

## MORTGAGE RECORD 75

principal and interest of all the bonds and the observance and performance of all the covenants and conditions of this Indenture on the part of the Company; and, as a condition of any sale, merger or lease of the property of the Company as an entirety, the corporation to which such property shall be sold, merged or leased as an entirety, shall, as a part of the consideration therefor, assume the due and punctual payment of the principal and interest of all the bonds and interest and the observance and performance of all the covenants and conditions of this Indenture on the part of the Company. Any successor corporation formed by any such consolidation, or any corporation into which the Company shall be merged, shall at the time of such consolidation or merger, and any such purchasing, or leasing corporation, simultaneously with the delivery to it of such conveyances, execute and deliver to the Trustees a proper instrument or instruments, in form satisfactory to the Trustees, whereby such corporation shall so assume the due and punctual payment of the principal and interest of all the bonds and agree to the observance and performance of all said covenants and conditions on the part of the company, and the corporation formed by such consolidation, or merger, or to which such sale or lease shall have been made, thereupon shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as a party hereto.

SECTION 2. For every purpose of this Indenture, including the execution, issue and use of any and all the bonds, the term "Company" except where a contrary meaning is indicated by the context, includes and means not only said The Kansas City, Kaw Valley & Western Railroad Company, but also any such corporation which may be a successor to it. Every successor corporation shall possess, and from time to time may exercise, each and every right and power hereunder of its predecessor corporation, including the right to issue bonds, in its name or otherwise, and any act or proceeding by any provision of this Indenture required to be done or performed by any board or officer of such predecessor corporation may be done and performed with like force and effect by the like board or officer of any corporation that shall at the time be such lawful successor. All the covenants, stipulations, promises and agreements in this Indenture contained by or on behalf of the Company shall bind its successors and assigns, whether so expressed or not.

## ARTICLE XI.

## CONVENING THE TRUSTEES.

SECTION 1. It is mutually covenanted, agreed and understood by and between the parties hereto that the Trustees, for themselves and their successor or successors and assigns, accept the trusts and assume the duties hereby created and imposed upon them, only upon the following terms and conditions, to which the holders of each and every bond issued hereunder, and the coupons thereto annexed, by accepting such bonds and coupons recognize and assent, to-wit:

(a) The recitals of fact herein and in said bonds contained shall be taken as statements made by the Company and shall not be construed as made by the Trustees.

(b) It shall be no part of the duty of the Trustees to record or file these presents as a mortgage of real or personal property, or to refile or renew same, or to do any other act for the continuance of the lien of this Indenture or to give notice of the existence of the lien hereof, or to extend or supplement the lien sought to be created hereby, nor shall it be any part of the duty of the Trustees to pay, or keep themselves advised as to the payment of rents, taxes, assessments or other charges of or upon the trust estate, or to effect insurance thereof, or to require the payment of such rents, taxes, assessments, or other charges, or insurance premiums, but the Company shall and will do all things needful in that respect. The Trustees may, however, in their discretion, at the expense of the Company, do any or all of the matters and things in this paragraph set forth or require the same to be done, and all moneys advanced therefor shall, by virtue of this instrument, be a first lien upon the trust estate.

(c) The Trustees may select and employ in and about said trusts and duties, suitable agents and attorneys whose reasonable compensation shall be paid by the Company, or in default of such payment, shall be a charge upon the trust estate and the proceeds thereof paramount to said bonds, and the Trustees shall not be liable for any neglect, omission or wrongdoing of any such agents or attorneys, reasonable care being exercised in their selection, nor shall the Trustees be otherwise answerable hereunder save for their own wilful negligence and default.

The Trustees may advise with legal counsel to be selected and employed by them at the expense of the Company, and anything done or suffered in good faith by the Trustees in accordance with the opinion of such counsel shall be conclusive in favor of the Trustees on the Company and on all the holders of the bonds secured hereby.

(d) The Trustees shall have a first lien upon the trust estate and the proceeds thereof for their reasonable compensation, expenses and counsel fees, and for all liabilities incurred in and about the execution of the trust hereby created and in the exercise and performance of their powers and duties hereunder, which compensation, expenses and fees, the Company covenants and agrees to pay on demand.

(e) The Trustees shall be under no obligation or duty to perform any act hereunder, or to defend any suit in respect hereof, unless first indemnified to their satisfaction, nor shall the Trustees be bound to recognize any person as a bondholder, unless his bonds are submitted to them for inspection, if required, and his title satisfactorily established, if disputed. The Trustees shall not be required to take notice of any default hereunder, and anything herein contained to the contrary notwithstanding, they may conclusively assume that the Company is not in default hereunder unless they shall have been notified in writing of such default by the holders of at least one fourth in principal amount of the bonds hereby secured then outstanding, such notice distinctly specifying the default desired to be brought to the attention of the Trustees.

(f) The exclusive right of action hereunder shall be vested in the Trustees and no bondholder shall have a right to enforce these presents until after demand made upon the Trustees by the required number of bondholders, accompanied by a tender of indemnity satisfactory to them as aforesaid, and refusal of the Trustees to act in accordance with said demand.

(g) The Trustees shall be protected in acting upon any resolution, notice, request, consent, certificate, affidavit, voucher, bond or other paper or document believed by them to be genuine and to have been passed or signed by the proper party. Whenever in this Indenture the existence of any fact, situation, matter or conclusion of any character, or the sufficiency or validity of any instrument, paper or proceeding, or of any proof or evidence of any fact shall be prescribed as a condition of, or in any manner with respect to, any action or proceeding on the part of the Trustees, or shall be deemed necessary or convenient to be ascertained by the Trustees, except as herein otherwise expressly provided, a certificate signed by the President or one of the Vice Presidents, and also by the Treasurer of the Company, shall, in the discretion of the Trustees, be sufficient evidence of any such fact, situation, matter or conclusion. The fact of the adoption of a resolution by the Board of Directors of the Company, or by the stockholders of such Company, for the purpose of this Indenture shall be sufficiently evidenced to the Trustees by the certificate of the Secretary of such Company under its corporate seal. The Trustees may, however, in their discretion require other evidence.

(h) The Trustees shall not be liable for the exercise of any discretion or power hereunder or mistake or error in judgment, or otherwise, in connection with this trust, except for their own wilful misconduct or gross negligence.

(i) The Trustees may become the owners of bonds and coupons secured hereby with the same rights which they or either of them would have if they were not Trustees.

(j) The provisions of this Article are intended for the protection of the Trustees and shall not be construed to limit any discretion or power by any provision of this Indenture given the Trustees to determine whether or not they or either of them shall take any action hereunder; and the Trustees, in their discretion, and at the expense of the Company or the mortgaged property, may do or procure to be done any of the things in this Indenture set forth and the so doing shall not be construed