

MORTGAGE RECORD 85

Section 13. Trustee to Collect Whole Amount Due and To Have Power to Sue Therefor.

The Corporation covenants that if default shall be made in the payment of the principal of any of the bonds hereby secured when it shall become due and payable, whether at the maturity of such bonds or by declaration as authorized by this Indenture, or in case of a sale as provided in Section 3 of this Article IX, or otherwise, or if default shall be made and continue for thirty (30) days in the payment of any interest upon any of the bonds issued hereunder, then and in such case, upon demand of the Trustee, the Corporation will pay to the Trustee, for the benefit of the holders and registered owners of such bonds and coupons so due and payable, the whole amount due and payable on all such bonds for principal, premium and interest, with interest on overdue principal and premium and on overdue installments of interest at the legal rate of interest then in effect in the State of Kansas; and in case the Corporation shall fail to pay such amount forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to sue and recover judgment as aforesaid either before or, if permitted by law, after or during the pendency of any proceedings for the enforcement of the lien of this Indenture upon the property subject to the lien of this Indenture, or otherwise for the enforcement of any of its rights or the rights of the bondholders hereunder, and in case of the sale of any of the property subject to the lien of this Indenture, and of the application of the proceeds of sale to the payment of the debt hereby secured, the Trustee in its own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds and coupons then outstanding hereunder, for the benefit of the holders and registered owners thereof, and the Trustee shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest as above stated. No recovery of any such judgment by the Trustee and no levy of any execution upon any such judgment upon any of the properties subject to the lien of this Indenture or upon any other property shall in any manner or to any extent affect the lien of this Indenture upon the property subject to the lien of this Indenture, or any part thereof, or any rights, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders and registered owners of the bonds, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before.

Any moneys thus collected by the Trustee or received by the Trustee under this Section 13, shall be applied by them, first, to the payment of its expenses, disbursements and compensation and the expenses disbursements and compensation of its agents, attorneys and counsel, and, second, toward payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably, and without any preference or priority of any kind (subject to the provisions of Section 11 of this Article IX with respect to extended, transferred and pledged coupons and claims for interest), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons, and upon stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Section 14. Trustee May Enforce Rights Without Possession of Bonds.

All rights of action in favor of the Trustee arising under this Indenture, in respect of the bonds or coupons or otherwise, may be enforced by the Trustee without the possession of any of the bonds or coupons or the production thereof on the trial or other proceedings relative thereto; and any such suit or proceeding instituted by the Trustee shall be brought in its own name as Trustee and any recovery of judgment shall be for the equal benefit of the holders and registered owners of the bonds and coupons, subject to the provisions of this Indenture.

Section 15. As to Institution of Separate Actions by Bondholders.

No holder or registered owner of any bond or coupon shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless such holder or registered owner shall have previously given to the Trustee written notice of a default and of the continuance thereof as hereinbefore provided, and unless also the holders or registered owners of twenty-five per cent. (25%) in principal amount of either (1) the bonds then outstanding hereunder or (2) the bonds then outstanding hereunder primarily affected by the default, shall have made written request to the Trustee and shall have afforded it reasonable opportunity to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; nor unless they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; and no such holder shall have any right to institute any such suit if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the lien of this Indenture upon any property subject to the lien hereof.

Nothing in this Section 15 or contained elsewhere in this Indenture shall affect or impair the absolute and unconditional obligation of the Corporation to pay the principal of, and any premium which may be due and payable on, and the interest on the bonds in accordance with the terms thereof, to the respective holders or registered owners thereof and of the coupons attached thereto as they shall severally become due and payable (whether by lapse of time or call for redemption or otherwise), or affect or impair the right of action of such holders or registered owners to enforce such payment.

Section 16. Waiver of Grace Period Permitted.

The Corporation may, if permitted by law, waive any period of grace provided for in this Article IX.

Section 17. Discontinuance or Abandonment of Proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Corporation and the Trustee shall be restored to their former positions and rights hereunder with respect to the property subject to the lien of this Indenture, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 18. Exercise of Rights, Remedies and Powers is Subject to Applicable Law.

All rights, remedies and powers provided for in this Article IX may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law applicable thereto, and all the provisions of this Article IX are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Indenture invalid, unenforceable or not entitled to be recorded or filed under the provisions of any applicable law.

ARTICLE X.

EVIDENCE OF RIGHTS OF BONDHOLDERS AND OWNERSHIP OF BONDS.

Section 1. As to Method of Signature of Documents by Bondholders and Proof Relating Thereto.

Any request, direction, declaration or other instrument which this Indenture may require or permit to be signed and executed by the bondholders, may be in any number of concurrent instruments of similar tenor, and shall be signed and executed by such bondholders in person or by attorney appointed in writing. Proof of the execution of any such request, direction, declaration or other instrument, or of a writing appointing any such attorney, or the holding by any person of the bonds or coupons appertaining thereto shall be sufficient for any purpose of this Indenture (except as otherwise expressly provided herein) if made in the following manner:

(a) The fact and date of the execution by any person of any such request, direction, declaration or other instrument or writing may be proved by the certificate of any notary public, or other officer authorized to take acknowledgments of deeds in the jurisdiction in which he purports to act, that the persons signing such request, direction, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness to such execution;