

persons required in such cases by the other applicable provisions of the Indenture:

(a) Certificates or opinions made by the President or a Vice-President and the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Company stating that such conditions precedent have been complied with;

(b) an opinion of counsel (who may be of counsel for the Company) stating that in his opinion such conditions precedent have been complied with and that the certificates or opinions furnished to the Trustee upon any such request or application of the Company are in substantial conformity with the requirements of, and that they are all the certificates or opinions required by, the applicable provisions of the Indenture; and

(c) in the case of conditions precedent compliance with which is subject to verification by accountants, a certificate or opinion of an accountant. Such accountant may be the Comptroller or Assistant Comptroller or Treasurer or Assistant Treasurer or any other officer or employee of the Company if such officer or employee is an accountant, except that, in the case of conditions precedent to the authentication and delivery of Bonds, and not otherwise, if the aggregate principal amount of such Bonds and of other Bonds authenticated and delivered under the Indenture since the commencement of the then current calendar year (other than those with respect to which a certificate or opinion of an accountant is not required by this subdivision (c), or with respect to which a certificate or opinion of an independent public accountant has previously been furnished) is 10% or more of the aggregate amount of Bonds outstanding under the Indenture at the time then the certificate or opinion shall be made by an independent public accountant selected or approved by the Trustee in the exercise of reasonable care; provided, however, that no certificate or opinion need be made by any person other than the officer or officers or employee or employees of the Company specified in the applicable provisions of the Indenture as to (A) dates or periods not covered by annual reports required

to be filed by the Company, in the case of conditions precedent which depend upon a state of facts as of a date or dates or for a period or periods different from that required to be covered by such annual reports, or (B) the amount and value of property additions, except as provided in this subdivision (c), or (C) the adequacy of depreciation, maintenance or repairs.

The Company further covenants and agrees that each certificate or opinion furnished to the Trustee with respect to compliance with any condition or covenant provided for in this Indenture, shall include: (1) a statement that the person or persons making such certificate or opinion have read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether the provision or provisions of this Indenture pursuant to which such certificate or opinion is made and filed have been complied with; and (4) a statement as to whether, in the opinion of the signers, such provision or provisions of this Indenture have been complied with.

§ 5.15. That, so long as any of the bonds of Series A are outstanding, it will not declare or pay any dividends upon any shares of its common stock (other than dividends payable solely in shares of its common stock), or make any other distribution upon any shares of its common stock, or purchase or otherwise retire any shares of its common or preferred stock, unless the earned surplus of the Company remaining after the payment of such dividends upon any shares of its common stock or the making of such distribution upon any shares of its common stock or purchase or retirement of common or preferred shares shall be at

least equal to the earned surplus of the Company at September 1, 1946.

Net income of the Company accruing to earned surplus for the purpose of this § 5.15 shall be, except as herein otherwise specified, determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises or in the absence thereof in accordance with standard accounting practice.

§ 5.16. That, whenever requested by the holders of not less than twenty-five per centum (25%) in principal amount of the Bonds outstanding hereunder, but not more often than once in every two (2) years, and, whether or not so requested by such percentage of the bondholders, at least once in every five (5) years, the Company will cause an examination of its public utility property subject to the lien hereof to be made by an independent engineer. Such engineer or other person shall be appointed by the Company with the approval of the Trustee, and may not be a person employed by or affiliated with an engineering firm or corporation supervising or affiliated with the management of the Company. If the Trustee and the Company cannot agree upon such engineer or other person to be appointed as aforesaid, an appointment shall be made by three arbitrators, one appointed by the Trustee, one by the Company and a third by the two thus named. The arbitrators may act by a majority and the decision of a majority shall be final and conclusive. When a decision is reached the arbitrators shall at once notify the Trustee and the Company in writing of the engineer or other person whom they appoint. If the two arbitrators, when named by the Trustee and the Company, shall fail to name a third arbitrator, or if the arbitrators shall fail to make a decision within a reasonable time, such engineer or other person

may be appointed by a judge of any Kansas court of appellate jurisdiction upon application of the Trustee or of the Company.

Such independent engineer, within a reasonable time from the date of his appointment, shall report to the Trustee and to the Company whether or not the public utility property of the Company (exclusive of retired property) subject to the lien hereof is in general being maintained in good physical condition and in a state of good operating efficiency for the purposes of the Company and whether or not all such property that is no longer used or useful in the Company's business has been duly recorded as retired on the books of the Company. If such engineer or other person shall report that such property in general is not being so maintained, he shall state clearly in his report the character and extent and the estimated cost of making good such deficiency and, if he shall report that there is property which is no longer used or useful in the Company's business which has not been recorded as retired on the books of the Company, he shall briefly describe such property and shall state the aggregate retirement which should be recorded on the books in respect of such property. Said report shall be placed on file by the Trustee and shall be open to inspection by any bondholder at any reasonable time.

The Company further covenants and agrees that, if such engineer or other person shall report that such a maintenance deficiency exists, the Company will with all reasonable speed make such repairs and/or do such other maintenance work as may be necessary to make good such deficiency as shall exist at the time of such report whereupon such engineer or other person (or, in the case of his refusal or inability to act, some other engineer or other