

Board of Directors of the Company shall consider to be for the protection of the trust estate and of the holders of Bonds, although the freedom of action of the Company may be materially restricted thereby;

(c) to describe the terms of any new series of Bonds as established by resolution of the Board of Directors of the Company pursuant to § 2.02;

(d) to subject to the lien of this Indenture or to perfect the lien hereof upon any additional properties of any character;

(e) to make such provisions in regard to matters or questions arising under this Indenture as may be necessary or desirable and not inconsistent with this Indenture;

(f) to modify any of the provisions of this Indenture or to relieve the Company from any of the obligations, conditions or restrictions herein contained, provided that no such modification (unless made pursuant to Article 13) shall be or become operative or effective, or in any manner impair any of the rights of the bondholders or of the Trustee, while any Bonds of Series A or of any other series established prior to the execution of such supplemental indenture shall remain outstanding; and provided, further, that such supplemental indenture shall be specifically referred to in the text of all Bonds of any series established after the execution of such supplemental indenture; and provided, also, that the Trustee may in its uncontrolled discretion decline to enter into any such supplemental indenture which in its opinion may not afford adequate protection to the Trustee when the same shall become operative; and/or

(g) for any other purpose not inconsistent with the terms of this Indenture and which shall not impair the security of the same or for the purpose of curing any ambiguity or of curing, correcting or supplementing any defective or inconsistent provision contained herein.

and the Company hereby covenants that it will fully perform all the requirements of any such supplemental inden-

ture which may be in effect from time to time; provided, however, that no restriction or obligation imposed hereby or by any supplemental indenture upon the Company with respect to any of the Bonds or series of Bonds then outstanding under this Indenture may be waived or modified by such supplemental indenture or otherwise, and nothing in this Article 17 contained shall affect or limit the right or obligation of the Company or any successor corporation to execute and deliver to the Trustees any instrument of further assurance or other instrument which elsewhere in this Indenture it is provided shall be delivered to them.

The Trustees may receive an opinion of counsel as conclusive evidence that any supplemental indenture is authorized and permitted by the terms of this Indenture and that it is proper for the Trustees under the provisions of this Article 17 to join in the execution thereof.

§ 17.02. All parties to this Indenture agree, and each holder or owner of any Bond by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee, for any action taken or omitted by them as such trustees, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustees, or either of them, to any suit instituted by any bondholders, or group of bondholders, holding in the aggregate more than ten per centum (10%) in principal amount of the Bonds outstanding, or to any suit instituted by any bondholder for the enforcement of

the payment of the principal or of interest on any Bond, on or after the respective due dates expressed in such Bond.

§ 17.03. If any provision of this Indenture limits, qualifies, or conflicts with another provision of this Indenture required to be included herein by any of Section 310 to 317, inclusive, of the Trust Indenture Act of 1939, such required provision shall control.

§ 17.04. Wherever reference is made in this Indenture to the Trust Indenture Act of 1939, reference is made to such Act as in force on the date of the execution of this Indenture.

§ 17.05. Nothing in this Indenture or in the Bonds issued hereunder, expressed or implied, is intended or shall be construed to give to any person or corporation other than the parties hereto and the holders of Bonds and coupons, any legal or equitable right, remedy or claim under or in respect of this Indenture or under any covenant, condition or provision herein contained; all its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the Bonds and coupons.

§ 17.06. Nothing in this Indenture or in the Bonds issued hereunder, expressed or implied, is intended or shall be construed to prevent any Bonds from having also any independent security or guaranty and the benefit of any covenants or agreements outside this Indenture, concerning which a notation may or may not be endorsed thereon, and the references herein or in the Bonds to the equal security hereunder of all Bonds shall not be deemed applicable to such independent security, guaranty, covenants or agreements, and the rights hereunder of the holders of such Bonds shall not be affected thereby.

§ 17.07. Any notice, demand or request authorized by this Indenture to be given or delivered to the Company

shall be sufficiently given or delivered for all purposes hereof if delivered to any officer of the Company or if mailed and addressed to the Company at Abilene, Kansas, or to its office or agency last known to the Trustee.

§ 17.08. In case by reason of the temporary or permanent suspension of publication of any newspaper, or by reason of any other cause, it shall be impossible for the Company to make publication of any notice required hereby in a newspaper or newspapers as herein provided, then such publication in lieu thereof as the Company shall make with the approval of the Trustee shall constitute a sufficient publication of such notice. Such publication shall, so far as may be, approximate the terms and conditions of the publication in lieu of which it is given.

§ 17.09. The same officer or officers of the Company, or the same engineers or counsel or other person, as the case may be, need not certify to all the matters required to be certified under the provisions of any Article, section, subdivision or other portion hereof, but different officers, engineers, counsel or other persons may certify to different facts, respectively.

Where any person or persons are required to make, give or execute two or more orders, requests, certificates, opinions or other instruments under this Indenture, any such orders, requests, certificates, opinions or other instruments may, but need not, be consolidated and form one instrument.

Any opinion of counsel required to be furnished pursuant to any of the provisions of this Indenture may, in lieu of stating the facts required by the provisions hereof, state that the required conditions will be fulfilled upon the execution and delivery of designated instruments, which instruments shall be delivered in form approved by such counsel