FIDLAR & CHAMBERS CO., DAVENPORT, IOWA

CHICAGO AND NORTH WESTERN
RAILWAY COMPANY
to
THE FIRST NATIONAL BANK OF CHICAGO
Trustee

ASSUMPTION AGREEMENT AND
SUPPLEMENTAL INDENTURE
Dated as of July 1, 1968
to
GENERAL INCOME MORTGAGE
Dated as of January 1, 1938
of
CHICAGO GREAT WESTERN RAILWAY COMPANY

Filed for record this 2 day of July
A. D. 1968, at 8:10 o'clock A. M.
#967 Mary E. Welty
~~Register~~, ~~Clerk~~, Recorder
, Deputy
Fee $ 14.50

FOR RELEASE OF ANNEXED MORTGAGE SEE MORTGAGE RECORD 135 PAGE 419

THIS ASSUMPTION AGREEMENT AND SUPPLEMENTAL INDENTURE of Mortgage and Deed of Trust, dated as of the first day of July, 1968, between CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a corporation duly organized and existing under the laws of the State of Wisconsin (hereinafter called "North Western"), party of the first part, and THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, as Trustee (hereinafter called the "Trustee"), party of the second part,

WITNESSETH:

WHEREAS, Chicago Great Western Railway Company, an Illinois corporation (hereinafter called the "Original Mortgagor"), on February 20, 1941, executed and delivered to the Trustee an Indenture of Mortgage and Deed of Trust dated as of January 1, 1938 (hereinafter called the "Original Mortgage"), to secure an issue of General Income Mortgage 4½% Bonds, limited in aggregate principal amount to Six Million Five Hundred Thousand Dollars ($6,500,000), issuable as in the Original Mortgage provided, and pursuant to the terms thereof the Original Mortgagor has issued Six Million One Hundred Thirteen Thousand Six Hundred Dollars ($6,113,600) principal amount of said General Income Mortgage 4½% Bonds; and

WHEREAS, pursuant to Section 1 of Article Fifteen of the Original Mortgage, the Original Mortgagor and the Trustee entered into three indentures, dated May 11, 1942, December 26, 1952 and June 11, 1954, respectively, supplemental to the Original Mortgage, subjecting to the lien of the Mortgage additional property then owned by the Original Mortgagor; and

WHEREAS, pursuant to authority and approval granted by the Interstate Commerce Commission in an order dated November 18, 1955, the Original Mortgagor was merged on December 31, 1955 into Chicago Great Western Railway Company, a Delaware corporation (hereinafter called the "First Successor Mortgagor"), in a duly authorized statutory merger effected in conformity with applicable law, under which merger the First Successor Mortgagor was the surviving corporation; and

WHEREAS, the First Successor Mortgagor, pursuant to Section 1 of Article Fourteen and Section 1 of Article Fifteen of the Original Mortgage, executed and delivered to the Trustee an Assumption Agreement and Supplemental Indenture, dated as of January 1, 1956, whereby the First Successor Mortgagor, among other things, expressly assumed the due and punctual payment of the principal of and interest and premium, if any, on

all of the Bonds issued or to be issued under the Original Mortgage, and joined in the original grant of the trust estate as if the First Successor Mortgagor had executed and delivered the Original Mortgage and indentures supplemental thereto, and succeeded to and was substituted for the Original Mortgagor in the Original Mortgage and indentures supplemental thereto with the same effect as if it had been originally named as the party of the first part therein; and

WHEREAS, pursuant to Article Sixteen of the Original Mortgage, the First Successor Mortgagor and the Trustee entered into a Supplemental Indenture, dated as of December 17, 1957, modifying Section 15 of Article Six of the Original Mortgage; and

WHEREAS, pursuant to Section 1 of Article Fifteen of the Original Mortgage, the First Successor Mortgagor and the Trustee entered into seven Indentures, dated June 13, 1956, February 24, 1958, March 16, 1959, March 22, 1960, July 31, 1963, August 20, 1965 and November 1, 1966, respectively, supplemental to the Original Mortgage, subjecting to the lien of the Mortgage additional property then owned by the First Successor Mortgagor; and

WHEREAS, on the date hereof Five Million Four Hundred Fifteen Thousand Two Hundred Dollars ($5,415,200) principal amount of General Income Mortgage 4½% Bonds, due January 1, 2038, including Bonds held in treasury, are issued and outstanding under the Mortgage; and

WHEREAS, pursuant to authority and approval granted by the Interstate Commerce Commission in an order dated April 20, 1967, as modified by an order dated September 27, 1967, and as reinstated, affirmed and further modified by an order dated May 23, 1968, in Finance Dockets 23388 and 23389, the First Successor Mortgagor was merged, effective 12:01 A.M. on July 1, 1968 (which time and date is hereinafter called the "Merger Date"), into North Western in a duly authorized statutory merger (hereinafter called the "Merger"), effected in conformity with applicable law, under which North Western is the surviving corporation; and

WHEREAS, North Western is lawfully entitled to acquire and operate the trust estate, and the Merger is on such terms as fully preserves and in no respects impairs the lien and security of the Mortgage or any of the rights and powers of the Trustee or of the bondholders thereunder; and

WHEREAS, Section 1 of Article Fourteen of the Original Mortgage permits the First Successor Mortgagor to merge into another corporation

lawfully entitled to acquire and operate the trust estate, provided that such merger shall be on such terms as shall fully preserve and in no respects impair the lien and security of the Mortgage or any of the rights and powers of the Trustee or of the bondholders thereunder and that the successor corporation resulting from such merger shall execute a supplemental indenture containing provisions prescribed by Article Fourteen of the Original Mortgage; and

WHEREAS, Section 1 of Article Fifteen of the Original Mortgage permits the entering into of an indenture supplemental to the Original Mortgage for the purposes, among others, of (i) adding such further covenants as the Board of Directors of the Railway Company and the Trustee shall consider to be for the protection of the trust estate and of the holders of Bonds and (ii) curing any ambiguity or curing, correcting or supplementing any defective or inconsistent provision contained in the Original Mortgage or in any supplemental indenture, and it is desired to amend certain provisions of the Original Mortgage for such purposes, as hereinafter provided; and

WHEREAS, North Western is entering into this Assumption Agreement and Supplemental Indenture, in order to comply with the terms of the Original Mortgage in connection with the merger of the First Successor Mortgagor into North Western, as the surviving corporation; and

WHEREAS, all conditions and requirements necessary to make this Assumption Agreement and Supplemental Indenture a valid, binding and legal instrument have been done, performed and fulfilled, and the execution and delivery hereof have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and of the sum of Ten Dollars ($10.00) lawful money of the United States of America to North Western duly paid by the Trustee, the receipt of which by North Western is hereby acknowledged by it, and to comply with the terms and provisions of the Original Mortgage with respect to the merger of the First Successor Mortgagor into North Western, it is agreed and covenanted by North Western with the Trustee for the benefit of the respective holders from time to time of the Bonds as follows, namely:

ARTICLE ONE

DEFINITIONS

SECTION 1. All terms defined in the Original Mortgage when used in this Assumption Agreement and Supplemental Indenture shall, unless otherwise

defined herein or the context otherwise requires, have the meanings given to such terms in the Original Mortgage.

ARTICLE TWO

ASSUMPTION BY AND SUBSTITUTION OF NORTH WESTERN

SECTION 1. North Western expressly assumes the due and punctual payment of the principal of and interest and premium, if any, on all of the Bonds issued and to be issued under the Mortgage, according to their tenor and purport, and the due and punctual performance of all of the covenants, terms and conditions of the Original Mortgage, and of all indentures supplemental thereto, to be kept, observed or performed by the Original Mortgagor or the First Successor Mortgagor.

SECTION 2. Subject to the provisions of this Assumption Agreement and Supplemental Indenture, North Western shall succeed to and be substituted for the Original Mortgagor and First Successor Mortgagor, with the same force and effect as if North Western had been originally named in and had executed the Original Mortgage, as the party of the first part thereto, and each indenture heretofore executed supplemental thereto, and shall have and possess and may exercise, subject to the terms and conditions of the Mortgage, each and every power, authority and right therein reserved to or conferred upon the Original Mortgagor or First Successor Mortgagor, and subject to the provisions of this Assumption Agreement and Supplemental Indenture, the term "Railway Company" includes and means, for every purpose of the Mortgage, not only the Original Mortgagor and the First Successor Mortgagor, but also North Western.

ARTICLE THREE

LIEN OF MORTGAGE

SECTION 1. The Mortgage shall not by reason of the Merger, or this Assumption Agreement and Supplemental Indenture, or otherwise, constitute or become a lien upon, and the term "trust estate" as used herein and in the Mortgage shall not include or comprise:

(a) any property or franchise which prior to the Merger Date was owned by North Western, or any property or franchises which may theretofore have been acquired by the Original Mortgagor or the First

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Successor Mortgagor and which prior to the Merger Date was not subject to the lien of the Mortgage; or

(b) any property or franchise which may be purchased, constructed or otherwise acquired by North Western after the Merger Date, excepting only the betterments, extensions, improvements, additions, repairs, renewals, replacements, substitutions, alterations, property and franchises mentioned and referred to in Section 2 of this Article Three, which, as and when purchased, constructed, or otherwise acquired by North Western, shall be and become subject to the lien of the Mortgage, notwithstanding the Merger.

SECTION 2. North Western hereby confirms the lien of the Mortgage upon the trust estate, and hereby conveys to the Trustee, and subjects to the lien and operation of the Mortgage as a first lien, or as a lien subject to liens affecting the property and franchises of the Original Mortgagor or the First Successor Mortgagor prior to the Merger Date:

(1) all property acquired either with cash now or at any time hereafter held under the Mortgage by the Trustee or in exchange for property released from the lien of the Mortgage or the acquisition or construction of which has been or shall be made the basis of the withdrawal of cash or the issuance of Bonds under the Mortgage;

(2) all betterments, extensions, improvements and additions of, to, upon and for the property, rights and franchises subject to the lien of the Mortgage;

(3) all repairs, renewals, replacements, substitutions and alterations of, to, upon and for such property, rights and franchises;

(4) all property, rights and franchises acquired pursuant to any covenant contained in the Mortgage which may be purchased, constructed, or otherwise acquired by North Western from and after the Merger Date; and

(5) all equipment and additions, betterments and improvements to any property all or any part of the purchase price or cost of which has been or may hereafter be charged against the Capital Fund provided for by Section 14 of Article Six of the Mortgage.

SECTION 3. North Western covenants that all property and franchises hereafter acquired by it, and necessary to the full and complete performance of any covenant contained in the Mortgage relating to the maintenance and upkeep of the trust estate, to the making of all needful and proper renewals, replacements, substitutions and alterations and to the preserva-

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tion and keeping in full effect of all rights, franchises and privileges subject to the lien of the Mortgage, and of any other covenant in the Mortgage, shall be conclusively deemed and taken to be acquired by it in performance of such covenant and to have become subject to the prior lien of the Mortgage, subject only to the liens to which they would have been subject had they been acquired by the First Successor Mortgagor in the absence of the Merger.

SECTION 4. North Western covenants to keep the trust estate, so far as practicable, readily identifiable; and stipulates that the Trustee shall not be taken impliedly to waive, by accepting and joining in this Assumption Agreement and Supplemental Indenture, any rights it would otherwise have.

ARTICLE FOUR

AMENDMENT RESPECTING CAPITAL FUND

SECTION 1. Effective with respect to payments due or to become due on March 1, 1969 and each March 1 thereafter, the Railway Company hereby surrenders certain rights to reduce its Capital Fund appropriations and credits and accordingly, Section 14 of Article Six of the Original Mortgage is hereby amended in the following respects (the amendment provided for in subparagraph A of this Section 1 also reflects the provisions of Section 1 of Article Five of this Assumption Agreement and Supplemental Indenture):

A. By amending the words and figures appearing in the first paragraph of such Section 14 and reading as follows:

"appropriate and credit to said Capital Fund account out of available net income of the Railway Company (as hereinafter in this Section defined) either (a) an amount equal to 2½% of the 'railway operating revenues' of the Railway Company for the next preceding calendar year or (b) an amount equal to the available net income of the Railway Company (as hereinafter in this Section defined) for such preceding calendar year, whichever amount shall be less.":

to be and read as follows:

"appropriate and credit to said Capital Fund account an amount equal to 2½% of 12.6% of the 'railway operating revenues' of the Railway Company for the next preceding calendar year, except that such appropriation and credit to be made on March 1, 1969

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shall be an amount equal to 2½% of 12.6% of the combined 'railway operating revenues' of the Chicago and North Western Railway Company, a Wisconsin corporation, and Chicago Great Western Railway Company, a Delaware corporation, for the next preceding calendar year.":

B. By deleting the last sentence of the first paragraph of such Section 14;

C. By amending the words "the lesser of the amounts" appearing in two places in the fifth paragraph of such Section 14 to be and read "the amount";

D. By deleting clauses (a) and (b) of the sixth paragraph of such Section 14;

E. By deleting the ninth, tenth and eleventh paragraphs of such Section 14; and

F. By deleting the phrase "income available for fixed charges" appearing in the last paragraph of such Section 14.

ARTICLE FIVE

DESIGNATIONS RESPECTING APPORTIONMENTS

SECTION 1. Pursuant to the provisions of Section 1 of Article Fourteen of the Original Mortgage, the provisions of Section 1 of Article Four of this Assumption Agreement and Supplemental Indenture are hereby designated as equitable provision for determining the portion of the earnings to be used as the basis for the determination under the provisions of the Mortgage of the amount which is to be appropriated and credited to the Capital Fund provided for in Section 14 of Article Six of the Original Mortgage.

SECTION 2. Pursuant to the provisions of Section 1 of Article Fourteen of the Original Mortgage, the following designations are made as equitable provision to be used as the basis for the determination under the provisions of the Mortgage of the defined income of the Railway Company:

(a) the combined defined income of North Western and of the First Successor Mortgagor for the calendar year 1968 and the defined income of North Western for each calendar year thereafter are hereby designated as defined income of the Railway Company for such calendar year for the purpose of determining the liability of North Western to pay on the April 1 next following such calendar year interest on the Bonds issued under the Mortgage and sums payable as and for the sinking fund provided for in Section 1 of Article Five of the Original Mortgage; and

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(b) the sum of (i) the aggregate of the defined income of the Original Mortgagor and First Successor Mortgagor for each calendar year during the period from January 1, 1938 up to the Merger Date, less the aggregate of all proper charges during such period against such defined income, (ii) the accumulated retained income of North Western, as shown by its accounts, immediately prior to the Merger Date, and (iii) the aggregate defined income of North Western for the period commencing on the Merger Date, is hereby designated as defined income of the Railway Company for all other purposes of the Mortgage.

SECTION 3. The Trustee acknowledges that the designations made by Sections 1 and 2 of this Article Five constitute equitable provision, satisfactory to it, for the purposes therein provided.

ARTICLE SIX

RESTRICTIONS UPON ISSUANCE OF ADDITIONAL BONDS AND PAYMENT OF DEPOSITED CASH

SECTION 1. For the purpose of making subparagraph (d) of paragraph (4) of Part B of Section 4 of Article Three of the Original Mortgage consistent with Section 14 of Article Six as amended herein, the words and figures appearing in said subparagraph (d) and reading as follows:

"and the surplus funds (as defined in Section 14 of Article Six) in the Capital Fund account, if any, shall have been used in such year for such purposes to the extent of the amount by which 2½% of 'railway operating revenues' for such year (as defined in Section 14 of Article Six) exceeds the amount of the appropriation and credit to the Capital Fund for the year in which the expenditures were made,"

are hereby amended to be and read as follows:

"and the surplus funds (as defined in Section 14 of Article Six) in the Capital Fund Account, if any, shall have been used in such year for such purposes to the extent of the amount by which (1) 2½% of 'railway operating revenues' (as defined in Section 14 of Article Six) of the Railway Company (as then defined in this Mortgage) for such year if such year be prior to 1968, or (2) 2½% of 12.6% of the combined 'railway operating revenues' of Chicago Great Western Railway Company, a Delaware corporation, and Chicago and North Western Railway Company, a Wisconsin corporation, for such year if such year be the year 1968, or (3) 2½% of 12.6% of 'railway operating revenues'

of the Railway Company for such year if such year be after 1968, as the case may be, exceeds the amount of the appropriation and credit to the Capital Fund for the year in which the expenditures were made,"

ARTICLE SEVEN

CERTIFICATES OF INDEPENDENT EXPERTS

SECTION 1. The words and figures appearing in subparagraph (ii) of paragraph (3) of Part B of Section 4 of Article Three of the Original Mortgage and reading as follows:

"If the cost of any parcel of property acquired shall exceed $25,000, the Railway Company shall furnish to the Trustee, in addition to the other certificates required to be so furnished, a certificate as to the fair value of such property, determined as hereinabove provided, signed by an independent engineer satisfactory to the Trustee.",

are hereby amended to be and read as follows:

"If the cost of any parcel of property acquired shall exceed $25,000, the Railway Company shall furnish to the Trustee, in addition to the other certificates required to be so furnished, a certificate as to the fair value of such property, determined as hereinabove provided, signed by an independent engineer, independent appraiser or other independent expert satisfactory to the Trustee."

SECTION 2. The words appearing in Section 2 of Article Eleven of the Original Mortgage and reading as follows:

"provided that the Railway Company shall retain at least an undivided one-third interest in any such line and shall retain the perpetual right to operate over any such line, and that the Trustee shall be furnished with the certificate of an independent engineer satisfactory to it stating that the granting or selling of such undivided or part interest by the Railway Company will not, in his opinion, adversely affect the operation over said line or lines by the Railway Company or impair or prejudice the value of the security afforded by this Mortgage.",

are hereby amended to be and read as follows:

"provided that the Railway Company shall retain at least an undivided one-third interest in any such line and shall retain the perpetual

right to operate over any such line, and that the Trustee shall be furnished with the certificate of an independent engineer or other independent expert satisfactory to it stating that the granting or selling of such undivided or part interest by the Railway Company will not, in his opinion, adversely affect the operation over said line or lines by the Railway Company or impair or prejudice the value of the security afforded by this Mortgage."

SECTION 3. The words and figures appearing in subparagraph (c) of paragraph (2) of Section 4 of Article Eleven of the Original Mortgage and reading as follows:

"*provided, however,* that in case the fair value of the property to be released exceeds in amount $25,000, a further certificate complying with the requirements of this subparagraph (c) by an independent engineer (in the case of any property other than stocks, bonds or other obligations) or by an independent appraiser (in the case of stocks, bonds and other obligations) satisfactory to the Trustee, shall be delivered to the Trustee."

are hereby amended to be and read as follows:

"*provided, however,* that in case the fair value of the property to be released exceeds in amount $25,000, a further certificate complying with the requirements of this subparagraph (c) by an independent engineer, independent appraiser or other independent expert satisfactory to the Trustee, shall be delivered to the Trustee."

ARTICLE EIGHT

CONCERNING THE TRUSTEE

The Trustee hereby accepts the trusts hereby declared and provided, and agrees to perform the same upon the terms and conditions set forth in the Original Mortgage and all indentures supplemental thereto as well as the following terms and conditions:

The recitals contained in this Assumption Agreement and Supplemental Indenture shall be taken as the statements of North Western alone and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the value or condition of the property conveyed to it in this Assumption Agreement and Supplemental Indenture, or as to the security afforded thereby, or as to the validity of the lien of this Assumption Agreement and Supplemental Indenture, and the Trustee shall incur no responsibility in respect of any such matters.

ARTICLE NINE

GENERAL

SECTION 1. All provisions of the Original Mortgage and indentures supplemental thereto which shall have been heretofore entered into shall remain in full force and effect except to the extent that such provisions are inconsistent with the provisions of this Assumption Agreement and Supplemental Indenture.

SECTION 2. All Bonds heretofore signed and delivered by the Original Mortgagor or the First Successor Mortgagor to the Trustee shall hereafter be authenticated and delivered by the Trustee the same as if they had been signed and delivered to the Trustee by North Western subsequent to the date hereof; and North Western hereby adopts said Bonds as its obligation with the same force and effect as though North Western had been named therein in place of the Original Mortgagor or the First Successor Mortgagor, as the case may be, and had itself signed, executed and delivered said Bonds.

All Bonds, if any, hereafter signed and delivered to the Trustee by North Western shall be in the form of the Bonds prescribed by the Original Mortgage, except that said Bonds may be so modified to show that, as a result of the Merger, North Western is the obligor.

SECTION 3. This Assumption Agreement and Supplemental Indenture may be executed simultaneously in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, CHICAGO AND NORTH WESTERN RAILWAY COMPANY has caused this Assumption Agreement and Supplemental Indenture to be signed and acknowledged on its behalf by its Vice President—Finance, and its corporate seal to be hereunto affixed and attested by its Secretary, and THE FIRST NATIONAL BANK OF CHICAGO, as Trustee, has caused this Assumption Agreement and Supplemental Indenture to be signed and acknowledged on its behalf by a Vice President, and its corporate seal to be

hereunto affixed and attested by one of its Trust Officers, all as of the day and year first above written.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

[CORPORATE SEAL]

ATTEST:

By T. L. BRANDT
T. L. Brandt
Vice President—Finance

T. A. Ross
T. A. Ross
Secretary

Witnesses to the signatures of the officers of Chicago and North Western Railway Company.

M. L. CASSELL III
M. L. Cassell III

S. W. LAUGHTON
S. W. Laughton

THE FIRST NATIONAL BANK OF CHICAGO, as Trustee

[CORPORATE SEAL]

ATTEST:

By A. J. HURT
A. J. Hurt
Vice President

A. R. MENARD
A. R. Menard
Trust Officer

Witnesses to the signatures of the officers of The First National Bank of Chicago.

M. L. CASSELL III
M. L. Cassell III

S. W. LAUGHTON
S. W. Laughton

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STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, D. J. Walsh, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that T. L. Brandt, personally known to me to be the Vice President—Finance of Chicago and North Western Railway Company, a Wisconsin corporation, and T. A. Ross, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President—Finance and Secretary, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are the Vice President—Finance and Secretary, respectively, of said corporation, that they signed and delivered said instrument as Vice President—Finance and Secretary of said corporation, and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said corporation.

GIVEN under my hand and notarial seal this first day of July, A. D. 1968.

D. J. WALSH

D. J. Walsh
Notary Public

My commission expires July 18, 1971.

[NOTARIAL SEAL]

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STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, N. Neher, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that A. J. Hurt, personally known to me to be a Vice President of The First National Bank of Chicago, a national banking association, and A. R. Menard, personally known to me to be a Trust Officer of said association, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Vice President and Trust Officer, appeared before me this day in person, and, being by me duly sworn, severally said and acknowledged that they are a Vice President and a Trust Officer, respectively, of said association, that they signed and delivered said instrument as Vice President and Trust Officer of said association, and caused the corporate seal of said association to be affixed thereto, pursuant to authority given by the By-laws of said association, as their free and voluntary act, and as the free and voluntary act and deed of said association, for the uses and purposes therein set forth, and that the seal affixed to said instrument is the corporate seal of said association.

GIVEN under my hand and notarial seal this first day of July, A. D. 1968.

N. NEHER

N. Neher
Notary Public

My commission expires December 16, 1970.

COMPARED

[NOTARIAL SEAL]