

MORTGAGE RECORD 85

writing signed by such holders or registered owners and delivered to the Corporation and to the Trustee. The right to make any such declaration as aforesaid is subject, however, to the right of the holders or registered owners of a majority in principal amount of the bonds then outstanding hereunder (determined as provided in Section 5 of this Article IX), by written notice to the Corporation and to the Trustee, to rescind and annul such declaration and destroy its effect at any time before any sale hereunder, if before any such sale all covenants or agreements with respect to which default shall have been made shall be fully performed, and all arrears of interest upon all bonds outstanding hereunder (with interest on overdue installments of interest at the legal rate of interest then in effect in the State of Kansas) and reasonable expenses and charges of the Trustee, its agent and attorneys, and all other indebtedness secured hereby, except the principal of any bonds not then due by their terms and interest accrued on such bonds since the last interest day, shall be paid, or the amount thereof shall be paid to the Trustee for the benefit of those entitled thereto; but no such rescission or annulment and no waiver of default hereunder shall extend to or affect any subsequent default or impair any rights subsequently accruing thereon.

Section 2. Entry upon and Operation of Mortgaged Property by Trustee on Completed Default and Application of Income Collected.

The Corporation agrees, to the full extent that it may lawfully so agree, that upon the occurrence of one or more completed defaults, the Corporation, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all the mortgaged property (with the books, papers and accounts of the Corporation) and to hold, operate and manage such property, and from time to time to make all needful repairs and such alterations, additions and improvements as to the Trustee shall seem wise, and to receive the rents, income, issues and profits thereof, and use them to pay all proper costs and expenses of so taking, holding, operating and managing such property, including reasonable compensation to the Trustee, its agents, attorneys 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, alterations, additions and improvements, and to apply the remainder of the moneys so received by the Trustee (subject to the provisions of Section 11 of this Article IX with respect to extended, transferred and pledged coupons and claims for interest), as follows:

(a) In case the principal of none of the bonds then outstanding shall have become due, then to the payment of the interest in default, in the order of the maturity of the installments of interest, with interest on the overdue installments thereof at the legal rate of interest then in effect in the State of Kansas, such payments to be made ratably to the persons entitled thereto, without discrimination or preference; or

(b) In case the principal of any of the bonds shall have become due, by declaration or otherwise, first to the payment of the interest in default in the order of the maturity of the installments of such interest, with interest on the overdue installments of interest at the legal rate of interest then in effect in the State of Kansas, and thereafter to the payment of the principal of all bonds then due with interest on the overdue principal at the legal rate of interest then in effect in the State of Kansas; and any balance thereafter to the payment of any premium (with like interest thereon) which may be due and payable on bonds theretofore called for redemption; such payments, respectively, to be made ratably to the persons entitled thereto without discrimination or preference.

Whenever all that is due upon such interest installments and upon the principal of and premium on such bonds shall have been paid, and all defaults under any of the terms of this Indenture shall have been made good, the Trustee shall surrender possession to the Corporation, its successors or assigns. The same right of entry, however, shall exist upon any subsequent default.

Section 3. Power of Sale on Completed Default.

Upon the occurrence of one or more completed defaults, then and in every such case the Trustee may, if and to the extent permitted by law, by such officer or agent as it may appoint, with or without entry, sell all property subject to the lien hereof as an entirety, or in such parcels as the holders of a majority in principal amount of the bonds at the time outstanding hereunder shall in writing request, or, in the absence of such request, as the Trustee may determine, at public auction, at some convenient place in Abilene, Kansas, or in such other place or places as may be required by law, or by order of court, having first given notice of such sale by publication at least once in each of not less than four (4) successive calendar weeks, (in each case on any day of the week), immediately preceding the date fixed for any such sale, in a daily newspaper printed in the English language and published and of general circulation in the City of Boston, Massachusetts, in a daily newspaper printed in the English language and of general circulation in Abilene, Kansas, and, if there be such a daily newspaper, in a daily newspaper printed in the English language and published and of general circulation in the place or places where such sale is to take place, and any other or additional notice which may be required by law, and from time to time may adjourn such sale in its discretion by announcement at the time and place fixed for such sale without further notice except such as may be required by law, and upon such sale may make and deliver to the purchaser or purchasers a good and sufficient deed or deeds for such property, which sale shall be a perpetual bar, both at law and in equity, against the Corporation, and all persons or corporations lawfully claiming or who may claim by, through or under it. The Trustee and its successors or assigns are further hereby irrevocably appointed the true and lawful attorney or attorneys of the Corporation, in its name and stead, for the purpose of effectuating any such sales to execute and deliver all necessary deeds, bills of sale, assignments and transfers, and to substitute one or more persons or corporations with like power, - the Corporation hereby ratifying and confirming all that the Trustee, its successors or assigns as its attorney or attorneys, or such substitute or substitutes, shall lawfully do by virtue hereof. Nevertheless, if so requested by the Trustee or by any purchaser, the Corporation shall expressly ratify and confirm any such sale or transfer by executing and delivering to the Trustee or to such purchaser or purchasers all proper conveyances, assignments, instruments of transfer and releases as may be designated in any such case.

Section 4. Judicial Proceedings on Default; Remedies Cumulative; No Waiver from Failure to Exercise Right.

In the event of default by the Corporation in the performance of any of the covenants or conditions contained in 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 completed default hereunder, 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 property subject to the lien of this Indenture under the judgment or decree of a court of competent jurisdiction; and it shall be obligatory upon the Trustee to take action either by such proceedings or by the exercise of its powers with respect to entry or sale as it may determine, upon being requested so to do by the holders or registered owners of a majority in principal amount of the bonds at the time outstanding and upon being indemnified as hereinafter provided.

No remedy conferred upon or reserved to the Trustee or to the bondholders by the terms of this Indenture is intended to be exclusive of any other remedy, but each and every such remedy shall, to the extent permitted by law, 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.

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.

Section 5. Majority of Bondholders May Direct Trustee.

The holders or registered owners of a majority in principal amount of the bonds at the time outstanding, by an instrument in writing executed and delivered to the Trustee, may direct the method and place of con-