

solidated net earnings available for restricted payments'' shall mean an amount equal to (1) 70% of consolidated net earnings for the period (taken as one accounting period) commencing on July 1, 1964 and terminating at the end of the last fiscal quarter preceding the date of any proposed restricted payment, less (2) the sum of (a) the aggregate amount of all dividends and other distributions paid or declared by the Company on any class of its stock after June 30, 1964, (b) the excess of the aggregate amount expended, directly or indirectly, after June 30, 1964, for the redemption, purchase or other acquisition of any shares of its stock, over the aggregate amount received after the Completion Date, as the net cash proceeds of the sale of any shares of its stock, and (c) the aggregate amount expended, directly or indirectly, after June 30, 1964 for the payment of principal of and interest on, and the retirement, redemption, purchase or other acquisition of, Subordinated Debt. There shall not be included in restricted payments or in any computation of consolidated net earnings available for restricted payments: (x) dividends payable in stock of the Company; or (y) exchanges of stock of one or more classes of the Company, except to the extent that cash or other value is involved in such exchange.

SECTION 5.10. *Negative Covenants.* The Company will not and will not permit any Subsidiary to:

A. *Liens.* Create, assume or suffer to exist any mortgage, pledge, encumbrance, lien or charge of any kind (including the charge upon property purchased under conditional sale or other title retention agreements) upon any of its property or assets, whether now owned or hereafter acquired, or suffer to exist any indebtedness of the Company or any Subsidiary or any claim or demand against the Company or any such Subsidiary which, if unpaid, might (in the hands of the holder or any one who shall have guaranteed the same or who has any rights or obligations to purchase the same) by law or upon bankruptcy or insolvency or otherwise, be given any priority over its general creditors, except

- (i) the lien of this Indenture and the NII Mortgage;
- (ii) liens for taxes not yet due or which are being contested in good faith by appropriate proceedings;