

30965

State of Delaware

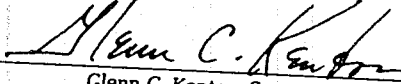
Vol. 183 Page 20235



Office of Secretary of State

I, GLENN C. KENTON, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER OF "DIAMOND INTERNATIONAL CORPORATION" MERGING WITH AND INTO "DIAMOND (USA) INC." UNDER THE NAME OF "DIAMOND INTERNATIONAL CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-NINTH DAY OF SEPTEMBER, A.D. 1983, AT 3:55 O'CLOCK P.M.

1 1 1 1 1 1 1 1 1 1

  
Glenn C. Kenton, Secretary of State

AUTHENTICATION: 10078872  
DATE: 09/30/1983

832720348

'83 NOV 23 PM 3 21

OK  
140.00

CERTIFICATE OF MERGER  
OF  
DIAMOND INTERNATIONAL CORPORATION  
INTO  
DIAMOND (USA) INC.

The undersigned corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: The name and state of incorporation of each of the constituent corporations of the merger is as follows:

| <u>NAME</u>                       | <u>STATE OF INCORPORATION</u> |
|-----------------------------------|-------------------------------|
| DIAMOND INTERNATIONAL CORPORATION | Delaware                      |
| Diamond (USA) Inc.                | Delaware                      |

SECOND: An Agreement and Plan of Merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 228 and subsection (c) of Section 251 of the General Corporation Law of the State of Delaware.

THIRD: The name of the surviving corporation of the merger is Diamond (USA) Inc., herewith changed to DIAMOND INTERNATIONAL CORPORATION.

FOURTH: The Certificate of Incorporation of Diamond (USA) Inc. has been amended and restated, and a copy of the Restated Certificate of Incorporation is attached hereto.


20237

FIFTH: The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation. The address of said principal place of business is: 733 Third Avenue, New York, New York 10017.

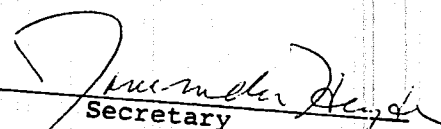
SIXTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving corporation on request and without cost to any stockholder of any constituent corporation.

Dated: September 29, 1983

DIAMOND (USA) INC.

By   
Vice President

ATTEST:

By   
Secretary

RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
DIAMOND (USA) INC.

1. The name of the Corporation is Diamond (USA) Inc. and the date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was April 2, 1982.

2. This Restated Certificate of Incorporation re-states and integrates and further amends the Certificate of Incorporation.

3. The text of the Certificate of Incorporation is amended hereby to read as herein set forth:

FIRST. The name of the corporation is Diamond International Corporation (hereinafter sometimes called the "Corporation").

SECOND. The address of the registered office of the Corporation in the State of Delaware is 306 South State Street, in the City of Dover, County of Kent. The name of its registered agent at that address is the United States Corporation Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware as set forth in Title 8 of the Delaware Code (the "GCL").

FOURTH. The aggregate number of shares which the Corporation shall have authority to issue is 103,960, of which 103,000 shares of the par value of \$1.00 per share shall be designated Preferred Stock and 960 shares of the par value of \$1.00 per share shall be designated Common Stock.

A. PREFERRED STOCK

Each of the series of the Preferred Stock shall rank on a parity with the others with respect to the payment of dividends and liquidation preference and shall rank senior to the Common Stock with respect to the payment of dividends and liquidation preference.

(i)(a) Designation of Series. Of the 103,000 authorized shares of the Preferred Stock the Corporation shall have authority to issue 27,600 shares as shares of \$1.20 Series C Cumulative Convertible Preferred Stock (hereinafter called the "Series C Preferred Stock"). The shares of Series C Preferred Stock shall be fully-paid and non-assessable. All shares of Series C Preferred Stock redeemed, and all shares of Series C Preferred Stock otherwise purchased or acquired by the Corporation (including shares of Series C Preferred Stock that shall be converted) shall have the status of authorized but unissued shares of Preferred Stock and any such shares may be reissued as shares of the Series C Preferred Stock or of any other series.

The number of shares of Series C Preferred Stock may be decreased (but not below the number of such shares then outstanding) but not increased by a certificate executed, acknowledged, filed, and recorded in accordance with Section 103 of the General Corporation Law of the State of Delaware setting forth a statement that a specified decrease therein had been authorized and directed by a resolution or resolutions adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of the certificate of incorporation of the Corporation.

(b) Dividends. The holders of Series C Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available for the purpose, dividends in cash at the rate of \$1.20 per share per annum, and no more, payable quarterly at the rate of \$.30 per share (except for the initial dividend, which shall be payable at a rate per share (rounded to the nearest cent) equal to the amount accrued per share at the annual rate for the number of days in the period between the date of original issuance of the Series C Preferred Stock and the date the first quarterly dividend is payable) on the first day of February, May, August, and November in each year for the quarterly (except for the initial dividend) dividend periods ending respectively on the dates immediately preceding such dates, commencing on the first of such dates occurring after the later of (i) 45 days after the date of original issuance of the \$1.20 Series A Cumulative Convertible Preferred Stock of Diamond International Corporation, a Delaware corporation ("DIC") and (ii) 14 days after the date DIC paid for shares in the election of shareholders of LMF Corporation, a Missouri corporation ("LMF"); to receive cash upon the merger (the "LMF Merger") of LMF into DIC; provided, however, that in no event shall a holder of shares of Series C Preferred Stock be entitled to receive with respect to a particular period of time dividends on both such shares and the shares of \$1.20 Series A Cumulative Convertible

Preferred Stock of DIC which were converted into shares of Series C Preferred Stock upon consummation of the merger of DIC into the Corporation. Dividends on the Series C Preferred Stock shall be cumulative from and after the date of original issuance, whether or not earned or declared and whether or not there shall be funds of the Corporation legally available for the payment of such dividends. Accruals and accumulations of dividends shall not bear interest. The date of original issuance of the shares of Series C Preferred Stock shall be the effective date of the LMF Merger.

So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not declare or pay, or set apart for payment, any dividends or make any distribution in cash or other property (other than dividends or distributions in shares of any class or series of stock of the Corporation ranking junior to Series C Preferred Stock with respect to dividends) on any class or series of stock of the Corporation ranking junior to Series C Preferred Stock with respect to dividends, and shall not redeem, purchase, or otherwise acquire, directly or indirectly (other than (x) through exchange for, or out of net cash proceeds received by the Corporation or any of its subsidiaries after the original date of issuance of the Series C Preferred Stock from the sale of shares of, any class or series of stock of the Corporation ranking junior to Series C Preferred Stock with respect to liquidation preference or (y) upon the conversion of shares of stock of the Corporation), any shares of any class or series of stock of the Corporation ranking junior to Series C Preferred Stock with respect to liquidation preference, if at the time of making such declaration, payment, setting apart, distribution, redemption, purchase, or acquisition, full cumulative dividends upon all outstanding shares of Series C Preferred Stock to the end of the last completed dividend period shall not have been paid or declared and set apart for payment. So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not declare, with respect to any dividend period, any dividends on any class or series of stock of the Corporation ranking on a parity with the Series C Preferred Stock with respect to dividends, unless the Corporation shall have likewise declared dividends on the Series C Preferred Stock for all dividend periods coinciding with or ending before such dividend period, ratably in proportion to the respective annual dividend rates for Series C Preferred Stock and for such other class or series.

(c) Liquidation Rights. In the event of any liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, the holders of Series C Preferred Stock shall be entitled to receive or to have set apart for them, before any payment or distribution of the assets of the Corporation shall be made to or set apart for any class or series of stock of the Corporation ranking junior to the

Series C Preferred Stock with respect to liquidation preference, an amount equal to \$16.00 per share, plus an amount equal to all dividends accrued, accumulated, and unpaid thereon to the date of final distribution to such holders; but they shall be entitled to no further payment. If the assets of the Corporation distributable to shares of the Series C Preferred Stock and to shares of any class or series of stock of the Corporation ranking on a parity with the Series C Preferred Stock with respect to liquidation preference shall be insufficient to provide for full payment of the preferential amounts to which the holders thereof are respectively entitled, the Corporation shall make payments on shares of the Series C Preferred Stock and on shares of any such class or series ratably in accordance with the preferential amounts to which such shares are respectively entitled.

For the purposes of this section (c), no sale, conveyance, exchange, or transfer (for cash, shares of stock, securities, or other consideration) of all or substantially all of the property or assets of the Corporation, no reorganization of the Corporation, and no consolidation or merger of the Corporation with one or more corporations shall be deemed to be a liquidation, dissolution, or winding up, voluntary or involuntary.

(d) Voting. Other than as provided by law or in this section (d), the holders of Series C Preferred Stock shall not be entitled to vote at any election of directors or on any other matter submitted to stockholders of the Corporation.

If and whenever dividends on any series of Preferred Stock shall not have been paid in an aggregate amount equal to six quarterly dividends or more (whether or not consecutive), the holders of the Series C Preferred Stock, until divested of such right as hereinafter provided, shall be entitled, voting as a single class together with the holders of all other series of Preferred Stock so entitled, to elect two of the members of the Board of Directors, and each share of each such series of Preferred Stock shall be entitled to one vote. In the event that the holders of such series of the Preferred Stock shall become so entitled to elect two of the members of the Board of Directors, then, at the next annual meeting of the stockholders of the Corporation, the number of members constituting the Board of Directors shall be increased by two, and the holders of such series of the Preferred Stock, voting as a single class, shall elect two of the members of the Board of Directors, and the remaining members of the Board of Directors shall (subject to the right of holders of any class or series of stock or other securities of the Corporation other than such series of the Preferred Stock to elect directors

upon the happening of an event, such as a default in the payment of dividends) be elected by the holders of the securities of the Corporation entitled at the time to vote for the election of directors (other than holders whose right to elect directors is contingent upon the happening of an event, such as a default in the payment of dividends). Thereafter, at each annual meeting of the stockholders of the Corporation, until divested as hereinafter provided of their right to elect two of the members of the Board of Directors, the holders of such series of the Preferred Stock, voting as a single class, shall elect two of the members of the Board of Directors, and the remaining members of any class or series of stock or to the right of holders of any class or series of stock or other securities of the Corporation other than such series of the Preferred Stock to elect directors upon the happening of an event, such as a default in the payment of dividends) be elected by the holders of the securities of the Corporation entitled at the time to vote for the election of directors (other than holders whose right to elect directors is contingent upon the happening of an event, such as a default in the payment of dividends).

A director elected by the holders of shares of such series of Preferred Stock voting as a single class pursuant to the aforesaid right or designated by a director pursuant to the provisions of this paragraph shall automatically cease to serve as a director whenever full cumulative dividends upon all outstanding shares of all series of Preferred Stock to the end of their respective last completed dividend periods shall have been paid or declared and set aside for payment. Any such director may otherwise be removed only by the vote of the holders of record of the majority of the outstanding shares of such series of Preferred Stock, voting as a single class, at a meeting of the stockholders or of the holders of shares of such series of Preferred Stock called for that purpose. Any vacancy in the office of any such director may be filled by designation to the Corporation in writing by the remaining director then in office who was either elected by the holders of such series of Preferred Stock pursuant to this section (d) or was designated by a director pursuant to the provisions of this sentence, or, if not so filled within 30 days after the vacancy occurs, by the holders of such series of Preferred Stock at any meeting, annual or special, for the election of directors held thereafter. A special meeting of the holders of shares of such series of Preferred Stock may be called for the purpose of filling any such vacancy. In the case of removal of any such director, the vacancy may be filled at the same meeting at which such removal was voted.

Whenever, after the amount of dividends on any series of Preferred Stock shall not have been paid in an aggregate amount equal to six quarterly dividends or more (whether or not consecutive), full cumulative dividends upon all outstanding shares of all series of Preferred Stock to the

end of their respective last completed dividend periods shall be paid or declared and set aside for payment, the right of the holders of such series of the Preferred Stock to elect two of the members of the Board of Directors and their right to be represented at, and to receive notice of, stockholders' meetings shall be divested and the members constituting the Board of Directors shall be reduced by two, but always subject to the revesting of such right in the holders of such series of the Preferred Stock in the event of any similar future default in the payment of dividends.

So long as any shares of Series C Preferred Stock shall be outstanding, the Corporation shall not (i) create any class or series of stock ranking, either as to payment of dividends or as to liquidation preference, prior to the Preferred Stock, (ii) increase the authorized number of shares of any such prior class or series of stock, or (iii) amend, alter, or repeal any of the provisions of the certificate of incorporation (as defined in Section 104 of the General Corporation Law of the State of Delaware on November 15, 1978) of the Corporation so as to affect the holders of shares of Preferred Stock materially and adversely, without the affirmative vote or written consent of the holders of at least two-thirds of the aggregate number of outstanding shares of Series C Preferred Stock and all other series of Preferred Stock entitled to have or express such two-thirds vote or consent, voting as a single class; provided, however, that if any proposed amendment, alteration, or repeal of the certificate of incorporation (as so defined) of the Corporation shall not affect all such series of Preferred Stock materially and adversely, then only the shares of such series of Preferred Stock so affected shall be considered a separate class for the purposes of clause (iii) of this paragraph of this section (d).

(e) Redemption and Purchase of Series C Preferred Stock. The Series C Preferred Stock may be redeemed at the option of the Corporation, in whole at any time or in part from time to time, on or after the fifth anniversary of the date of original issuance of the Series C Preferred Stock, upon the notice hereinafter provided for, by the payment therefor in cash of an amount per share equal to the following redemption prices, plus an amount per share (rounded to the nearest cent) equal to the amount accrued per share at the annual dividend rate for the number of days in the period between (i) the end of the last completed dividend period as to which dividends have been or are paid on the shares to be redeemed and (ii) the redemption date:

If Redeemed During the 12  
Months Beginning November 15

Per Share Redemption  
Price

|                           |                   |
|---------------------------|-------------------|
| 1983 .....                | \$16.75 per share |
| 1984 .....                | \$16.60 per share |
| 1985 .....                | \$16.45 per share |
| 1986 .....                | \$16.30 per share |
| 1987 .....                | \$16.15 per share |
| 1988 and thereafter ..... | \$16.00 per share |

Notwithstanding the foregoing, no shares of Series C Preferred Stock or of any other series of Preferred Stock shall be redeemed unless, on the date fixed for redemption, full cumulative dividends upon all outstanding shares of all series of Preferred Stock to the end of their respective last completed dividend periods shall have been paid or declared and set aside for payment.

If at any time less than all of the shares of Series C Preferred Stock then outstanding shall be called for redemption, the shares to be redeemed shall be selected by lot in a manner determined by the Board of Directors of the Corporation.

Notice of any proposed redemption of Series C Preferred Stock shall be given by the Corporation by first class mail, postage prepaid, not more than 60 nor less than 15 days prior to the date of redemption, to the holders of record of the shares to be redeemed at their respective addresses then appearing on the records of the Corporation. Such notice shall set forth the date of redemption, the place for surrender of certificates for shares to be redeemed, and a statement of or reference to the conversion right set forth in section (f) below, including the period within which the conversion right may be exercised and the applicable conversion rate.

On or before the redemption date, the Corporation shall deposit in trust with any transfer agent or other agent, or set aside in trust, separate and apart from the other funds of the Corporation, for the account of the holders of the shares of Series C Preferred Stock to be redeemed, the moneys necessary for such redemption. Upon (i) the depositing or setting aside of such moneys (whether on or before the date of redemption) and (ii) the mailing, as hereinabove provided, of the notice of such redemption, all shares of Series C Preferred Stock with respect to the redemption of which such deposit or setting aside shall have been made and such mailing effected shall, whether or not the certificates for such shares shall have been surrendered for cancellation, be deemed to be no longer outstanding and all rights with respect to such shares shall thereupon cease and terminate, except for the right of the holders of the certificates for such shares to receive out of the moneys so deposited or set aside in

trust, from and after the redemption date and upon actual surrender to the Corporation, or, in the event of such deposit, to the transfer agent or other agent with which such deposit shall be made, of such certificates, duly endorsed or assigned for transfer (unless such endorsement or assignment be waived by the Corporation), the amount payable upon the redemption thereof, without interest, and except for the right of the holders of the certificates for such shares to convert such shares as provided in the third paragraph of section (f). Notwithstanding anything to the contrary contained in this section (e), moneys deposited or set aside in trust on account of the redemption price of shares of Series C Preferred Stock converted subsequent to the making of such deposit or such setting aside shall be repaid to the Corporation, or shall become unrestricted moneys of the Corporation, as the case may be, forthwith upon the conversion of such shares. At the expiration of five years after the redemption date (or prior to any earlier date on which such moneys would otherwise escheat to or become the property of any governmental unit or agency thereof), any such moneys then remaining on deposit with such transfer agent or other agent shall be paid over to the Corporation, free of trust, and any such moneys then set apart by the Corporation shall become unrestricted moneys of the Corporation, free of trust, and thereafter the holders of the certificates for such shares of Series C Preferred Stock shall have no claims against such transfer agent or other agent, but only claims as unsecured creditors against the Corporation for amounts equal to their pro rata portions of the moneys so paid over, without interest. Interest, if any, accrued on moneys deposited or set aside pursuant to the foregoing provisions shall belong to the Corporation.

The Corporation may also from time to time purchase or otherwise acquire shares of Series C Preferred Stock or of any other series of Preferred Stock theretofore issued and at the time outstanding, except that whenever full cumulative dividends upon all outstanding shares of all series of Preferred Stock to the end of their respective last completed dividend periods shall not have been paid or declared and set aside for payment, then until full cumulative dividends upon all outstanding shares of all series of Preferred Stock to the end of their respective last completed dividend periods shall have been paid or declared and set aside for payment, the Corporation shall not purchase or otherwise acquire any shares of Series C Preferred Stock or of any other series of Preferred Stock other than (x) in accordance with a tender offer or purchase offer made by the Corporation to all holders of record of all series of Preferred Stock providing for the purchase of shares at a stated price or prices and upon stated terms or (y) upon the conversion of the shares of Series C Preferred Stock or of any other series of Preferred Stock.

In case less than all the shares of Series C Preferred Stock represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

The shares of the Series C Preferred Stock shall not be entitled to the benefit of any sinking fund or purchase

(f) Conversion. Each share of the Series C Preferred Stock shall be convertible at the option of the holder thereof into \$20.74 in cash, which was the amount of cash receivable by a holder of 0.466 of a share of common stock, par value \$.50 per share, of DIC upon the consummation of the merger of Diamond Acquisition Inc., a Delaware corporation, into DIC.

Each holder of Series C Preferred Stock desiring to exercise his right of conversion shall deliver written notice of his election to convert Series C Preferred Stock, stating the names and addresses of the persons to whom the cash is to be issued, and shall surrender the certificate for such shares of Series C Preferred Stock, duly endorsed or assigned for transfer (unless such endorsement or assignment be waived by the Corporation), to the Corporation at the office of the transfer agent for the Series C Preferred Stock. In case less than all the shares of Series C Preferred Stock represented by any certificate are converted, such notice shall also state the number of shares to be converted, and a new certificate shall be issued representing the unconverted shares. Upon receipt by the Corporation of any such notice of election to convert Series C Preferred Stock and upon surrender of the certificate therefor, the Corporation shall deliver, as soon as practicable, to the converting holder of Series C Preferred Stock, the amount of cash resulting from such conversion. For all purposes, the rights of a converting holder of Series C Preferred Stock as such shall cease as to the shares converted.

In case of the Corporation's redemption of any shares of the Series C Preferred Stock, such right of conversion shall end, as to the shares called for redemption, at the later of (i) the close of business on the fifth business day prior to the date fixed for redemption and (ii) the close of business fifteen days after the day notice of redemption shall be given by the Corporation to the holders of record of the shares to be redeemed, unless default shall be made in the payment of the redemption price, in which case the right of conversion shall be deemed to continue until such default is cured. In the event of the liquidation, dissolution, or winding up of the Corporation, such right of conversion shall end at the close of business on the tenth business day prior to the date fixed for the first distribution of the assets of the Corporation to the holders of Series C Preferred Stock. Upon conversion, the Corporation shall make no payment or

adjustment on account of dividends accrued, accumulated, and unpaid (other than dividends payable to holders of Series C Preferred Stock as of a record date prior to such conversion) on the shares of Series C Preferred Stock surrendered for conversion.

Shares of Preferred Stock other than shares of the Series C Preferred Stock may be issued from time to time in one or more series as may from time to time be determined by the Board of Directors, each of said series to be distinctly designated. All shares of any one series of Preferred Stock shall be alike in every particular, except that there may be different dates from which dividends, if any, thereon shall be cumulative, if made cumulative. The voting powers and the designations, preferences and relative, participating, optional or other special rights of each such series, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding; and, subject to the provisions of subparagraph 1 of Paragraph C of this Article FOURTH, there is hereby expressly vested in the Board of Directors of the Corporation the authority to issue one or more series of Preferred Stock and to fix in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors of the Corporation the voting powers and the designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions of such series, including, but without limiting the generality of the foregoing, the following:

- (1) The distinctive designation of, and the number of shares of Preferred Stock which shall constitute, such series, and such number may be increased (except where otherwise provided by the Board of Directors) or decreased (but not below the number of shares thereof then outstanding) from time to time by the like action of the Board of Directors;
- (2) The rate and times at which, and the terms and conditions upon which, dividends, if any, on Preferred Stock of such series shall be paid, the extent of the preference or relation, if any, of such dividends to the dividends payable on any other class or classes, or series of the same or other classes of stock and whether such dividends shall be cumulative or non-cumulative;

- (3) The right, if any, of the holders of Preferred Stock of such series to convert the same into, or exchange the same for, shares of any other class or classes or of any series of the same or any other class or classes of stock of the Corporation or any other property and the terms and conditions of such conversion or exchange;
- (4) Whether or not Preferred Stock of such series shall be subject to redemption, and the redemption price or prices and the time or times at which, and the terms and conditions upon which, Preferred Stock of such series may be redeemed;
- (5) The rights, if any, of the holders of Preferred Stock of such series upon the voluntary or involuntary liquidation, merger, consolidation, distribution or sale of assets, dissolution or winding-up, of the Corporation;
- (6) The terms of the sinking fund or redemption or purchase account, if any, to be provided for the Preferred Stock of such series; and
- (7) The voting powers, if any, of the holders of such series of Preferred Stock which may, without limiting the generality of the foregoing, include the right, voting as a series by itself or together with other series of Preferred Stock or all series of Preferred Stock as a class, to elect one or more directors of the Corporation if there shall have been a default in the payment of dividends on any one or more series of Preferred Stock or under such other circumstances and on such conditions as the Board of Directors may determine.

Of the 103,000 authorized shares of the Preferred Stock the Corporation shall have authority to issue 75,000 shares of Series A Preferred Stock. The voting powers and the designation, preferences and relative participating, optional or other rights, and the qualifications, limitations or restrictions thereof are as follows:

(ii) 1. Designation of Series. The series of Preferred Stock provided for hereby is designated "Series A Preferred Stock."

## II. 1. Dividends.

1.A. The holders of record of Series A Preferred Stock shall be entitled, equally and ratably, to receive, pari passu with the holders of the Series B Convertible Preferred Stock and the \$1.20 Series C Cumulative Preferred Stock and before any dividends are declared or paid upon any class or series of the capital stock of the Corporation ranking junior to the Series B Convertible Preferred Stock or the \$1.20 Series C Cumulative Preferred Stock as to dividends, when and as available by the Board of Directors out of funds legally available for such purpose, cash dividends payable semi-annually on the third day of October and April of each year (the "Dividend Payment Dates") at the annual rate of \$72.50 per share or such dividend rate as may be payable from time to time on the Series B Convertible Preferred Stock, if greater (such annual rate being herein called the "Annual Dividend Rate"). Cash dividends shall commence on the first Dividend Payment Date which is at least 30 days after the date of issue. The Annual Dividend Rate shall be computed on the basis of a 360-day year of twelve 30-day months. Dividends shall be cumulative and shall accrue at the Annual Dividend Rate, whether or not declared, from and after the date of issue. The initial dividend paid with respect to each share of Series A Preferred Stock issued on a date other than a Dividend Payment Date shall be prorated according to the portion of the dividend period between the date of issue of such share and the next first Dividend Payment Date.

1.B. The Corporation shall not declare or pay any dividends whatsoever upon, make any distribution upon, or redeem or repurchase any shares of Common Stock or any shares of any other class or series of stock ranking junior as to dividends or assets to the Series A Preferred Stock, if the aggregate of such payments, distributions, redemptions, or

repurchases from and after April 2, 1982 would exceed 20% of the sum of (a) the Corporation's cumulative consolidated net income (as determined in accordance with generally accepted accounting principles) subsequent to April 2, 1982 and (b) proceeds from the conversion of indebtedness or warrants convertible into the Corporation's Common Stock; provided, however, that the Corporation may declare or pay dividends upon, make a distribution upon, redeem or repurchase shares of Common Stock or shares of any other class or series of stock ranking junior as to dividends or assets to the Series A Preferred Stock, out of any capital contributions made to the Corporation or the proceeds from the sale of the Corporation's Common Stock after April 2, 1982.

1.C. No declaration or payment of dividends whatsoever shall be made upon, nor shall any distribution be made upon, nor shall there be any redemption or repurchase of, any shares of Common Stock or any shares of any other class or series of stock ranking junior as to dividends or assets to the Series A Preferred Stock if, at the time of such transaction (such time being herein called the "Payment Date"), (a) there shall be any accrued and unpaid dividends (whether or not declared) on the Series A Preferred Stock or (b) the Net Worth of the Corporation (as hereinafter defined), immediately after giving effect to any such payment of dividends, distribution, redemption or repurchase, shall be less than an amount equal to the aggregate liquidation value of all shares of Series A Preferred Stock and of all other shares of the capital stock of the Corporation ranking prior to or pari passu with the Series A Preferred Stock as to dividends and assets then outstanding. For the purpose of this paragraph 1, the "Net Worth of the Corporation" shall mean the net worth of the Corporation as shown on an audited consolidated balance sheet of the Corporation and its subsidiaries (all the financial information on which is computed in accordance with generally accepted accounting principles) as of the last day of the most recent fiscal year ended at least 90 days prior to the Payment Date (or ended within the 90 days prior to the Payment Date provided audited financial statements as of the last day of such fiscal year are available on or before the Payment Date), as adjusted to give effect to (w) any dividends accrued and unpaid (whether or not declared) which are not included as a liability on such consolidated balance sheet, (x) any payments of dividends or distributions upon, and any issuances, redemptions or repurchases of, any shares of the capital stock of the Corporation, or any contributions made to the capital of the Corporation, since the end of such fiscal year, (y) any payments

of dividends or distributions upon, and any issuances, redemptions or repurchases of, any outstanding share of preferred stock of any consolidated subsidiary of the Corporation which shares are not owned by the Corporation or another consolidated subsidiary of the Corporation and (z) net income or loss for the interim period between the end of such fiscal year and the end of the last fiscal quarter ended more than 45 days prior to the Payment Date, as shown on an unaudited consolidated statement of income of the Corporation and its subsidiaries (all the financial information on which is computed in accordance with the generally accepted accounting principles) as at the end of such fiscal quarter.

1.D. In the event that the Net Worth of the Corporation as shown on an audited consolidated balance sheet of the Corporation and its subsidiaries for any fiscal year shall be adjusted in connection with the declaration or payment of a dividend, or distribution, redemption or repurchase as contemplated by paragraph 1.C. above, the Corporation shall deliver to each holder of Series A Preferred Stock (x) the unaudited consolidated statement of income based on which such adjustment has been made, (y) an unaudited consolidated balance sheet as at the end of the last fiscal quarter ended more than 45 days prior to the Payment Date and (z) a certificate of the chief financial officer of the Corporation certifying what the Net Worth of the Corporation is immediately after giving effect to any such payments of dividends, distributions, redemptions or repurchases, including a computation identifying the adjustments made to the net worth of the Corporation in accordance with paragraph 1.C. above, not later than 5 days after the Payment Date in connection with which such adjustment has been made. Not later than 90 days after the end of each fiscal year of the Corporation (commencing with its fiscal year ending December 31, 1982), the Corporation shall deliver to each holder of Series A Preferred Stock audited consolidated statements of income and surplus of the Corporation and its subsidiaries for such fiscal year and an audited consolidated balance sheet of the Corporation and its subsidiaries as of the last day of such fiscal year. The financial information in such audited statements and balance sheet shall be computed in accordance with generally accepted accounting principles and such audited statements and balance sheet shall set forth in reasonable detail the consolidated financial condition of the Corporation and its subsidiaries and the consolidated results of operations of the Corporation and its subsidiaries, and shall be accompanied by a letter from an independent public accountant or firm of independent public accountants (who may be the public accountants regularly employed by the Corporation to audit and examine its books) stating whether, in making the examination in connection with the report on the

consolidated financial statements of the Corporation and its subsidiaries for the period under review, such person or firm has obtained (a) any knowledge that any unaudited consolidated statement of income for any interim period during such fiscal year or any unaudited consolidated balance sheet which is delivered to the holders of the Series A Preferred Stock pursuant to this paragraph 1.D. has not been prepared in accordance with generally accepted accounting principles or (b) any knowledge of any violation by the Corporation existing during such fiscal year in the observance of paragraph 1.C. of this paragraph 1 which has not been consented to by the holders of Series A Preferred Stock, and, if any knowledge of any such violation is stated in such certificate to have been obtained, specifying each such violation.

1.E. So long as any shares of the Series A Preferred Stock shall be outstanding, if there shall be any declaration or payment of dividends upon, any distribution upon, or any redemption or repurchase of, any shares of Common Stock or any shares of any class or series of stock ranking junior as to dividends or assets to the Series A Preferred Stock in violation of either paragraph 1.B. or 1.C., and, in the case of a violation of paragraph 1.B., such violation has not been corrected within 60 days of receipt by the Corporation of notice from any record holder of any shares of Series A Preferred Stock, or, in the case of a violation of paragraph 1.C., the Net Worth of the Corporation shall not have been restored to an amount equal to the aggregate liquidation value of all shares of Series A Preferred Stock and of all other shares of the capital stock of the Corporation ranking prior to or *pari passu* with the Series A Preferred Stock as to dividends and assets then outstanding within 90 days of any such declaration, payment, distribution, redemption or repurchase or within 60 days of receipt by the Corporation of notice from any record holder of any shares of Series A Preferred Stock directing that the Net Worth of the Corporation be so restored, whichever is later, the Series A Preferred Stock, at the option of the holder thereof, shall thereupon be immediately redeemable, in whole or in part, at a price per share payable in cash equal to the sum of \$1,000 plus an amount equal to all accrued and unpaid dividends thereon (whether or not declared). Such right of redemption shall be without prejudice to any other remedy or right which a holder of the Series A Preferred Stock may have by law or in equity. Any notice pursuant to this paragraph 1.E. shall be given by letter, cable, telex, telegram or other facsimile transmission, all charges or postage prepaid, directed to the Corporation at its principal executive offices, or to such other person or such other address as the Corporation may specify in writing to the holders of the Series A Preferred Stock.

## 2. Redemption.

2.A. Redemption Price. The Series A Preferred Stock shall, subject to section (e) of the provisions of the \$1.20 Series C Cumulative Preferred Stock, be redeemable as provided in this paragraph 2, at the option of the Corporation, at any time after it is issued, and, at the option of the holder thereof, at any time after the fifth anniversary of the date of issue, at a price per share payable in cash equal to the sum of \$1,000 plus in each case an amount equal to all accrued and unpaid dividends thereon (whether or not declared) to the date fixed for redemption (herein called the "Redemption Date"), such sum being herein called the "Redemption Price."

2.B. Notice of Redemption. Notice of any redemption of Series A Preferred Stock, specifying the Redemption Price, and the time and place of redemption, shall be mailed, postage prepaid, if to the holder of record of shares to be redeemed, at such holder's address as shown by the records of the Corporation, and if to the Corporation, at the address set forth in paragraph 1.E. hereof, not more than 60 nor less than 30 days prior to the Redemption Date; if less than all the shares owned by such holder are then to be redeemed, the notice shall also specify the number of shares and the certificate numbers thereof which are to be redeemed.

2.C. Dividends after Redemption Date. Notice of redemption having been so mailed, the shares of Series A Preferred Stock therein designated for redemption shall not be entitled to any dividends accruing after the Redemption Date specified in such notice, unless default be made in the payment of the Redemption Price, and on such Redemption Date all rights of the respective holders of such shares, as shareholders of the Corporation by reason of the ownership of such shares, shall cease, except the right to receive the Redemption Price of such shares upon presentation and surrender of the respective certificates representing such shares, and such shares shall not after such Redemption Date be deemed to be outstanding. In case less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

2.D. All Past Dividends Must be Paid Prior to Redemption. The Corporation shall not purchase or redeeming unless all dividends on such stock at any time outstanding periods (accrued through the date of purchase or redemption) shall have been paid or declared and a sum sufficient for the payment thereof set apart. If the Redemption

Price of any shares of the Series A Preferred Stock redeemed from any holder is less than \$1,000 plus the accrued and unpaid dividends to the date fixed for redemption of such shares because the Corporation is prohibited by law from paying any of the accrued and unpaid dividends on such shares, then such dividends shall be added in equal amounts per share to the accrued and unpaid dividends on the shares of the Series A Preferred Stock remaining outstanding in the hands of such holder, provided that in no event shall the Corporation purchase or redeem the last share of Series A Preferred Stock held by such holder until the Corporation shall have paid to such holder all accrued and unpaid dividends on all shares of Series A Preferred Stock held by such holder at any time.

3. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment to the holders of shares of any class or series of the capital stock of the Corporation which by its terms ranks prior to the Series A Preferred Stock as to dividends or assets, the holders of the shares of Series A Preferred Stock shall be entitled to be paid, pari passu with the holders of the Series B Convertible Preferred Stock and the \$1.20 Series C Cumulative Convertible Preferred Stock and before any distribution or payment is made upon any Common Stock or upon any other class or series of the capital stock of the Corporation ranking junior as to dividends and assets to the Series A Preferred Stock, an amount equal to the sum of \$1,000 per share plus an amount equal to all accrued and unpaid dividends thereon (whether or not declared) to the date payment is made available to the holders of the Series A Preferred Stock (such sum being herein called the "Liquidation Payment"). Upon receipt of the Liquidation Payment, the holders of the Series A Preferred Stock shall not be entitled to any further payment. If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation to be distributed among the holders of the Series A Preferred Stock, the Series B Convertible Preferred Stock and the \$1.20 Series C Cumulative Convertible Preferred Stock shall be insufficient to permit payment to such holders of the amount distributable as aforesaid, then the entire assets of the Corporation to be distributed to such holders shall be distributed ratably among them. Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Series A Preferred Stock, Series B Convertible Preferred Stock, \$1.20 Series C Cumulative Convertible Preferred Stock and any other class or series of Preferred Stock ranking senior as to dividends or assets to the Common Stock shall have been paid in full the amount to which such holders

shall be entitled, the remaining assets of the Corporation may be distributed to the holders of Common Stock. Notice of such liquidation, dissolution or winding up, stating the amount of the Liquidation Payment, a payment date and the place where the amounts distributable shall be payable, shall be given by mail, postage prepaid, at least 10 days prior to the payment date stated therein, to the holders of record of the Series A Preferred Stock, such notice to be addressed to each such holder at such holder's address as shown by the records of the Corporation. Neither the consolidation nor merger of the Corporation into or with any other corporation or corporations, nor the sale or transfer by the Corporation of all or any part of its assets nor the reduction of the authorized capital stock of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of any of the provisions of this paragraph 3.

4. Voting Rights. Except (i) as otherwise provided by the laws of the State of Delaware, (ii) except that the holders of the shares of Series A Preferred Stock shall vote as a class on any proposed amendment to the Certificate of Incorporation of the Corporation which would alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely and (iii) that no shares of any class or series of stock ranking senior to, or on a parity with the Series A Preferred Stock as to dividends or assets, shall be authorized or issued without the approval of the holders of the Series A Preferred Stock voting as a class, the holders of the shares of Series A Preferred Stock shall not have any voting rights. In the case of any vote by the holders of shares of Series A Preferred Stock, each holder of record of the Series A Preferred Stock shall be entitled to one vote for each outstanding share of Series A Preferred Stock held by such holder.

---

Of the 103,000 authorized shares of the Preferred Stock the Corporation shall have authority to issue 360 shares of Series B Convertible Preferred Stock. The voting powers and the designation, preferences and relative participating, optional or other rights, and the qualifications, limitations or restrictions thereof are as follows:

(iii) I. Designation of Series. The series of Preferred Stock provided for hereby is designated "Series B Convertible Preferred Stock."

II. 1. Dividends.

1.A. The holders of record of Series B Convertible Preferred Stock shall be entitled, equally and ratably, to receive, pari passu with the holders of the Series A Preferred Stock and the \$1.20 Series C Cumulative Convertible Preferred Stock and before any dividends are declared or paid upon any class or series of the capital stock of the Corporation ranking junior to the Series A Preferred Stock or the \$1.20 Series C Cumulative Convertible Preferred Stock as to dividends, when and as declared by the Board of Directors out of funds legally available for such purpose, cash dividends payable semiannually on the third days of October and April of each year (the "Dividend Payment Dates") at the annual rate of \$72.50 per share or at the rate provided for in the following sentence (such annual rate being herein called the "Annual Dividend Rate"). Holders of not less than two-thirds of the outstanding shares of Series B Convertible Preferred Stock, by a vote at a meeting duly called and held for that purpose or by written consent, may elect at any time prior to the second anniversary of the issuance of the Series B Convertible Preferred Stock, by delivery of written notice to the Corporation, to have the Annual Dividend Rate fixed at a rate equal to the commercial dividend rate in effect at the time of election for preferred stock having similar attributes issued by entities of similar size to the Corporation and engaged in businesses similar to those of the Corporation and its subsidiaries; provided that the holders of not less than two-thirds of the outstanding shares of Series B Convertible Preferred Stock may elect, by delivery of written notice to the Corporation within ten days after final determination of such commercial dividend rate, to withdraw their election to fix the Annual Dividend Rate at a commercial dividend rate. Such commercial dividend rate shall be determined (i) by agreement of two nationally recognized U.S.-based investment banking firms, one of which shall be selected by each of the Corporation and the holders of the Series B Convertible Preferred Stock, or (ii) if such two firms are unable to agree within 45 days after the delivery of notice of election, promptly thereafter by a third nationally recognized U.S.-based investment banking firm to be selected by such two firms. Such commercial dividend rate shall accrue from and after the eleventh day following the final determination of such commercial dividend rate; provided that the

holders of the Series B Convertible Preferred Stock shall not have withdrawn their election to fix the Annual Dividend Rate at a commercial dividend rate. In the event of such election and provided such election is not withdrawn as provided above, the Series B Convertible Preferred Stock will cease to be convertible into Class B Common Stock and the holders of shares of Series B Convertible Preferred Stock shall have no rights of conversion pursuant to paragraph 3 hereof or otherwise.

Cash dividends shall commence on the first Dividend Payment Date which is at least 30 days after the date of issue. The Annual Dividend Rate shall be computed on the basis of a 360-day year of twelve 30-day months. Dividends shall be cumulative and shall accrue at the Annual Dividend Rate, whether or not declared, from and after the date of issue. The initial dividend paid with respect to each share of Series B Convertible Preferred Stock issued on a date other than a Dividend Payment Date shall be prorated according to the portion of the dividend period between the date of issue of such share and the next first Dividend Payment Date.

1.B. The Corporation shall not declare or pay any dividends whatsoever upon, make any distribution upon, or redeem or repurchase any shares of Common Stock or any shares of any other class or series of stock ranking junior as to dividends or assets to the Series B Convertible Preferred Stock, if the aggregate of such payments, distributions, redemptions or repurchases from and after April 2, 1982 would exceed 20% of the sum of (a) the Corporation's cumulative consolidated net income (as determined in accordance with generally accepted accounting principles) subsequent to April 2, 1982 and (b) proceeds from the conversion of indebtedness or warrants convertible into the Corporation's Common Stock; provided, however, that the Corporation may declare or pay dividends upon, make distributions upon, redeem or repurchase shares of Common Stock or shares of any other class or series of stock ranking junior as to dividends or assets to the Series B Convertible Preferred Stock, out of any capital contributions made to the Corporation or the proceeds from the sale of the Corporation's Common Stock after April 2, 1982.

1.C. No declaration or payment of dividends whatsoever shall be made upon, nor shall any distribution be made upon, nor shall there be any redemption or repurchase of, any shares of Common Stock or any shares of any other class or series of stock ranking junior as to dividends or assets to the Series B Convertible Preferred Stock if, at the time of such transaction (such time being herein called the

"Payment Date"), (a) there shall be any accrued and unpaid dividends (whether or not declared) on the Series B Convertible Preferred Stock or (b) the Net Worth of the Corporation (as hereinafter defined), immediately after giving effect to any such payment of dividends, distribution, redemption or repurchase, shall be less than an amount equal to the aggregate liquidation value of all shares of the capital stock of the Corporation ranking prior to or pari passu with the Series B Convertible Preferred Stock as to dividends and assets then outstanding. For the purpose of this paragraph 1, the "Net Worth of the Corporation" shall mean the net worth of the Corporation as shown on an audited consolidated balance sheet of the Corporation and its subsidiaries (all the financial information on which is computed in accordance with generally accepted accounting principles) as of the last day of the most recent fiscal year ended at least 90 days prior to the Payment Date (or ended within the 90 days prior to the Payment Date provided audited financial statements as of the last day of such fiscal year are available on or before the Payment Date), as adjusted to give effect to (w) any dividends accrued and unpaid (whether or not declared) which are not included as a liability on such consolidated balance sheet, (x) any payments of dividends or distributions upon, and any issuances, redemptions or repurchases of, any shares of the capital stock of the Corporation, or any contributions made to the capital of the Corporation, since the end of such fiscal year, (y) any payments of dividends or distributions upon, and any issuances, redemptions or repurchases of, any outstanding share of preferred stock of any consolidated subsidiary of the Corporation which shares are not owned by the Corporation or another consolidated subsidiary of the Corporation and (z) net income or loss for the interim period between the end of such fiscal year and the end of the last fiscal quarter ended more than 45 days prior to the Payment Date, as shown on an unaudited consolidated statement of income of the Corporation and its subsidiaries (all the financial information on which is computed in accordance with the generally accepted accounting principles) as at the end of such fiscal quarter.

1.D. In the event that the Net Worth of the Corporation as shown on an audited consolidated balance sheet of the Corporation and its subsidiaries for any fiscal year shall be adjusted in connection with the declaration or payment of a dividend, or distribution, redemption or repurchase as contemplated by paragraph 1.C. above, the Corporation shall deliver to each holder of Series B Convertible Preferred Stock (x) the unaudited consolidated statement of income based on which such adjustment has been made, (y) an unaudited consolidated balance sheet as at the end of the

last fiscal quarter ended more than 45 days prior to the Payment Date and (2) a certificate of the chief financial officer of the Corporation certifying what the Net Worth of the Corporation is immediately after giving effect to any such payments of dividends, distributions, redemptions or repurchases, including a computation identifying the adjustments made to the net worth of the Corporation in accordance with paragraph 1.C. above, not later than 5 days after the Payment Date in connection with which such adjustment has been made. Not later than 90 days after the end of each fiscal year of the Corporation (commencing with its fiscal year ending December 31, 1982), the Corporation shall deliver to each holder of Series B Convertible Preferred Stock audited consolidated statements of income and surplus of the Corporation and its subsidiaries for such fiscal year and an audited consolidated balance sheet of the Corporation and its subsidiaries as of the last day of such fiscal year. The financial information in such audited statements and balance sheet shall be computed in accordance with generally accepted accounting principles and such audited statements and balance sheet shall set forth in reasonable detail the consolidated financial condition of the Corporation and its subsidiaries and the consolidated results of operations of the Corporation and its subsidiaries, and shall be accompanied by a letter from an independent public accountant or firm of independent public accountants (who may be the public accountants regularly employed by the Corporation to audit and examine its books) stating whether, in making the examination in connection with the report on the consolidated financial statements of the Corporation and its subsidiaries for the period under review, such person or firm has obtained (a) any knowledge that any unaudited consolidated statement of income for any interim period during such fiscal year or any unaudited consolidated balance sheet which is delivered to the holders of the Series B Convertible Preferred Stock pursuant to this paragraph 1.D. has not been prepared in accordance with generally accepted accounting principles or (b) any knowledge of any violation by the Corporation existing during such fiscal year in the observance of paragraph 1.C. of this paragraph 1 which has not been consented to by the holders of Series B Convertible Preferred Stock, and, if any knowledge of any such violation is stated in such certificate to have been obtained, specifying each such violation.

1.E. So long as any shares of the Series B Convertible Preferred Stock shall be outstanding, if there shall be any declaration or payment of dividends upon, any distribution upon, or any redemption or repurchase of, any shares of Common Stock or any shares of any class or series of stock ranking junior as to dividends or assets to the Series B Convertible Preferred Stock in violation of either paragraph 1.B. or 1.C., and, in the case of a violation of paragraph 1.B., such violation has not been corrected within 60 days of receipt by the Corporation of notice from any

record holder of any shares of Series B Convertible Preferred Stock, or, in the case of a violation of paragraph 1.C., the Net Worth of the Corporation shall not have been restored to an amount equal to the aggregate liquidation value of all shares of Series B Convertible Preferred Stock and of all other shares of the capital stock of the Corporation ranking prior to or pari passu with the Series B Convertible Preferred Stock as to dividends and assets then outstanding within 90 days of any such declaration, payment, distribution, redemption or repurchase or within 60 days of receipt by the Corporation of notice from any record holder of any shares of Series B Convertible Preferred Stock directing that the Net Worth of the Corporation be so restored, whichever is later, the Series B Convertible Preferred Stock, at the option of the holder thereof, shall thereupon be immediately redeemable, in whole or in part, at a price per share payable in cash equal to the sum of \$1,000 plus an amount equal to all accrued and unpaid dividends thereon (whether or not declared). Such right of redemption shall be without prejudice to any other remedy or right which a holder of the Series B Convertible Preferred Stock may have by law or in equity. Any notice pursuant to this paragraph 1.E. shall be given by letter, cable, telex, telegram or other facsimile transmission, all charges or postage prepaid, directed to the Corporation at its principal executive offices, or to such other person or such other address as the Corporation may specify in writing to the holders of the Series B Convertible Preferred Stock.

1.F. The Corporation shall notify each holder of Series B Convertible Preferred Stock, by mailing written notice, postage prepaid, to each holder of record of shares of Series B Convertible Preferred Stock, at such holder's address as shown by the records of the Corporation, within 45 days prior to the record date for any dividend or distribution to be paid to holders of shares of Common Stock or any other class or series of capital stock ranking junior to the Series B Convertible Preferred Stock.

## 2. Redemption.

2.A. Redemption Price. The Series B Convertible Preferred Stock shall, subject to section (e) of the provisions of the \$1.20 Series C Cumulative Convertible Preferred Stock, be redeemable as provided in this paragraph 2 at any time after the fifth anniversary of the issuance thereof, at the option of the holder thereof or at the option of the Corporation, at a price per share payable in cash equal to the sum of \$1,000 plus in each case an amount equal to all accrued and unpaid dividends thereon (whether or not declared) to the date fixed for redemption (herein called the "Redemption Date"), such sum being herein called the "Redemption Price."

2.B. Notice of Redemption. Notice of any redemption of Series B Convertible Preferred Stock, specifying the Redemption Price and the time and place of redemption, shall be mailed, postage prepaid, in case of redemption by the Corporation, to each holder of record of shares to be redeemed, at such holder's address as shown by the records of the Corporation, and, in case of redemption by the holder thereof, to the Corporation as set forth in paragraph 1.E., not more than 60 nor less than 30 days prior to the Redemption Date; if less than all the shares owned by such holder are then to be redeemed, the notice shall also specify the number of shares and the certificate numbers thereof which are to be redeemed.

2.C. Dividends after Redemption Date. Notice of redemption having been so mailed, the shares of Series B Convertible Preferred Stock therein designated for redemption shall not be entitled to any dividends accruing after the Redemption Date specified in such notice, unless default be made in the payment of the Redemption Price, and on such Redemption Date all rights of the respective holders of such shares, as shareholders of the Corporation by reason of the ownership of such shares, shall cease, except the right to receive the Redemption Price of such shares upon presentation and surrender of the respective certificates representing such shares, and such shares shall not after such Redemption Date be deemed to be outstanding. In case less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

2.D. All Past Dividends Must be Paid Prior to Redemption. The Corporation shall not purchase or redeem shares of the Series B Convertible Preferred Stock at any time outstanding unless all dividends on such stock for all past quarterly dividend periods (accrued through the date of purchase or redemption) shall have been paid or declared and a sum sufficient for the payment thereof set apart. If the Redemption Price of any shares of the Series B Convertible Preferred Stock redeemed from any holder is less than \$1,000 plus the accrued and unpaid dividends to the date fixed for redemption of such shares because the Corporation is prohibited by law from paying any of the accrued and unpaid dividends on such shares, then such dividends shall be added in equal amounts per share to the accrued and unpaid dividends on the shares of the Series B Convertible Preferred Stock remaining outstanding in the hands of such holder, provided that in no event shall the Corporation purchase or redeem the last share of Series B Convertible Preferred Stock held by such holder until the Corporation shall have paid to such holder all accrued and unpaid dividends on all shares of Series B Convertible Preferred Stock held by such holder at any time.

3. Conversion. Each share of Series B Convertible Preferred Stock shall be convertible at the option of the holder thereof, at any time to and including the fifth anniversary of the issuance of the Series B Convertible Preferred Stock, upon surrender to any office or agency maintained by the Corporation from time to time for the purpose of the certificates for the shares so to be converted, into one fully paid and nonassessable share of Class B Common Stock of the Corporation, provided that at the time any such share of Series B Convertible Preferred Stock is converted all shares of Series B Convertible Preferred Stock outstanding are converted.

The right, if any, to convert shares of the Series B Convertible Preferred Stock called for redemption shall terminate upon the election of the holders of Series B Convertible Preferred Stock to designate a commercial dividend rate as the Annual Dividend Rate pursuant to paragraph 1.A hereof. Upon conversion, no payment or adjustment shall be made for dividends on any class of shares.

The Corporation shall at all times reserve and keep available out of its authorized but unissued shares the full number of shares into which all shares of Series B Convertible Preferred Stock from time to time outstanding are convertible.

4. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after payment to the holders of shares of any class or series of the capital stock of the Corporation which by its terms ranks prior to the Series B Convertible Preferred Stock as to dividends or assets, the holders of the shares of Series B Convertible Preferred Stock shall be entitled to be paid, pari passu with the holders of the Series A Preferred Stock and the \$1.20 Series C Cumulative Convertible Preferred Stock and before any distribution or payment is made upon any Common Stock or upon any other class or series of the capital stock of the Corporation ranking junior as to dividends and assets to the Series B Convertible Preferred Stock, an amount equal to the sum of \$1,000 per share plus an amount equal to all accrued and unpaid dividends thereon (whether or not declared) to the date payment is made available to the holders of the Series B Convertible Preferred Stock (such sum being herein called the "Liquidation Payment"). Upon receipt of the Liquidation Payment, the holders of the Series B Convertible Preferred Stock shall not be entitled to any further payment. If upon such liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation to be distributed among the holders of the Series B Convertible

Preferred Stock, Series A Preferred Stock and \$1.20 Series C Cumulative Convertible Preferred Stock shall be insufficient to permit payment to such holders of the amount distributable as aforesaid, then the entire assets of the Corporation to be distributed to such holders shall be distributed ratably among them. Upon any such liquidation, dissolution or winding up of the Corporation, after the holders of Series A Preferred Stock, Series B Convertible Preferred Stock and \$1.20 Series C Cumulative Convertible Preferred Stock and any other class or series of Preferred Stock ranking senior as to dividends or assets to the Common Stock shall have been paid in full the amount to which such holders shall be entitled, the remaining assets of the Corporation may be distributed to the holders of Common Stock. Notice of such liquidation, dissolution or winding up, stating the amount of the Liquidation Payment, the aggregate amount payable on liquidation to holders of the Corporation's Common Stock, as determined according to whether or not the holders of shares of Series B Convertible Preferred Stock have elected to exercise their right of conversion pursuant to paragraph 3 above, a payment date and the place where the amounts distributable shall be payable, shall be given by mail, postage prepaid, at least 45 days prior to the payment date stated therein, to the holders of record of the Series B Convertible Preferred Stock, such notice to be addressed to each such holder at such holder's address as shown by the records of the Corporation. The holders of shares of Series B Convertible Preferred Stock shall have 15 days from receipt of such liquidation notice to convert such shares in accordance with the provisions of paragraph 3. Neither the consolidation nor merger of the Corporation into or with any other corporation or corporations, nor the sale or transfer by the Corporation of all or any part of its assets nor the reduction of the authorized capital stock of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of any of the provisions of this paragraph 4.

5. Voting Rights. Except (i) as otherwise provided by the laws of the State of Delaware, (ii) that the holders of the shares of Series B Convertible Preferred Stock shall vote as a class on any proposed amendment to the Certificate of Incorporation of the Corporation which would alter or change the powers, preferences or special rights of the Series B Convertible Preferred Stock so as to affect them adversely, and (iii) that no shares of any class or series of stock ranking senior to, or on a parity with the Series B Convertible Preferred Stock as to dividends or assets, shall be authorized or issued without the approval of the holders of the shares of Series B Convertible Preferred Stock voting as a class, the holders of the shares of Series B Convertible

Preferred Stock shall have no voting rights. In the case of any vote by the holders of shares of Series B Convertible Preferred Stock, each holder of record of the Series B Convertible Preferred Stock shall be entitled to one vote for each outstanding share of Series B Convertible Preferred Stock held by such holder.

#### B. COMMON STOCK

Of the 960 authorized shares of the Common Stock, the Corporation shall have authority to issue 600 shares as shares of Class A Common Stock ("Class A Common Stock") and 360 shares as shares of Class B Common Stock ("Class B Common Stock").

(1) Each holder of Class A Common Stock shall have one vote in respect of each share of Class A Common Stock held by such holder. Holders of Class A Common Stock voting as a class shall have the right to elect all directors of the Corporation other than one director elected by the holders of Class B Common Stock voting as a class. Holders of Class A Common Stock shall vote together as a class with holders of Class B Common Stock on all other matters submitted to the Corporation's stockholders. Holders of Class A Common Stock shall have no right to subscribe for, nor any preemptive right to purchase, any shares of the Corporation's capital stock.

The Class A Common Stock shall rank pari passu with the Class B Common Stock with respect to payment of dividends or any other distributions and upon liquidation. No dividend or distribution, whether upon liquidation or otherwise, shall be paid on any issued and outstanding shares of Class B Common Stock unless a ratable dividend or distribution is paid on issued and outstanding shares of Class A Common Stock.

(2) Holder of Class B Common Stock, voting together as a class, shall have the right to elect one director of the Corporation. Each holder of Class B Common Stock shall have one vote in respect of every three shares (rounding down in the case of fractional shares) of Class B Common Stock held by such holder on all other matters submitted to the Corporation's stockholders, and holders of Class B Common Stock shall vote together as a class with holders of Class A Common Stock on all such other matters.

Until the fifth anniversary of the first issuance of shares of the Corporation's Series B Convertible Preferred Stock, each holder of Class B Common Stock shall have the

preemptive right to subscribe for a ratable portion (after giving effect to the exercise of all such preemptive rights) of such number of shares of the Corporation's Common Stock in excess of 960 as may be issued by the Corporation from time to time. The Corporation shall notify each holder of Class B Common Stock in writing 60 days prior to the proposed issuance of any Common Stock and each such holder shall exercise such holder's preemptive right by delivery of written notice to the Corporation within 30 days after receipt of such written notice from the Corporation. Any purchase of shares of Common Stock pursuant to such preemptive right shall be on the same terms and conditions as are offered to other purchaser of such stock, except (i) that in the event the aggregate voting power of all shares of Common Stock held and to be purchased by the holders of Class B Common Stock shall exceed 19% of the aggregate voting power of all shares of Common Stock outstanding after giving effect to the proposed issuance of Common Stock, the voting power of the shares to be purchased pursuant to any such preemptive rights shall be appropriately adjusted and (ii) that in the event any such shares of Common Stock are proposed to be issued in exchange for consideration other than cash, the holders of Class B Common Stock shall be required to pay cash equal in value to such non-cash consideration as determined in good faith by the Corporation's Board of Directors.

The Class B Common Stock shall rank pari passu with the Class A Common Stock with respect to payment of dividends or any other distributions and upon liquidation. No dividend or distribution, whether upon liquidation or otherwise, shall be paid on any issued and outstanding shares of Class A Common Stock unless a ratable dividend or distribution is paid on issued and outstanding shares of Class B Common Stock.

#### C. OTHER PROVISIONS

(1) Except as provided herein with respect to the Class B Common Stock, no holder of any of the shares of any class or series of stock or of options, warrants or other rights to purchase shares of any class or series of stock or of other securities of the Corporation shall have any preemptive right to purchase or subscribe for any unissued stock of any class or series or any additional shares of any class or series to be issued by reason of any increase of the authorized capital stock of the Corporation of any class or series, or bonds, certificates of indebtedness, debentures or other securities convertible into or exchangeable for stock of the Corporation of any class or series, or carrying any right to

purchase stock of any class or series, but any such unissued stock, additional authorized issue of shares of any class or series of stock or securities convertible into or exchangeable for stock, or carrying any right to purchase stock, may be issued and disposed of pursuant to resolution of the Board of Directors to such persons, firms, corporations or associations, whether such holders or others, and upon such terms as may be deemed advisable by the Board of Directors in the exercise of its sole discretion.

(2) The relative powers, preferences and rights of each series of Preferred Stock in relation to the powers, preferences and rights of each other series of Preferred Stock shall, in each case, be as fixed from time to time by the Board of Directors in the resolution or resolutions adopted pursuant to authority granted in Paragraph A of this Article FOURTH and the consent, by class or series vote or otherwise, of the holders of such of the series of Preferred Stock as are from time to time outstanding shall not be required for the issuance by the Board of Directors of any other series of Preferred Stock whether or not the powers, preferences and rights of such other series shall be fixed by the Board of Directors as senior to, or on a parity with, the powers, preferences and rights of such outstanding series, or any of them; provided, however, that the Board of Directors may provide in the resolution or resolutions as to any series of Preferred Stock adopted pursuant to Paragraph A of this Article FOURTH that the consent of the holders of a majority (or such greater proportion as shall be fixed therein) of the outstanding shares of such series voting thereon shall be required for the issuance of any or all other series of Preferred Stock.

(3) Subject to the provisions of subparagraph 2 of this Paragraph C, shares of any series of Preferred Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(4) Except as otherwise provided with respect to the Class B Common Stock, shares of authorized Common Stock may be issued from time to time as the Board of Directors of the Corporation shall determine and on such terms and for such consideration as shall be fixed by the Board of Directors.

(5) Subject to the applicable provisions of the GCL, if any, the authorized number of shares of Class A Common Stock, Class B Common Stock and Preferred Stock may, without a class or series vote, be increased or decreased from time to time by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote thereon.

FIFTH. The name and mailing address of the Sole Incorporator is as follows:

| <u>Name</u>        | <u>Mailing Address</u>                                     |
|--------------------|--|
| Jane von der Heyde | Suite 2400<br>650 Fifth Avenue<br>New York, New York 10019 |

SIXTH. The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- (1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
- (2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.
- (3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.
- (4) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the statutes of Delaware, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SEVENTH. Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide.

The books of the Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

EIGHTH. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of the GCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of the GCL, order a meeting of the creditors or class of creditors, and/or of the stockholders of class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

NINTH. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or thereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

4. This Restated Certificate of Incorporation was duly adopted by the unanimous written consent of the stockholders in accordance with Sections 228, 242 and 245 of the General Corporation Law of Delaware.

5. The capital of the Corporation will not be reduced by reason of any amendment in this Restated Certificate of Incorporation.

Vice  
IN WITNESS WHEREOF, the Corporation has caused  
this Restated Certificate of Incorporation to be signed by  
its President and attested by its Secretary this 29th day  
of September, 1983.

ISSUED 11.11.83

DIAMOND (USA) INC.

By

*Richard*

Vice President

Dated: September 29, 1983

ATTEST

*June m. de Hengde*  
Secretary

ret.: Ticor Title Insurance Co.  
120 Broadway  
New York, New York  
10271

STATE OF OREGON, )  
County of Klamath )  
Filed for record at request of

on this 23rd day of Nov. A.D. 19 83  
at 3:21 o'clock P M, and duly  
recorded in Vol. M83 of Misc.  
Page 20235

EVELYN BIEHN, County Clerk

By *Ann Smith* Deputy

Fee 140.00