proper by the signer for any rights and intangible property (except going concern value or good will) simultaneously acquired with such utility system for which no separate or distinct consideration shall have been paid or apportioned.

(2) A net earnings certificate, with such appropriate modifications or additions thereto as may be necessary to show compliance with the provisions of clause (B) of this Section.

(3) An opinion of counsel to the effect that the nature and extent of the prior lien or prior liens on the property so to be acquired are correctly stated in said engineer's certificate, and that upon the acquisition thereof by the Company all such property of the character intended to be subjected to the lien hereof will be subject to the lien of this Indenture, free from all liens and encumbrances except the prior lien or prior liens specified in said engineer's certificate and except prepaid liens and permitted encumbrances.

In case, in connection with any such acquisition of property subject to a prior lien, the indebtedness secured by prior lien shall exceed sixty per centum (60%) of the then cost or fair value, whichever is less, of the property subject thereto and the Company's right to make such acquisition shall, accordingly, be based in part on the waiver as aforesaid of the right to the authentication and delivery of bonds hereunder, the Company shall evidence such waiver by a certified resolution, and shall comply with all applicable provisions of this Indenture relating to such authentication and delivery (except as hereinafter in this Section provided, and with such omissions and variations as may be appropriate in the light of the fact that a waiver of the right to the authentication and delivery of bonds is required); *provided, however*, that in no such case shall the Company be required to deliver to the Trustee the resolution and certificate such as are described in subdivisions (1) and (5) of Section 3.06 but in lieu of the certificate described in said subdivision (5) of said Section 3.06 the Company shall deliver the certificate described in subdivision (2) of this Section, or such parts of the opinion described in subdivision (6) of Section

3.06 as relate to the authorization of the issue of bonds by governmental authorities and by the Company and as relate to tax laws applicable to the issue of bonds, or to comply with any earnings requirements except as set forth in subdivision (2) of this Section.

Anything herein contained to the contrary notwithstanding, the right of the Company to acquire equipment from the manufacturers thereof or from others subject to any chattel mortgage, or conditional sales agreement shall not be in any respect limited or restricted by the provisions of this Section, and such provisions shall have no application to any such acquisition.

SECTION 4.16. That, if a default as defined in Section 9.01 shall occur and be continuing, it will not sell, pledge or otherwise dispose of any bonds issued hereunder then held by it or on its behalf.

SECTION 4.17. The term "restricted property", as used in this Section, shall at any time mean (1) property additions theretofore or then being funded and not theretofore released from the lien hereof, which were at the time of funding thereof and continue to be subject to a prior lien, and (2) prior lien bonds theretofore or then being funded, *provided* that the prior lien securing such bonds shall not have been cancelled.

The Company covenants and agrees that it will not apply for or obtain the authentication and delivery of any additional bonds, or the withdrawal of any cash, or the release of any property under any provision of this Indenture if as a result of such authentication and delivery of bonds, or withdrawal of cash, or release of property, as shall be stated in an engineer's certificate or certificate of the Company accompanying the application, the aggregate of:

(A) the principal amount of all additional bonds theretofore authenticated and delivered and then outstanding (provided that all such additional bonds which have theretofore been refunded by the issuance of bonds under Section 3.07 shall, solely for the purposes of this clause (A), be considered to be