hereof.

Qualification for
successor trustee

Any Trustee which has resigned or been removed shall nevertheless retain the lien afforded to it by Section 19.09 hereof upon the trust estate, including all property or funds held or collected by such Trustee, as such, to secure the amounts due to such Trustee as compensation, reimbursement, expenses and indemnity, and shall retain the rights afforded to it by said Section 19.09 hereof.

Lien of resigned
or removed Trustee

SECTION 19.16. At any time or times, for the purpose of conforming to any legal requirements, restrictions or conditions in any State or jurisdiction in which any part of the Mortgaged and Pledged Property then or to become subject to the Lien of this Indenture may be located, the Company and the Trustee shall have the power to appoint, and, upon the request of the Trustee, the Company shall for such purpose join with

Appointment of
separate trustee or
co-trustee

819.16

the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, another corporation or one or more persons approved by the Trustee, either to act as separate trustee or trustees, or co-trustee or co-trustees jointly with the Trustee, of all or any of the property subject to the Lien hereof. In the event that the Company shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, the Trustee alone shall have power to make such appointment.

Every separate trustee, every co-trustee and every successor trustee, other than any trustee which may be appointed as successor to the Original Trustee, shall, to the extent permitted by law, but to such extent only, be appointed subject to the following provisions and conditions, namely:

Conditions:

(1) Exercise of powers

(1) The rights, powers, duties and obligations conferred or imposed upon trustees hereunder or any of them shall be conferred or imposed upon and exercised or performed by the Trustee and such separate trustee or separate trustees or co-trustee or co-trustees jointly, as shall be provided in the instruments and agreements appointing such separate trustee or separate trustees or co-trustee or co-trustees, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such separate trustee or separate trustees or co-trustee or co-trustees;

(2) Authentication, etc. of bonds

(2) The bonds secured hereby shall be authenticated and delivered, and all powers, duties, obligations and rights, conferred upon the Trustee in respect of the custody of all bonds and other securities and of all cash pledged or deposited hereunder, shall be exercised solely by the Original Trustee or its successors in the trust hereunder; and

(3) Resignation or removal of separate trustee or co-trustee

(3) The Company and the Trustee, at any time by an instrument in writing executed by them jointly, may accept the resignation of or remove any separate trustee or co-trustee appointed under this Section or otherwise, and, upon the request of the Trustee, the Company shall, for such purpose, join with the Trustee and in the execution, delivery and performance of all instruments and agreements necessary or proper to make effective such resignation or

removal. In the event that the Company shall not have joined in such action within fifteen (15) days after the receipt by it of a request so to do, the Trustee alone shall have power to accept such resignation or to remove any such separate trustee or co-trustee. A successor to a separate trustee or co-trustee so resigned or removed may be appointed in the manner provided in this Section.

No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

Any notice, request or other writing, by or on behalf of the holders of the bonds delivered to the Original Trustee, or its successor in the trust hereunder, shall be deemed to have been delivered to all of the then trustees or co-trustees as effectually as if delivered to each of them. Every instrument appointing any trustee or trustees other than a successor to the Original Trustee shall refer to this Indenture and the conditions in this Article expressed, and upon the acceptance in writing by such trustee or trustees or co-trustee or co-trustees, he, she, they or it shall be vested with the estates or property specified in such instrument, either jointly with the Original Trustee, or its successor, or separately, as may be provided therein, subject to all the trusts, conditions and provisions of this Indenture; and every such instrument shall be filed with the Original Trustee or its successor in the trust hereunder. At the written direction of the Company or the Trustee, any separate trustee or trustees, or any co-trustee or co-trustees, shall by an instrument in writing constitute the Original Trustee or its successor in the trust hereunder his, her, their or its agent or attorney-in-fact, with full power and authority, to the extent which may be permitted by law, to do any and all acts and things and exercise any and all discretion authorized or permitted by him, her, them or it, for and in behalf of him, her, them or it, and in his, her, their or its name. In case any separate trustee or trustees or co-trustee or co-trustees, or a successor to any of them, shall die, become incapable of acting, resign or be removed, all the estates, property, rights, powers, trusts, duties and obligations of said separate trustee or co-trustee, so far as permitted by law, shall vest in and be exercised by the Original Trustee or its successor in the trust hereunder, without the appointment of a new trustee as successor to such separate trustee or co-trustee.

SECTION 19.17. Any successor trustee appointed hereunder shall execute, acknowledge and deliver to his, her or its predecessor trustee,

Notice by
bondholders to
Trustee, notice to
all trustees

Contents, filing, etc.,
of instrument
appointing trustee

Appointment of
agent, etc. by
separate trustee
or co-trustee

Incapacity, etc. of
separate trustee
or co-trustee

Acceptance of
successor trustee