

diaries) subsequent to December 31, 1977 of shares of, or warrants or other rights to subscribe for shares of, its authorized but previously unissued capital stock (including the issue or sale of shares upon conversion subsequent to December 31, 1977 of debt securities of the Company), (b) 75% of the aggregate consolidated net income, as determined in accordance with generally accepted accounting principles, earned subsequent to December 31, 1977 or, in case such consolidated net income shall be a deficit, minus such deficit, and (c) \$500,000.

The provisions of this Section 7.09 shall not prevent or restrict (i) any acquisition of shares of capital stock of the Company solely in exchange for other shares of capital stock of the Company or solely out of the proceeds of a substantially concurrent sale of other shares of capital stock of the Company, in which event neither the acquisition or issuance of such shares nor the receipt or expenditure of such proceeds shall be taken into account in computations pursuant to the preceding paragraph; or (ii) the payment of any dividend within 60 days after the date of declaration thereof, if at the date of declaration the payment of such dividend would have conformed to the provisions of this Section, but all such dividends shall be taken into account in such computations; or (iii) the declaration or payment of any dividend payable solely in capital stock of the Company, and any such stock dividend shall not be taken into account in such computations; or (iv) the payment of regular fixed dividends on, or the making of mandatory sinking fund payments in respect of, or the redemption pursuant to any mandatory sinking fund of, any shares of preferred stock of the Company (other than shares of such preferred stock which have been issued as a stock dividend, or have been issued pursuant to a subscription or rights offering, to holders of shares of the Company's common stock), but all payments made for such purposes shall be taken into account in such computations.

For purposes of all computations under this Section 7.09, the amount to be included with respect to any property, other than cash, distributed or received shall be the fair value thereof as of the date of such distribution or receipt as determined by resolution adopted by the Board of Directors. The net proceeds received by the Company from the issue or sale of shares of its capital stock upon the conversion of debt securities of the Company shall be the net proceeds received by the Company upon the original issuance of the debt securities so converted, less the amount of any cash paid out upon such conversion in respect of fractional interests or otherwise.

Section 7.10. The Company covenants that it will, and will cause each of its Consolidated Subsidiaries which at the time is the owner of any of the Mortgaged and Pledged Property to, at all times keep, maintain and preserve all the property of the Company and of such Consolidated Subsidiary in good repair, working order and condition and from time to time make all needful and proper repairs, renewals, replacements, betterments and improvements thereto, so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

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