

MORTGAGE RECORD 75

payment or application of moneys required by any provision of this indenture to be made out of moneys held by the Trustees shall, when made, be made by the Corporate Trustee. All bonds and other securities, agreements or other instruments, as well as all moneys, by the terms of this indenture to be deposited with or held by the Trustees hereunder, shall be deposited with and held by the Corporate Trustee. Any request made in writing by the Corporate Trustee to or of the Individual Trustee or any trustee appointed in succession to him, or any additional trustee, shall be sufficient warrant for such other trustee to take the action so requested.

Every instrument appointing a successor or additional trustee or trustees shall refer to this indenture and the conditions in this Article XI expressed, and upon the acceptance in writing by such successor or additional trustee or trustees, he, they, or it shall be vested with the estates and property specified in such instrument, either jointly with The Guardian Trust Company or its successor, or separately, as may be provided, subject to all the trusts, conditions, covenants and provisions of this indenture. Every such instrument shall be filed with The Guardian Trust Company or its successor in the trust. Said L.B. Foote and any of his successors in the trust and any additional trustee or trustees may, at any time, by an instrument in writing, constitute said The Guardian Trust Company, and its successors in the trust hereunder, his, their or its attorney and agent in fact, with full power and authority to the extent which may be permitted by law to do all acts and things and exercise all discretions authorized or permitted to be done or exercised by him, them or it hereunder for and in behalf and in the name of the Trustee or Trustees executing such instrument.

All the estates, right and interest by this indenture conveyed or assigned or transferred to the Trustees are conveyed, assigned and transferred to them as joint tenants and not as tenants in common, but none of the same shall be conveyed or in any manner dealt with by the Individual Trustee unless with the written consent of the Corporate Trustee or otherwise as in this indenture expressly authorized.

In case the said L.B. Foote, or any additional trustee or a successor to either of them shall die, become incapable of acting, resign, or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such trustee, so far as permitted by law, shall vest in and be exercised by said The Guardian Trust Company, or its successor in the trust, without the appointment of a new trustee as successor to said L.B. Foote or to such additional trustee.

No successor to said L.B. Foote or to any additional trustee shall be appointed unless The Guardian Trust Company, or its successor or the holders of a majority in principal amount of the bonds, shall deem such appointment expedient for any cause.

SECTION 3. L.B. Foote, the Individual Trustee has been joined with The Guardian Trust Company as Trustee hereunder, so that if by any present or future law in any jurisdiction in which it may be necessary to perform any act in the execution of the trusts herein created, The Guardian Trust Company, Trustee, or its successor or successors, may be incompetent or unqualified to act as such Trustee, or may deem it unwise or inadvisable to act as such Trustee, then all of the acts required to be performed in such jurisdiction in the execution of the trusts hereby created, shall and will be performed by said L.B. Foote as Trustee, or his successor or successors, acting alone. Except as it may be deemed necessary for said L.B. Foote solely to execute the trusts hereby created, The Guardian Trust Company, Trustee, or its successor or successors, may solely have and exercise the powers, and shall be solely charged with the performance of the duties hereinbefore declared on the part of the Trustee to be had and exercised, or to be performed. Any request in writing by The Guardian Trust Company, Trustee, or by any trust company appointed in succession to it, to the Individual Trustee hereunder, or to any trustee appointed in succession to him, shall be a sufficient warrant for the Individual Trustee, or his successor taking such action as may be so requested. Such Individual Trustee, or his successor, may delegate to The Guardian Trust Company, or the trust company appointed in succession to it, the exercise of any power, discretionary or otherwise, conferred by the provisions of this mortgage.

ARTICLE XII

DEFINITIONS AND SUNDRY PROVISIONS.

SECTION 1. All covenants, conditions, stipulations, promises and agreements in this indenture contained by or on behalf of the Company, shall bind and be binding upon its successors and assigns, whether so expressed or not; and the words "Trustee" "Trustees" "Corporate Trustee" or "Individual Trustee" as used in this instrument, shall be construed to mean such trustee or trustees for the time being hereunder, whether original, temporary, substituted or new, and such Trustee or Trustees shall be vested with and entitled to all the estate, powers, rights, benefits and indemnities granted hereby to the respective Trustees named herein.

SECTION 2. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustees, or to the holders of the bonds secured hereby, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or existing at law or in equity or by statute.

SECTION 3. All demands, notices or requests provided to be made or served upon the Company under any of the provisions of this indenture, shall be deemed to be sufficiently made or served if sent by registered mail addressed to The Kansas City, Kaw Valley and Western Railroad Company, Kansas City, Kansas, or to such address as may hereafter be certified in writing by the Company to the Trustees.

SECTION 4. In case any bond shall have been certified but not delivered, each successor trustee may adopt a certificate of authentication of its predecessor trustee and may deliver such bond, and any successor trustee may authenticate bonds in its own name, or in the name of any predecessor trustee.

SECTION 5. The word "bondholder" shall be held and construed to mean the holder of one or more bonds issued hereunder.

The word "bond" and "bondholder" shall include the plural as well as the singular number.

The word "coupons" refers to the interest coupons appertaining to the bonds issued hereunder.

SECTION 6. The term "opinion of counsel" shall mean an opinion in writing signed by legal counsel (who may be of counsel for the Company) satisfactory to the Trustees, or, satisfactory to counsel appointed by the Trustees.

SECTION 7. Nothing in this indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or corporation, other than the parties hereto their respective successors and assigns, and the holders of the bonds and coupons, any right, remedy or claim, under or by virtue of this indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this indenture contained by or on behalf of any of the parties shall be for the sole and exclusive benefit of the others of the parties hereto, their respective successors and assigns, and of the holders of the bonds and coupons.

SECTION 8. It is further covenanted and agreed by and between the parties hereto that in event any of the provisions of this indenture shall be held to be unenforceable by reason of any statute or ruler of law, such unenforceable provisions of this indenture shall not affect the validity and enforceability of the other provisions of this indenture.

SECTION 9. For the purpose of facilitating the recording hereof, this indenture has been executed in several counterparts, each of which shall be deemed an original, and all collectively