

6526

November 24, 1971

Mr. E. A. Burkhardt, President
The San Luis Central Railroad Co.
Box 1249
Evanston, Illinois 60204

RE: Fee Branch No. 96992
Nov. 10, 1971

Dear Mr. Burkhardt:

This has reference to your letter transmitting for recordation by this Commission an amendment dated Oct. 1, 1971, to an indenture dated July 1, 1913, covering first mortgage six percent gold bonds of the San Luis Central Railroad Company, which indenture you believe is on file with this Commission. Your check for \$10 was enclosed to cover the recordation fee.

Our records do not disclose that the 1913 indenture was recorded with this Commission under section 20(c) of the Interstate Commerce Act which was not enacted until July 16, 1952. It is noted that your transmittal letter, copy attached hereto, does not specify the number, date, and hour of the previous recordation under section 20(c), and no record of a previous recordation by The San Luis Central Railroad Co. has been found in the Commission's index of such recorded documents.

If the original indenture of 1913 is to be recorded under the provisions of sec. 20(c), there would be a \$50 fee for the initial document plus a \$10 fee for each subsequent amendment or supplement. In the circumstances, the counterparts of the Oct. 1, 1971, amendment and agreement will be held in this office pending further advice from you. Your \$10 fee is returnable from the U. S. Treasury upon request to this office.

Sincerely,

Robert L. Oswald
Secretary

Attachments

(1)

6526

RECORDATION NO. _____ Filed & Recorded

JAN 12 1972 - 2 00 PM

INTERSTATE COMMERCE COMMISSION

AN INDENTURE, made this 1st day of July, A. D. 1913, Date and parties
 between The San Luis Central Railroad Company, a
 corporation created and existing under the laws of the
 State of Colorado (hereinafter called the Railroad Com-
 pany) party of the first part, and The City Bank and
 Trust Company, a corporation created and existing under
 the laws of the State of Colorado (Hereinafter called
 the Trustee), party of the second part:

WHEREAS, the Railroad Company has deemed it necessary, Purpose of bond issue
 for the purpose of acquiring, constructing and equip-
 ping its railroad and other corporate purposes, to bor-
 row money and to issue its bonds therefor, and to
 mortgage its property, hereinafter described, to se-
 cure the payment of the same; and,

WHEREAS, to that end the share holders and Board of Di- Descrip- tion of bonds
 rectors of the Railroad Company have duly directed the
 issue of a series of five hundred bonds to be issued
 from time to time in the manner hereinafter set forth,
 to be dated the first day of July, 1913, to mature the
 first day of July, 1925, to bear interest at the rate
 of 6% per annum, payable semi-annually, on the first
 days of January and July in each year, said bonds to
 be signed by the President or Vice-President of the
 Railroad Company, sealed with its corporate seal, at-
 tested by its Secretary or Assistant Secretary, and
 duly authenticated by the certificate of the Trustee
 hereunder, and to have interest coupons thereto at-
 tached with a fac-simile of the signature of its Treas-
 urer thereon, which bonds, certificates and coupons
 are to be in substantially the form following, to-wit:

-(BOND)

UNITED STATES OF AMERICA.

THE SAN LUIS CENTRAL RAILROAD COMPANY,
FIRST MORTGAGE SIX PER CENT GOLD BOND.

No. _____ \$1000.00

For value received, The San Luis Central Railroad Company (herein called the Railroad Company) promises to pay to bearer, or in case this bond be registered, to the registered owner hereof, \$1000.00 in Gold coin of the United States of America, of the present standard of weight and fineness, at City Bank and Trust Company, Denver, Colorado, or at the Chase National Bank, in New York City, at the option of the holder, on the first day of July, A. D. 1923, and upon presentation and surrender of the annexed coupons as they become due, to pay interest thereon at the rate of 6 per centum per annum, from the first day of July, one thousand nine hundred and thirteen, until such principal shall be paid, in like gold coin at City Bank and Trust Company, Denver, Colorado, or at the Chase National Bank, in New York City, at the option of the holder, on the first days of January and July in each year, principal and interest to be payable without deduction from principal or interest, on account of any taxes, assessments or other governmental charges which the obligor company may be required to pay or retain therefrom, by virtue of any present or future law or requirement of the United States of America, or any state, county, municipality or other governmental subdivision thereof.

This bond is one of a series of five hundred bonds of like import and amount, numbered consecutively from 1 to 500, and secured to be paid by a mortgage or deed of trust, bearing even date herewith, from the Railroad Company to The City Bank and Trust Company, Trustee, and is entitled to the benefits and subject to the provisions thereof. Reference is especially made to the provision giving the Railroad Company the right to redeem the entire or part of this issue on any interest day after July 1st, 1916, by the payment of One thousand and fifty dollars and accrued interest for each one thousand dollar bond.

No stockholder of the Railroad Company shall be personally liable for indebtedness arising hereon, such liability being waived; and by receiving this bond each successive holder assents to this provision.

This bond may be registered on the books of the Railroad Company at said City Bank and Trust Company, in the City and County of Denver, State of Colorado, and such registration noted hereon, after which no valid transfer of this bond may be made except on such books until after the registered transfer to bearer, whereupon it will again become transferable by delivery. It may be again and from time to time registered and transferred to bearer as the holder or owner may elect, but registration shall in no case affect the annexed interest coupons, which shall continue to be transferable by delivery.

This bond shall not be valid until the certificate endorsed hereon shall have been signed by the Trustee.

In witness whereof, The San Luis Central Railroad Company has caused its corporate seal to be affixed hereto, attested by its Secretary or Assistant Secretary, and these presents to be signed by its President or Vice-President, as of the first day of July, one thousand nine hundred and thirteen.

By

President.

(SEAL)

Attest:

Secretary.

(COUPON)

\$30.00

No. _____

On the first day of _____, 19____, The San Luis Central Railroad Company will pay to bearer thirty dollars in Gold coin of the United States, at City Bank and Trust Company, Denver, Colorado, or at the Chase National Bank, in the City of New York, at the option of the holder, being six months' interest then due upon its First Mortgage ____ Per cent. Gold Bond No. _____.

Not due if bond called for previous redemption.

Treasurer.

(TRUSTEE'S CERTIFICATE)

The undersigned, Trustee named in the within bond, and in the trust deed therein referred to, hereby certifies that this bond is one of the series of five hundred (500) bonds specified in said trust deed.

THE CITY BANK AND TRUST COMPANY,

By 
 Trust

and,

WHEREAS, the execution and delivery of this mortgage or deed of trust has been duly authorized and directed by the Share Holders and the Board of Directors of the Railroad Company;

Authoriza-
tion of
mortgage

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that the Railroad Company, in consideration of the premises and of the sum of one dollar to it duly paid by the Trustee at or before the en sealing and delivery of these presents, the receipt whereof is hereby acknowledged, in order to secure the payment of the principal and interest of the bonds and coupons aforesaid, according to their tenor and the fulfillment of all the covenants and conditions in these presents contained, hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, convey and confirm unto the Trustee, its successor or successors, and their heirs and assigns forever,

Considera-
tion

Granting
Clause

All and singular the estate, right, title and interest of the Railroad Company in and to all of its property, real, personal and mixed, now owned or hereafter to be acquired by purchase, merger or otherwise, including the following, to-wit;

Properties
mortgaged

The entire line of railroad of the Railroad Company, extending from a point at or near the factory of The San Luis Valley Beet Sugar Company, in the County of

Rio Grande, State of Colorado, and running in a northerly direction to the City of Center, in the County of Saguache, in the State of Colorado, a distance of about twelve miles.

Also all branches, extensions, railroad yards and terminal properties now owned by said Railroad Company, or which it may at any time hereafter acquire;

Also all lands, real estate and grounds, upon which the said lines of railroad, or any of the branches, extensions, railroad yards or terminal properties thereof, now are, or at any time shall be, situated, or which now are or at any time shall be necessary, useful or convenient for the use, maintenance and operation of the said lines of railroad or of any of the branches, extensions, railroad yards or terminal properties thereof;

Also all tracks, switches, sidings, spurs, turntables, water tanks, bridges, viaducts, culverts, telegraph and telephone lines, fences, depots, station houses, freight houses, engine houses, power and machine houses, shops, gravel beds, warehouses, coal houses, elevators, furniture, fixtures, and all constructions, of whatsoever kind that now belong or that shall at any future time belong or appertain to or be provided for use upon, or in connection with, any of the said lines of railroads, or any of the branches, extensions, railroad yards or terminal properties thereof;

Also all locomotives, engines, tenders, passenger and freight cars, and all other rolling stock and equipment, and all rails and all kinds of machinery and tools, and all fuel, and all other materials and supplies that are now

owned or may be hereafter acquired for use in operating, repairing or replacing the said lines of railroad or any of the branches, extensions, railroad yards or terminal properties thereof;

Also all rights, powers, privileges, liberties, immunities and franchises, which now are or which at any time shall appertain to any of said lines of railroad, or any of the branches, extensions, railroad yards or terminal properties thereof or to which the Railroad Company is or shall be entitled.

And also all claims, demands, contracts and things in action of the Railroad Company, now owned or hereafter acquired, including any and all sums of money which are now or at any time may be due thereon;

Also all corporate rights, powers, privileges, liberties, immunities and franchises, whether now owned, possessed and enjoyed by the Railroad Company or hereafter to be acquired by it, including its right to be a corporation;

Also all income, rents, issues, profits and tolls from any property aforesaid now or at any time hereafter subject to the lien of this indenture;

It being the intention to include in the aforesaid description all the property of the Railroad Company, real, personal and mixed, now owned or hereafter to be acquired by the Railroad Company or any successor company formed by merger or consolidation with the Railroad Company. After acquired property

TO HAVE AND TO HOLD the same, with the Habendum
reversions, remainders, income, rents, issues, prof-
its and tolls thereof, and all privileges and appurtenan-
ces now or hereafter belonging or in any wise appertain-
ing thereto, unto the Trustee and its successors, and
their heirs and assigns forever;

IN TRUST, nevertheless, for those who Grant in
shall hold the bonds and interest coupons aforesaid, or trust
any or either of them, and to enforce the payment there-
of when payable, in accordance with the true intent and
meaning^{of} the stipulations of this indenture and of said
bonds and of said interest coupons;

AND IT IS HEREBY COVENANTED AND AGREED
by and between the parties hereto, and the Railroad
Company, for itself and its successors, doth hereby
covenant and agree with the Trustee for the benefit of
the respective persons, copartnerships and corporations
who shall hold the bonds and coupons aforesaid, or any
or either of them, as follows;

ARTICLE 1.

SECTION 1. Only such of said bonds as shall be certified
by the Trustee shall be entitled to any lien or benefit
under this indenture; and such certificate of the Trustee
shall be conclusive evidence that the bonds so certified
have been duly issued hereunder, and are entitled to the
benefit of the trust hereby created. Before certifying any
bonds, all coupons thereon then matured shall be cut off
and canceled by the Trustee.

Certifica-
tion of bonds
by Trustee

SECTION 2. Bonds may be issued by the Railroad Company,

Issue of
Bonds by
Railroad

Company

Company and shall be certified by the Trustee as follows, and not otherwise:

(A) Bonds for the principal sum in the aggregate of twenty-five thousand dollars (\$25,000.00), shall be certified and delivered by the Trustee upon and in accordance with the written order of the Railroad Company immediately upon the execution and delivery hereof and in advance of recording or filing hereof; said bonds being issued on account of construction work already completed upon about twelve and one-half miles of road extending from said Sugar factory to said City of Center.

\$25,000.00 immediately on account of construction and equipment of railroad between Sugar Factory and Center, Colo.

(B) Bonds for the principal sum in the aggregate of one hundred thousand dollars shall be certified and delivered by the Trustee upon and in accordance with the written order of the Railroad Company, whenever there shall be deposited with the Trustee, to the credit of the Railroad Company, cash for the purchase of any or all thereof at par and accrued interest, provided, however, that a certificate of the Treasurer of said Railroad Company, to the effect that money for the purchase of bonds has been deposited to the credit of the Railroad Company, or that payment thereof has been made to the Railroad Company for such purpose, shall be accepted by the Trustee as equivalent to cash, in the amount which said certificate states has been so deposited or paid. The sum in this subsection provided is intended to cover the cost of the completed and equipped road, from said Sugar factory to said City of Center, exclusive of the twenty-five thousand dollars (\$25,000) of bonds hereinbefore in subsection A provided to be issued. Any portion of said one hundred

thousand dollars (\$100,000.) face value of bonds herein provided to be issued which shall not be used for the purpose herein provided, may thereafter be used in accordance with the provisions of Sub-section(C) hereunder.

(C) The remainder of said bonds, to-wit;

Bonds for the principal sum in the aggregate of three hundred and seventy-five thousand dollars, shall from time to time be certified and delivered by the Trustee upon and in accordance with the written order of the Railroad Company as follows;

1. \$20,000 in principal amount of bonds whenever and as often as one additional mile of continuous railroad (exclusive of sidings and switches) connecting with the twelve and one-half miles of railroad between the said Sugar Factory and the said Town of Center hereinbefore referred to, shall have been completed and shall be owned by the Railroad Company free from all liens prior to the lien hereof and upon delivery to the Trustee of the following certificates, to-wit;

(a) Certificate of the Engineer of said Railroad Company that one additional mile of railroad has been built and constructed by said Railroad Company, and that the same is owned by the Railroad Company, free from all liens prior to the lien hereof.

(b) Certificate of the President or the Vice-President of the Railroad Company as to any facts necessary, in the judgment of the Trustee, to authorize the certification of such bonds or any thereof.

2. The Trustee shall at any time and from time to time certify and deliver to the Railroad Company bonds to the amount of 80% of the cost of additions,

improvements, equipment or betterments, and upon receipt of the following certificates, to-wit;

(a) Certificate of the Engineer of the said Railroad Company that certain additions, improvements, equipment or betterments have been added to the property of said Railroad Company, and that said additions, improvements, equipment or betterments are reasonably worth, for the purposes of the Railroad Company, at least a certain amount stated, which amount shall not exceed the actual cost thereof to the Railroad Company, and that said additions, improvements, equipment or betterments do not include any repairs or renewals necessary to keep the said Railroad Company's plant and property in good operation or satisfactory condition.

(b) Certificate of the President or Vice-President of the Railroad Company as to any facts necessary, in the judgment of the Trustee, to authorize the certification of such bonds or any thereof.

3. Certificates of the President or Vice-President and the Engineer of the Railroad Company may be accepted, under the provisions of this Article, by the Trustee, as sufficient evidence of any facts necessary or proper to be determined for the purpose of certifying and delivering bonds under the provisions of this article.

SECTION 3. Bonds issued hereunder may be printed, lithographed or engraved, at the election of the Board of Directors of said Railroad Company.

SECTION 4. Upon receipt by the Railroad Company of evidence satisfactory to it, by affidavit or otherwise, of the destruction or mutilation of any bond hereby secured, and upon receipt by the Railroad Company of indemnity satisfactory to it, and upon surrender and cancellation of such bond if mutilated,

Destroyed
or mutilated
bonds

the Railroad Company may execute, and upon its request the Trustee shall certify and deliver, a new bond of like tenor bearing the same serial number, in exchange and substitution for such mutilated bond or in lieu of and in substitution for such destroyed bond.

ARTICLE II.

Until default in the payment of the principal or interest aforesaid, or breach of any of the covenants or conditions in this indenture contained, the Railroad Company shall be suffered and permitted to possess and enjoy the aforesaid property and appurtenances, and to receive and use the income, rents, issues, profits and tolls thereof.

Railroad
Company's
possession
before
default

ARTICLE III.

The Railroad Company hereby covenants as follows:

SECTION 1. That it will pay the principal of all bonds duly issued hereunder, according to the terms thereof, when the same shall become or be declared due and payable, upon the surrender of the bonds, and will pay the interest thereon according to the terms of the bonds and coupons until the principal is paid, without deduction for taxes or assessments of any kind which the Railroad Company may be required to pay or to retain therefrom by virtue of any present or future law of any taxing authority. As the coupons annexed to said bonds are paid they shall be canceled, and no purchase of any coupons nor any advance or loan thereon, nor redemption thereof, by or on behalf of the Company, or by or on behalf of any guarantor of the payment of the same, shall keep such coupons

Covenants
of Railroad
Company
To pay prin-
cipal and
interest.

alive or preserve their lien upon the mortgaged property.

SECTION 2. That it will maintain the properties covered by this indenture in good condition and repair and will pay all taxes and assessments lawfully levied or assessed upon the property hereby conveyed or intended to be, or upon any part thereof or upon any income therefrom, when the same shall become due, and will not suffer any lien to be created upon said property, or any part thereof, or the income therefrom, prior to the lien of these presents, and will not suffer any matter or thing whereby the lien hereof might or could be impaired.

To keep properties in repair, pay taxes etc.

ARTICLE IV.

The Railroad Company may on any interest day prior to maturity, call in and redeem any or all of the bonds then outstanding at the price of One thousand and fifty dollars and accrued interest on each one thousand dollar bond, payable upon presentation of the bonds at the office of the Trustee in the City and County of Denver and at the Chase National Bank, in the City of New York, at the option of the holder, provided the Railroad Company shall serve a written notice of its intention so to do on the Trustee at least sixty days prior to such interest date, and shall also publish a notice specifying the date and place of such redemption in a daily newspaper published in the City and County of Denver, State

Right of Railroad Company to redeem entire issue of bonds

of Colorado, at least once a week for at least four successive weeks, the last publication being not more than ten days before such interest date, and specifying the bonds so to be redeemed.

On the date specified in said notice, all the said bonds so specified shall be redeemed at the price aforesaid. If any bonds shall not be presented for redemption at the place and time fixed therefor, the amount required to redeem said bonds at the price aforesaid shall be deposited with the Trustee, and the trustee shall hold the same for account of the holders of said bonds and pay the same out only upon such bonds when presented and surrendered; and after such payment has been made to the Trustee, all the coupons for interest on such bonds, subsequent to the day fixed for such redemption, shall become void, and such bonds shall not be entitled to the benefit of the security afforded by these presents.

All bonds redeemable as hereinbefore provided shall be cancelled or destroyed by the Trustee, who shall immediately make and deliver to the Railroad Company a certificate of such cancelation or destruction.

ARTICLE V.

Unless the Railroad Company shall be in default in the payment of principal or interest or in performance of some obligation contained in the bonds or this indenture, the Railroad Company

Releases
of mort-
gaged
property

(1) shall have the right without the consent of the Trustee, to sell or otherwise dispose of, free from any lien created hereby, any equipment, furniture, machinery, tools or implements which shall have become old, worn out or unfit for use, or which shall not be required in the operation of said Railroad or the manage-

(1) Equip-
ment no
longer
useful

ment of said property, provided the proceeds of any sale thereof are applied to the replacement of the property sold or otherwise disposed of, or otherwise for the benefit of the mortgaged property; and

(2) shall have the right, (with the consent in writing of the Trustee), to sell or otherwise dispose of, free from any lien created hereby, any other of the property covered by this mortgage which shall no longer be useful or necessary in the management or maintenance of the line, railroad and other property conveyed or the business thereof; including any property acquired as grounds for stations or other buildings, and which shall have ceased to be required for any purpose of the Railroad Company; any premises acquired for right of way, which shall have ceased to be required for this or any other purpose of the Railroad Company; and any other real estate belonging to the Railroad Company not forming part of the line of its Railroad, and not used or required for the maintenance, operation or other purposes of the said railroad, and which shall be in good faith sold or exchanged by the Railroad Company; the Trustee being hereby expressly authorized to assent to the release under seal from the lien of this indenture of any such property so sold or disposed of. (2)Other property

ARTICLE VI.

SECTION 1. In case default shall be made in the payment of any of the interest hereby secured to be paid, and such default shall continue for a period of ninety days, then upon the election of a majority in interest of the holders of the bonds hereby secured, and then outstanding, Remedies in case of default.

evidenced by an instrument or instruments in writing, signed by them and delivered to the Trustee, the entire principal sum secured hereby, and the interest accrued thereon, shall become and be immediately due and payable; but a majority of the holders in amount of the bonds hereby secured, then outstanding, shall have power at any time before any sale hereunder, to annul such election.

SECTION 2. In case (a) default shall be made in the payment of any interest on any of the bonds hereby secured, and any such default shall continue for a period of ninety days, or in case (b) default shall be made in the payment of the principal of any bond hereby secured, or in case (c) any other default shall be made hereunder by the Railroad Company, and any such last mentioned default shall continue for a period of ninety days after written notice thereof to the Railroad Company from the Trustee or from the holders of a majority in amount of the outstanding bonds; then and in every such case the Railroad Company, upon demand of the Trustee, shall forthwith surrender to the Trustee the actual possession of, and it shall be lawful for the Trustee forthwith to enter into and upon and take possession of, personally or by its agents or attorneys, all and singular the property and appurtenances hereby conveyed or intended to be, and the books, papers and accounts of the Railroad Company, and to have, hold and use, operate and manage the same, and from time to time make all needful repairs, and such alterations therein and additions and improvements thereto, as to it shall seem wise and as the net income coming to its hands shall be adequate to pay for; and to

principal
may be de-
clared due

Right of
Trustee to
enter

receive the rents, tolls, incomes, issues and profits thereof, and out of said rents, tolls, incomes, issues and profits to pay all the proper costs, charges and expenses of so taking, holding and managing the same, including a reasonable compensation to the Trustee, its agents, attorney and counsel, and all taxes and assessments and other charges prior to the lien of these presents, and all expenses of such repairs, alterations, additions and improvements, and to apply the remainder of the moneys so received by it as follows; first, to the payment of the coupons due and unpaid in the order of their maturity; and then to the payment of said bonds if they shall have become due, and accrued interest thereon, pro rata, without any preference or priority whatever.

SECTION 3. In case (a) default shall be made in the payment of any interest on any of the bonds hereby secured, and any such default shall continue for a period of ninety days, or in case (b) default shall be made in the payment of the principal of any bond hereby secured, or in case (c) any other default shall be made hereunder by the Railroad Company, and any such last-mentioned default shall continue for a period of ninety days after written notice thereof to the Railroad Company from the Trustee or from the holders of one fifth in amount of the outstanding bonds; then and in every such case it shall be lawful for the Trustee, personally, or by attorney, without entry, to sell all the property and appurtenances hereby conveyed, or intended to be, at public auction at some convenient place in the town of Monte Vista in the

Power of
sale

State of Colorado, having first given notice of such sale by publication in at least one newspaper published in the City and County of Denver, State of Colorado, at least once a week for four successive weeks next preceding such sale, and by such publication in and about the said town of Monte Vista as to the Trustee may seem reasonable; and the Trustee may from time to time adjourn such sale in its discretion, and upon such sale make and deliver to the purchaser or purchasers a good and sufficient deed or deeds for the same; and any such sale shall be a perpetual bar, both in law and in equity, against the Railroad Company, and all persons lawfully claiming or to claim by, through or under it.

SECTION 4. The Trustee shall apply the proceeds of such sale and all moneys which it shall then hold as a result of sales under Article V. hereof, as follows, to-wit;

Application of proceeds of sale.

first, to the payment of the costs and expenses of sale, including a reasonable compensation to the Trustee, its agents, attorneys, and counsel, and all expenses, liabilities and advances made and incurred by the Trustee in the administration of the trusts hereby created, and all taxes and assessments prior to the lien of these presents; second, to the payment of the whole amount of principal and interest which shall then be owing or unpaid upon the said bonds, with interest on the overdue installments of interest, and in case such proceeds shall not be sufficient to pay in full the whole amount so owing upon the said bonds, then to the payment of such principal and interest without preference or priority of principal over interest, or of interest over principal, or of any installment of

First to payment of expenses

Second to payment of principal and interest of bonds

interest over any other installment of interest, ratably, according to the aggregate amount due on each bond for principal and accrued interest; third, to pay over the surplus, if any, to whomsoever may be lawfully entitled to receive the same. Third, to payment of surplus to parties entitled thereto

SECTION 5. The receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase money, and such purchaser or purchasers, his or their assigns or personal representatives, shall not after paying such purchase money and receiving such receipt of the Trustee therefor, be obliged to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any wise answerable for any loss, misapplication or non-application of such purchase money by the Trustee.

SECTION 6. Upon any sale being made either under the foregoing power or under judgment or decree in any judicial proceedings for foreclosure or otherwise for the enforcement of this mortgage, the principal of all bonds then outstanding and secured hereby, with interest thereon, shall at once become and be due and payable. Principal to become due in case of sale

SECTION 7. Any purchaser at any such sale may, in paying purchase money, turn in any of said bonds and matured coupons hereby secured in lieu of cash to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon; said bonds, in case the amount so payable thereon shall be less than the amount due thereon, to be returned after being properly stamped to show partial payment. Purchaser may apply bonds etc. on purchase price

SECTION 8. Neither the Railroad Company nor any one claiming through or under it shall or will set up, claim or seek to take advantage of, any appraisal, valuation, stay, extension or redemption laws now existing, or which may hereafter be enacted, in the State of Colorado, in order to prevent or hinder the enforcement or foreclosure of this mortgage, or the absolute sale of the property hereby conveyed or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, but hereby waives the benefit of all such laws.

Waiver of redemption laws, etc.

SECTION 9. The Railroad Company, for itself and all who may claim through or under it, waives any and all right to have the estates comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof; and agrees that any court having jurisdiction to foreclose such lien may sell the mortgaged property as an entirety, and the request of the Trustee or of one-fourth in interest of the bond-holders shall be sufficient evidence that said property should be sold as an entirety and not in parts.

Sale of property as an entirety

SECTION 10. In case (a) default shall be made in the payment of any interest or any of the bonds hereby secured, and any such default shall continue for a period of ninety days, or in case (b) default shall be made in the payment of the principal of any bond hereby secured, or in case (c) any other default shall be made hereunder by the Railroad Company, and any such last-mentioned default shall continue for a

Right of Trustee to Take proceedings for enforcement of rights hereunder

period of ninety days after written notice thereof to the Railroad Company from the Trustee or from the holders of one-fifth in amount of the outstanding bonds; then and in every such case the Trustee shall have the right and power to take appropriate proceedings for the enforcement of its rights and the rights of the bondholders hereunder, and upon being requested so to do by one-fourth in interest of the holders of said bonds then outstanding and upon being properly indemnified it shall be obligatory upon it to take such action. No bondholder or bondholders shall be entitled to take any such proceedings except in case of refusal or neglect of the Trustee to act after such default and such request as aforesaid, or in case of such default and vacancy in the office of Trustee.

Right of bondholders to take such proceedings

SECTION 11. Upon the filing of a bill in equity, or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under these presents, any court of competent jurisdiction may appoint a receiver or receivers of the lands and other property hereby mortgaged, and of the income, tolls, rents, issues and profits thereof, pending such proceedings, with such powers as the Court making such appointment shall confer.

Appointment of Receiver.

SECTION 12. Each and every power or remedy herein specifically given shall be cumulative and shall be in addition to every other power or remedy herein specifically given or now or hereafter existing, at law or in equity or by statute, in favor of the Trustee or any of the holders of said bonds (except so far as the rights of the holders of said bonds may be expressly restricted); and

Remedies cumulative

each and every power and remedy herein specifically given, or otherwise so existing, may be exercised from time to time and as often and in such order as may be deemed expedient by the Trustee, and the exercise or the beginning of the exercise of one power or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter, any other power or remedy. No delay or omission of the Trustee, or of any of the holders of said bonds, in the exercise of any right or power accruing upon any default shall impair any such right or power or be construed to be a waiver of such default or an acquiescence therein.

Trustees
delay or
omission
no waiv-
er

SECTION 13. In the event a Receiver or Receivers shall be appointed in any Court of competent jurisdiction, and the Trustee shall be requested by the holders of the majority in face value of the bonds issued and outstanding hereunder to take any action by consenting or objecting to the issuance of Receivers certificates, to be made a lien upon any property in the hands of the Receiver or Receivers covered by this mortgage, the request of such majority shall be full authority to the Trustee to act in accordance with such request.

ARTICLE VII.

Any declaration, request, election or appointment herein provided to be made by the holders of bonds hereby secured shall be by an instrument or instruments in writing, signed and acknowledged by the bondholder or his duly authorized attorney before any officer authorized to take the acknowledgment of deeds

Form and
proof of
bond-
holders'
requests,
etc.

in any State of the United States. The Trustee may, nevertheless, require any person claiming to be a bondholder to produce his bonds or to prove his ownership by making oath thereto or by other evidence satisfactory to the Trustee.

ARTICLE VIII.

Each of the bonds hereby secured is issued upon the express condition, to which each successive holder thereof expressly assents by receiving the same, that no stockholder of the Railroad Company shall be held personally liable to pay any part of the principal or interest of said bond, by virtue of any law now in force or hereafter enacted, and each holder of any such bond, by receiving the same, expressly waives any right he may now or hereafter have, to proceed against the stockholders of the Railroad Company for the payment of said bonds or any part thereof, and agrees to have recourse for such payment only against the Railroad Company and the property thereof.

Waiver of right of action against stockholders.

ARTICLE IX.

If the Railroad Company, its successors and assigns, shall well and truly pay or cause to be paid unto the holders of said bonds and coupons to be issued as aforesaid, the principal and interest to become due thereon to said holders at the times and in the manner stipulated in said bonds and coupons and in this indenture, according to the true intent and meaning thereof (any bond to be deemed paid if money has been deposited with the Trustee for its redemption), and shall also pay all other sums payable hereunder by it, then these presents and the estate and rights hereby granted shall cease, determine

Defeasance

and be void, otherwise to be and remain in full force; and the Trustee may and upon request of the Railroad Company shall, cancel and discharge the lien of these presents, and execute and deliver to the Railroad Company such deeds as shall be requisite to satisfy the lien hereof and re- convey to the Railroad Company the estate and the title hereby conveyed, whenever all the bonds and coupons secured hereby, which shall have been duly issued, shall be paid and all other sums payable hereunder by the Railroad Company shall also have been paid.

Recon-
veyance
of mort-
gaged
property

ARTICLE X.

SECTION 1. The Trustee shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created or to appear in or defend any suit or other proceedings brought against it by reason of anything connected with the said trusts or by reason of its being such Trustee, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish it reasonable security and indemnity against such expense or liability; nor shall the Trustee be required to take notice of any default hereunder unless specifically notified in writing of such default by one or more of the holders of the bonds hereby secured then outstanding, and until so notified, the Trustee may, for all the purposes of this indenture, assume that no default has happened. The Trustee shall be under no liability to anybody by reason of acting upon any notice, request, consent, certificate, bond, document or paper believed by it to be genuine and to have been signed by the proper person.

Immun-
ities of
Trustee

The recitals and statements herein and in said

bonds and coupons contained shall be taken as statements by the Railroad Company and not by the Trustee. The Trustee assumes no responsibility as to the validity hereof or the security hereby afforded; and it shall be no part of its duty to see that any property intended now or hereafter to be conveyed in trust hereunder is subjected to the lien hereof. The Trustee shall not be responsible for the recording, registration, filing or refiling of this instrument, or any instrument of further assurance or for the giving of any notice of the same.

The Trustee shall be under no duty or liability in respect to any tax which may be assessed against it or against the owners of the bonds hereby secured in respect to the property hereby conveyed, nor in respect to any other prior liens.

Any money received by the Trustee under any provision of this indenture may be treated by it, until it is required to pay out the same conformably herewith, as a general deposit, without any liability for interest, save such as, during that time, it allows to its general depositors.

The Trustee may employ in and about the execution of any of the duties incumbent upon it hereunder suitable agents, or attorneys, and for their acts and neglects, if selected with reasonable care, the Trustee shall be in no wise responsible. The Trustee may, in its discretion, advise with legal counsel, to be selected and employed by it, at the expense of the Railroad Company, and anything done, omitted or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive in favor of the Trustee on the company and all holders of bonds and coupons secured hereby. The Trustee shall not be personally liable for any debts contracted

by it, nor for damages to persons or property injured, nor for salaries or non-fulfillment of contracts during any period in which the Trustee shall manage or operate the Trust property upon entry as aforesaid. The Trustee, save for its willful default, or for its gross negligence, shall not be personally liable to anybody.

The Railroad Company agrees, from time to time, on demand, to pay to the Trustee reasonable compensation for its services hereunder; also to make reimbursement to the Trustee for all expenditures made by the Trustee hereunder; also to indemnify and save the Trustee harmless against any liability which the Trustee may incur hereunder, and all such payments are hereby made a first charge upon the trust estate.

SECTION 2. The Trustee may resign by giving written notice to the Railroad Company and by publishing a notice thereof to the bondholders at least once a week for four successive weeks in one newspaper published in the City and County of Denver, State of Colorado. If for any reason the office of Trustee shall become vacant, the majority in amount of the bondholders may by an instrument or instruments in writing appoint a new Trustee or Trustees to fill such vacancy; and pending such appointment by the bondholders the Railroad Company may appoint any Trust Company of good standing in the State of Colorado to fill such vacancy temporarily.

Resignation of Trustee.
Appointment of new Trustee.

ARTICLE XI.

The Railroad Company and the Trustee shall, upon reasonable request, execute and deliver such further instruments and do such further acts as may be necessary or proper to carry

Further Assurances.

out more effectually the purposes of this mortgage or deed of trust, or to transfer to any new Trustee the estate, powers, instruments or funds held in trust hereunder.

ARTICLE XII.

Upon the certification of the said bonds by the Trustee, it may without formality, request, proof or requirement, return said bonds to the railroad company or its officers or agents from whom the same were received by it, and it shall be in no respect liable or answerable for the use made of said bonds or any of them after the certification, delivery and return of them as aforesaid, and any receipt therefor by an officer or agent of the railroad shall be full acquittance and authority for such certification and delivery.

ARTICLE XIII.

SECTION 1. All the covenants and agreements in this indenture contained shall bind and inure to the benefit of the successors and assigns of the parties hereto, whether so expressed or not. Covenants binding upon successors of parties hereto

SECTION 2. Except when otherwise indicated the words, "the Trustee," or any equivalent term as used in this indenture, are intended to mean the Trustee or Trustees for the time being, whether original or successor; the words, "Trustee," "Bond," "Bondholder" and "Holder" shall include the plural as well as the singular number.

SECTION 3. All of the conveyances, covenants and agreements in this indenture contained shall be for the sole and exclusive benefit of the parties hereto and of the holders of the First Mortgage Six Per Cent. Gold Bond hereby secured. Benefits hereof limited to parties hereto and bond-holders.

IN WITNESS WHEREOF, the Railroad Company has caused its corporate seal to be hereto affixed, attested by its secretary, and these presents to be signed by its President; and the Trustee, in token of its acceptance of the trusts hereby created, has caused its corporate seal to be hereto affixed, attested by its ^{Asst.} Secretary, and these presents to be signed in its behalf by its ~~Asst.~~-President, the day and year first above written.

Testimon-
ium

THE SAN LUIS CENTRAL
RAILROAD COMPANY,

J. S. Cozart
President.

(Corporate seal)

Attest:

A. T. Young
Secretary.

THE CITY BANK AND TRUST COMPANY,
TRUSTEE,

By A. H. Cozart
President.

Attest:

Wm. A. Brown
Asst. Secretary.

STATE OF COLORADO,)
City and County of Denver.) ss.

I, Thomas A. Willard, a Notary Public within and for said City and County, in the State aforesaid, do hereby certify that J. B. Casgriff and A. T. Young, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as having executed the same, respectively as President and Secretary of The San Luis Central Railroad Company, a corporation, and who are known to me to be such officers, respectively, appeared before me this day in person and severally acknowledged that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said J. B. Casgriff is the President of said corporation, and the said A. T. Young is the Secretary thereof; that, by the authority of said corporation, they respectively subscribed their names thereto as President and Secretary, and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 16th day of August, 1913.

My commission expires on the 16th day of March, A. D. 1914.

Thomas A. Willard
Notary Public.

STATE OF COLORADO, }
City and County of Denver. } ss.

I, Elizabeth Bassett, a Notary Public within and for the City and County of Denver, in the State aforesaid, do hereby certify that W. K. Crocker and Robt. A. Brown, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument in writing as having executed the same, respectively, as ~~Vice~~-President and ^{asst}Secretary of The City Bank and Trust Company, a corporation, and who are known to me to be such officers, respectively, appeared before me this day in person, and severally acknowledged that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that the same was thereunto affixed by the authority of said corporation; that said instrument was by like authority subscribed with its corporate name; that the said W. K. Crocker is a ~~Vice~~-President of said corporation, and the said Robt. A. Brown is the ^{asst}Secretary thereof; that, by the authority of said corporation, they respectively subscribed their names thereto, as ~~Vice~~-President and ^{Assistant}Secretary, and that they signed, sealed and delivered the said instrument of writing as their free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial seal this 20th day of August, A. D. 1913.

My commission expires on the 17th day of July, A. D. 1914.

MAL.CH. 8/2/13.

Elizabeth Bassett
Notary Public.

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Diff (Case)

1/10/20

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