

## MORTGAGE RECORD 75

hereby created, or by a Receiver, by virtue of any of the provisions of this Indenture, all of said property heretofore excepted by the Company shall thereupon become and be subject to the lien of this Mortgage, and shall, on written demand be immediately surrendered and delivered to the Trustees or to such Receiver.

All of the foregoing property, rights, franchises and privileges mentioned and described herein, constitutes, and is hereinafter referred to as, the "Trust Estate" having been conveyed to the Company by deed dated the 30th day of September, 1927 by Harry C. Jones, Special Master, Harry C. Jones, Receiver, and the Kansas City, Kaw Valley & Western Railway Company, to which deed reference is hereby made as if fully rewritten herein.

TO HAVE AND TO HOLD the above described railroads, property, rights, franchises and privileges, with the appurtenances thereunto belonging or in anywise appertaining, unto the said Trustees their successors in the trust hereby created, and assigns, forever, for its, his and their own use, BUT IN TRUST NEVERTHELESS, for the equal and pro rata benefit and security of any and all persons and parties, and their respective successors, executors, administrators and assigns, who may at any time hold any of the Bonds to be issued hereunder, without any discrimination, preference or priority in favor of any one Bond or coupon over any other Bond or coupon by reason of priority in the time of issue, sale or negotiation thereof, or otherwise, and with the powers and upon the terms, conditions and covenants hereinafter expressed and declared of and concerning the same; that is to say:

## ARTICLE L.

## CERTIFICATION AND ISSUE OF BONDS.

Section 1. The Aggregate face amount of all of the Bonds which may be issued under this Indenture shall not exceed in United States gold coin, or its equivalent, the principal sum of One Million Dollars (\$1,000,000.00). The Bonds secured hereby shall be signed on behalf of the Company, by its President or Vice-President and Secretary, for the time being, and the corporate seal of the Company shall be affixed thereto. In like manner, the coupons attached to said Bonds shall be authenticated by the facsimile of the signature of the Treasurer of the Company for the time being. Any and all bonds or coupons so signed or authenticated by such officer, shall be deemed valid and binding obligations of the Company, according to their terms, if certified and issued by the Corporate Trustee, or its successors in the trust hereby created, as herein provided, whether or not the same persons, or any of them, hold such offices at the time of the certification and issue of said Bonds by the Corporate Trustee. Only such Bonds as shall bear the certificate endorsed thereon, in the form heretofore recited, duly signed by the Corporate Trustee, shall be deemed issued or be valid or be secured by this Indenture, and any such certificate of the Corporate Trustee upon any Bond signed and sealed by the Company shall be conclusive evidence that the Bond so authenticated was duly issued hereunder, and shall entitle it to the benefit of the trust hereby created. Before certifying and delivering any Bonds hereunder, the Corporate Trustee shall detach and cancel all coupons maturing April 1, 1928, and all coupons thereon then matured, except that in the case of Bonds issued in place of mutilated, destroyed, stolen or lost Bonds, the Trustee shall detach and cancel only the coupons which shall have been paid.

SECTION 2. Upon delivery of this instrument, it shall be filed for record by the Company as a mortgage of real estate, and also as a chattel mortgage, in the office of the recorder, register or other proper officer for that purpose, for each of the counties or other subdivisions, by whatever name known, in which any of the property of the Company covered by this mortgage is located. Thereafter Bonds of the issue hereby secured, or intended so to be, may be signed and sealed by the Company and delivered by it to the Corporate Trustee for authentication. Upon the written request of the President and Secretary of the Company, the Corporate Trustee shall at one time or from time to time certify and deliver to the President of the Company, or upon his written order, Seven Hundred Eighty Four Thousand Five Hundred Dollars (\$784,500.00) of Bonds to be issued hereunder.

Thereafter no other or further bonds of the issue hereby secured, or intended so to be, shall be certified and delivered except for the purpose of paying for improvements, betterments, additions and extensions to the property of the Company, and then only when it shall be shown to the satisfaction of the Corporate Trustee that for the year, or in the event the Company's fiscal year does not end with the calendar year, then for the Company's fiscal year next preceding the date of the request for such certification, the net earnings of the Company have not been less than twice the amount of the interest charge on all outstanding bonds plus the bonds so requested to be certified. The term "net earnings" as used herein shall be deemed to be the net earnings of the Company and shall be ascertained by deducting from the gross earnings of the Company for such year all expenses of maintenance and operation, including such expenses for repairs, maintenance, replacements and the general expenses of management as are incurred or made in the ordinary course of business, together with all taxes and assessments (excluding Federal income taxes) paid by the Company, but including only such allowances for depreciation and maintenance as are now chargeable under the rules of accounting recognized by the Interstate Commerce Commission of the United States of America. The Corporate Trustee shall be entitled to rely upon the certificate or statement of the President or Vice President and Treasurer of the Company, setting forth the component items of gross earnings and the deductible items, for obtaining the net earnings as aforesaid, and shall be absolutely protected in so doing. In case it is shown to the satisfaction of the Corporate Trustee that the net earnings of the Company meet the foregoing requirement, bonds may be certified and delivered to an amount at par not exceeding eighty per cent (80%) of the actual cost of such improvements, betterments, additions or extensions, provided, first, that there is delivered to the Corporate Trustee a certified copy of a resolution of the Board of Directors of the Company which specifies the purpose or purposes for which said bonds or their proceeds are to be used, the cost of the contemplated improvements, betterments, additions and extensions, and the person to whom the bonds are to be delivered, and provided, second, that there shall be delivered to the Corporate Trustee a certificate signed by the President or Vice-President of the Company, and verified by the affidavit of its Chief Engineer, or other officer having knowledge of the facts, showing the purpose or purposes for which the said bonds or their proceeds are to be used, and stating the cost of the proposed improvements, betterments, additions and extensions. The delivery of these instruments to the Corporate Trustee shall be complete authority to it to certify and deliver bonds and unmatured coupons of the issue hereby secured to an amount at par equal to eight per centum (80%) of the cost of the proposed improvements, betterments, additions and extensions as stated in said resolution and certificate.

In all cases of certification and delivery of bonds hereunder evidence satisfactory to the Corporate Trustee shall first be furnished it showing that the necessary authority therefor has been obtained from the Public Utilities Commission of Kansas.

Section 3. Until the permanent coupon bonds can be prepared the Company may sign and seal and upon its request the Corporate Trustee shall authenticate and deliver, a temporary bond or bonds, in lieu of such permanent bonds, and upon and subject to the same provisions, limitations and conditions. Such temporary bonds shall be substantially of the tenor of the permanent bonds, but without coupons, and shall be of such denominations and in such amounts of each denomination suitable to be exchanged for permanent coupon bonds as the President or Board of Directors of the Company shall determine. Interest thereon, when and as payable, shall be paid, but only upon presentation of such temporary bonds for the endorsement of such interest thereon. When said permanent coupon bonds are ready for issue, the Corporate Trustee is authorized to authenticate and deliver to the holder, or holders, of said temporary bond or bonds, in exchange therefor, as the same are resented and surrendered to the Corporate Trustee, the