

If and when all dividends then in default on the Preference Stock of each series then outstanding shall have been paid, the Preference Stock shall be divested of such voting powers and the terms of office of the additional two directors (whether elected by vote of the holders of Preference Stock or to fill a vacancy) shall forthwith terminate and the number of directors constituting the full Board of Directors shall be reduced accordingly.

Whenever the Preferred Stock and/or Preference Stock shall be entitled to elect Directors, any holder of such stock shall have the right, during regular business hours, in person or by a duly authorized representative, to examine and to make transcripts of the stock records of the Corporation for the Preferred Stock and/or Preference Stock for the purpose of communicating with other holders of such stock with respect to the exercise of such right of election.

#### **D. No Cumulative Voting**

XIII. At all elections of directors by stockholders of the Corporation, each holder of Common Stock, and each holder of Preferred Stock and/or Preference Stock, if entitled to vote at such election, shall be entitled to one vote for each share. The principle of cumulative voting shall not apply.

#### **E. Certain Voting Rights of Preferred Stock**

XIV. So long as any shares of the Preferred Stock of any series shall be outstanding, the Corporation shall not, without the consent by vote or in writing of the holders of a majority of the shares of the Preferred Stock of all series at the time outstanding, considered as a class without regard to series,

(a) Sell all or substantially all its assets or consolidate or merge with or into any other corporation or corporations, except that no such consent or vote shall be required if such sale, consolidation or merger or the issuance or assumption of all securities to be issued or assumed in connection with such sale, consolidation or merger shall have been approved, permitted or ordered by the Securities and Exchange Commission or by any successor commission or by any

regulatory authority of the United States of America having jurisdiction over such sale, consolidation or merger or the issuance or assumption of securities in connection therewith; provided, however, that the provisions of this subparagraph (a) shall not apply to (i) a consolidation of the Corporation with, or a merger into the Corporation of, any subsidiary of the Corporation, or (ii) the purchase or other acquisition by the Corporation of the franchises or assets of another corporation in any manner which does not involve a consolidation or merger under the laws of the State of Delaware; the term "subsidiary" as used in this subparagraph (a) shall mean any corporation all of the outstanding shares of stock of which (except directors' qualifying shares) at the time shall be owned directly or indirectly by the Corporation or by a wholly-owned subsidiary of the Corporation; or

(b) Increase the total authorized amount of Preferred Stock, or authorized any other preferred stock on a parity therewith with respect to the payment of dividends or the distribution of assets upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary; or

(c) Issue any additional shares of Preferred Stock (including the reissuance of reacquired Preferred Stock) ranking on a parity with the outstanding shares of Preferred Stock either as to the payment of dividends or as to the distribution of assets unless (i) the consolidated gross income of the Corporation and its subsidiaries (after all taxes including taxes based on income) for 12 consecutive calendar months within a period of 15 calendar months immediately preceding the date of such issuance is equal to at least one and one-half times the aggregate of all interest charges on indebtedness of the Corporation and its subsidiaries on a consolidated basis (excluding interest charges on indebtedness to be retired by the application of the proceeds from the issuance of such Preferred Stock) and the annual dividend requirements on all Preferred Stock of the Corporation and its subsidiaries on a consolidated basis (including dividend requirements on all Preferred Stock ranking as to dividends or assets prior to or on a parity with the Preferred Stock to be issued) which will be outstanding immediately after the issuance of such Preferred Stock; and unless (ii) the aggregate par value, or stated capital represented by the outstanding shares of the junior stock of the Corporation, including premiums thereon plus any surplus of the Corporation is equal to at least the aggregate amount payable in connection with an involuntary liquidation of the Corporation with respect to all shares of the Preferred Stock and all shares of stock, if any, ranking prior thereto or on a parity therewith as to dividends or assets, which will be outstanding immediately after the issuance of such Preferred Stock. If for the purpose of meeting the requirements of clause (c)(ii) immediately preceding it shall have been necessary to take into consideration any earned surplus of the Corporation, the Corporation shall not thereafter pay any dividends on, or make any distributions in respect of, or purchase or otherwise acquire, junior stock which would result in reducing the junior stock equity to an amount less than the amount payable on involuntary liquidation of the Corporation with respect to all shares of the Preferred Stock and all shares ranking prior to or on a parity with the Preferred Stock as to dividends and assets at the time outstanding. If, during the period for which gross income is to be determined for the purpose set forth in clause (c)(i) above, the amount required to be expended by the Corporation pursuant to a maintenance fund or similar fund established under its mortgage indenture shall exceed the amount deducted in the determination of gross income on account of depreciation and maintenance, such excess shall also be deducted in determining gross income; or

(d) Issue or assume any unsecured notes, debentures or other securities representing unsecured indebtedness for any purpose other than

(i) the refunding of unsecured indebtedness theretofore created or assumed by the Corporation and then outstanding;

(ii) the reacquisition, redemption or other retirement of any indebtedness, whether secured or unsecured, which reacquisition, redemption or other retirement has been authorized by any state or federal regulatory authority; or

(iii) the reacquisition, redemption or other retirement of outstanding shares of one or more series of the Preferred Stock;

if immediately after such issue or assumption the total principal amount of all unsecured notes, debentures or other securities representing unsecured indebtedness issued or assumed by the Corporation (including unsecured indebtedness then to be issued or assumed) would exceed twenty per centum (20%) of the aggregate of (1) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by the Corporation and then to be outstanding and (2) the par value of, or stated capital represented by, the shares of all classes of stock of the Corporation then to be outstanding in the hands of the public, plus premium on such stock, plus capital surplus, earned surplus and any other surplus of the Corporation as then to be stated on the books of account of the Corporation.

XV. So long as any shares of the Preferred Stock of any series shall be outstanding, the Corporation shall not, without the consent by vote or in writing of the holders of two-thirds of the number of shares of the Preferred Stock of all series at the time outstanding considered as a class without regard to series, authorize any class of stock ranking prior to the Preferred Stock with respect to the payment of dividends or the distribution of assets upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary.

XVI. So long as any shares of the Preferred Stock of any series shall be outstanding, the Corporation shall not change the express terms and provisions of the Preferred Stock as such series so as to affect such series adversely, without the consent by vote or in writing of the holders of two-thirds of the number of shares of Preferred Stock of all series so affected, considered as a class without regard to series.

#### F. Certain Voting Rights of Preference Stock

XVII. So long as any shares of the Preference Stock of any series shall be outstanding, the Corporation shall not, without the consent by vote or in writing of the holders of two-thirds of the number of shares of Preference Stock of all series at the time outstanding considered as a class without regard to series, authorize or increase the authorized amount of any class of stock, other than shares of the Preferred Stock (whether now or hereafter authorized or increased) ranking prior to the Preference Stock with respect to the payment of dividends or the distribution of assets upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary.

XVIII. So long as any shares of the Preference Stock of any series shall be outstanding, the Corporation shall not change the express terms and provisions of the Preference Stock of such series so as to affect such series adversely, without the consent by vote or in writing of the holders of two-thirds of the number of shares of Preference Stock of all series so affected, considered as a class without regard to series.

XIX. So long as shares of the Preference Stock of any series shall be outstanding, the Corporation shall not, without the consent by vote or in writing of the holders of a majority of the shares of Preference Stock of all series at the time outstanding considered as a class without regard to series, either (a) increase the authorized amount of Preference Stock, or (b) authorize or create, or increase the authorized amount of, any class of stock, which is entitled to dividends or assets on a parity with the Preference Stock, (c) sell all or substantially all its assets or consolidate or merge with or into any other

corporation or corporations, except that no such consent or vote shall be required if such sale, consolidation or merger or the issuance or assumption of all securities to be issued or assumed in connection with such sale, consolidation or merger shall have been approved, permitted or ordered by the Securities and Exchange Commission or by any successor commission or by any regulatory authority of the United States of America having jurisdiction over such sale, consolidation or merger or the issuance or assumption of securities in connection therewith; provided, however, that the provisions of this subparagraph (c) shall not apply to (i) a consolidation of the Corporation with, or a merger into the Corporation of, any subsidiary of the Corporation, or (ii) the purchase or other acquisition by the Corporation of the franchises or assets of another corporation in any manner which does not involve a consolidation or merger under the laws of the State of Delaware; the term "subsidiary" as used in this subparagraph (c) shall mean any corporation all of the outstanding shares of stock of which (except directors' qualifying shares) at the time shall be owned directly or indirectly by the Corporation or by a wholly-owned subsidiary of the Corporation, or (d) purchase, otherwise than upon tenders, or redeem less than all of the outstanding Preference Stock, unless all past and current dividends on the Preference Stock shall have been paid or provided for.

#### **G. Rights of Preferred Stock on Liquidation, Dissolution or Winding Up**

XX. In the event of any liquidation or dissolution or winding up of the Corporation the holders of the Preferred Stock of each series shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders, before any distribution of assets shall be made to the holders of any class of junior stock, (i) if such liquidation, dissolution or winding up shall be involuntary, the sum of fifty dollars (\$50) per share plus full cumulative dividends thereon to the date of final distribution to the holders of the Preferred Stock and (ii) if such liquidation, dissolution or winding up shall be voluntary, the amount per share fixed by the Board of Directors pursuant to the foregoing Paragraph II plus full cumulative dividends thereon to the date of final distribution to the holders of the Preferred Stock; and the holders of the junior stock shall be entitled, to the exclusion of the holders of the Preferred Stock of any and all series, to share ratably in all the assets of the Corporation then remaining according to the number of shares of the junior stock held by them respectively. If upon any liquidation or dissolution or winding up of the Corporation the net assets of the Corporation shall be insufficient to pay the holders of all outstanding shares of Preferred Stock the full amounts to which they respectively shall be entitled, the holders of shares of Preferred Stock of all series shall share ratably in any distribution of assets according to the respective amounts payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to the Preferred Stock of all series were paid in full. Neither the merger nor consolidation of the Corporation into or with other corporation, nor the merger or consolidation of any other corporation into or with the Corporation, nor a sale, transfer or lease of all or any part of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation.

#### **H. Rights of Preference Stock on Liquidation, Dissolution or Winding Up**

XXI. The shares of Preference Stock shall be subordinate to the Preferred Stock but in preference to the Common Stock upon any dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary. Upon any such dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, the holders of Preference Stock of each series, without any preference of the shares of any series of Preference Stock over the shares of any other series of Preference Stock, shall be entitled to receive out of the assets of the Corporation, whether capital, surplus or other, before any distribution of the assets to be distributed shall be made to the holders of Common Stock or of any other stock not having preference as to assets over the Preference Stock, the amount determined to be payable on the shares of such series in the event of voluntary liquidation, or the amount of consideration

originally received by the Corporation for the shares of such series in the event of involuntary liquidation, as the case may be. In the case the assets shall not be sufficient to pay in full the amounts determined to be payable on all the shares of Preference Stock in the event of voluntary or involuntary liquidation, as the case may be, then the assets available for such payment shall be distributed ratably among the holders of the Preference Stock of all series in accordance with the amounts determined to be payable on the shares of each series, in the event of voluntary or involuntary liquidation, as the case may be, in proportion to the full preferential amounts to which they are respectively entitled. After payment to the holders of the Preference Stock of the full preferential amounts hereinbefore provided for, the holders of the Preference Stock as such shall have no right or claim to any of the remaining assets of the Corporation, either upon any distribution of such assets or upon dissolution, liquidation or winding up, and the remaining assets to be distributed, if any, upon a distribution of such assets or upon dissolution, liquidation or winding up, may be distributed among the holders of the Common Stock or of any other stock over which the Preference Stock has preference as to assets. Without limiting the right of the Corporation to distribute its assets or to dissolve, liquidate or wind up in connection with any sale, merger, or consolidation, neither the merger nor consolidation of the Corporation into or with any other corporation, nor the merger or consolidation of any other corporation into or with the Corporation, nor a sale, transfer or lease of all or any part of the assets of the Corporation, shall be deemed to be a liquidation, dissolution or winding up of the Corporation.

#### I. Certain Definitions

XXII. The term "consolidated net income of the Corporation and its subsidiaries" shall mean the consolidated gross earnings of the Corporation and its subsidiaries from all sources less all proper deductions for operating expenses, taxes (including income, excess profits and other taxes based on or measured by income or undistributed earnings or income), interest charges and other appropriate items, including provision for maintenance and depreciation, and less all dividends paid or accrued on the Preferred Stock of the Corporation which are applicable to the periods in question, and otherwise determined in accordance with sound accounting practice in use at the time, or, at the option of the Corporation, in use at the date of this Certificate Amendment, but determined without deducting any losses, expenses or provisions charged directly to surplus in accordance with the Uniform Systems of Accounts prescribed by regulatory commissions having jurisdiction over the Corporation and its subsidiaries. The amount deducted for maintenance and depreciation of property of the Corporation and its subsidiaries shall be at least equal to the aggregate amount spent for maintenance and provided for depreciation by the Corporation and its subsidiaries.

The term "consolidated surplus of the Corporation and its subsidiaries" shall include capital surplus, earned surplus and any other surplus of the Corporation and its subsidiaries, consolidated in accordance with sound accounting practice.

The term "distribution on junior stock" shall mean a dividend (other than a dividend payable in junior stock) or other distribution on junior stock, a purchase or redemption of junior stock and any other acquisition for value of junior stock (except in exchange for or with the proceeds of the issue of other junior stock).

The term "full cumulative dividends" whenever used in this Article FOURTH with reference to any share of any series of the Preferred Stock or Preference Stock shall be deemed to mean (whether or not in any dividend period or any part thereof in respect of which such term is used there shall have been net profits or net assets of the Corporation legally available for the payment of such dividends) that amount which shall be equal to dividends at the rate per share fixed for such series by the Board of Directors pursuant to Paragraphs II or VIII of this Article FOURTH, for the period of time elapsed from the date of cumulation of such series to the date as of which full cumulative dividends are to be computed (including an amount equal to a dividend at such rate for the elapsed portion of the current

dividend period) less, in each case, the amount of all dividends paid, or deemed paid, upon such stock.

The term "junior stock", whenever used in this Article FOURTH, shall mean the Common Stock, Preference Stock and any other class or classes of stock of the Corporation over which the Preferred Stock has preference or priority with respect to the payment of dividends and the distribution of assets upon the dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary.

The term "junior stock equity", whenever used in this Article FOURTH, shall mean the aggregate par value of, or stated capital represented by, the outstanding shares of the junior stock of the Corporation including premiums thereon plus any surplus of the Corporation.

The term "junior stock equity ratio" shall mean the ratio, computed as of the end of the second calendar month preceding the date of the authorization by the Board of Directors of the proposed distribution on junior stock and adjusted to reflect the proposed distribution on junior stock, of

(i) the aggregate par value of, or stated capital represented by, the outstanding shares of the junior stock, including premiums on junior stock, plus the consolidated surplus of the Corporation and its subsidiaries, as hereinafter in this Article FOURTH defined,

to

(ii) the total capitalization of the Corporation and its subsidiaries, as hereinafter in this Article FOURTH defined, plus the consolidated surplus of the Corporation and its subsidiaries.

The term "total Capitalization of the Corporation and its subsidiaries" shall mean the aggregate of the principal amount of all indebtedness of the Corporation and its subsidiaries outstanding in the hands of the public maturing more than twelve (12) months from the date of determination of total capitalization of the Corporation and its subsidiaries, plus the par value of, or stated capital represented by, the shares of all classes of stock of the Corporation and its subsidiaries outstanding in the hands of the public, plus premium on such stock plus, in the case of such stock of subsidiaries, any surplus applicable thereto.

#### J. Redemption of Preferred Stock and/or Preference Stock

XXIII. The Preferred Stock and/or Preference Stock of all series, or of any series thereof, or any part of any series thereof, at any time outstanding, may be redeemed by the Corporation, at its election expressed by resolution of the Board of Directors, at any time or from time to time (which time, when fixed in each case, is herein after called the "redemption date"), upon not less than thirty (30) days' previous notice to the holders of record of the Preferred Stock and/or Preference Stock to be redeemed, given by mail and by publication in a newspaper of general circulation in the Borough of Manhattan, City and State of New York, in such manner as may be prescribed by resolution or resolutions of the Board of Directors, at the optional redemption price or prices fixed by the Board of Directors pursuant to the foregoing Paragraph II and/or Paragraph VIII, as the case may be, then applicable to the Preferred Stock and/or Preference Stock to be redeemed, plus an amount equal to full cumulative dividends thereon to the redemption date (the aggregate of which amounts is hereinafter in this Paragraph XXIII called the "redemption price"). If less than all the outstanding shares of the Preferred Stock and/or Preference Stock of any series are to be redeemed, the redemption may be made either by lot or *pro rata* in such manner as may be prescribed by resolution of the Board of Directors. The Corporation may, if it so elects, provide moneys for the payment of the redemption price by depositing the amount thereof for the account of the holders of Preferred Stock and/or Preference Stock entitled thereto, with a bank or trust company doing business in the Borough of Manhattan, in the City of New York, and having capital and surplus of at least Five Million Dollars (\$5,000,000), at any time prior to the redemption date (the date of any such deposit being hereinafter called the "date of deposit"). In such event, the notice of

redemption shall include a statement of the intention of the Corporation to deposit such amount prior to the redemption date and the name and address of the bank or trust company with which the deposit will be made. On and after the redemption date (unless default shall be made by the Corporation in providing moneys for the payment of the redemption price), or, if the Corporation shall make such deposit on or before the date specified therefor in the notice, then on and after the date of deposit, all dividends on the Preferred Stock and/or Preference Stock thereby called for redemption shall cease to accrue and, notwithstanding that any certificate for shares of Preferred Stock and/or Preference Stock so called for redemption shall not have been surrendered for cancellation; the shares represented thereby shall no longer be deemed to be outstanding and all rights of the holders thereof as stockholders of the Corporation shall cease and terminate, except the right to receive the redemption price as hereinafter provided and except any conversion or exchange rights not theretofore expired. Such conversion or exchange rights, however, in any event shall cease and terminate upon the redemption date or upon any earlier date fixed by the Board of Directors pursuant to the foregoing Paragraph II and/or Paragraph VIII for the termination of such rights. The Corporation may pay in regular course any dividends reflected in the redemption price either to the holders of record on the record date fixed for determination of stockholders entitled to receive such dividends (in which event, anything herein to the contrary notwithstanding, the amount so deposited need not include any dividends so paid or to be paid) or as a part of the redemption price upon surrender of the certificates for the shares redeemed. On and after the redemption date or, if the Corporation shall elect to deposit the moneys for such redemption as herein provided, then on and after the date of deposit, the holders of record of the Preferred Stock and/or Preference Stock to be redeemed shall be entitled to receive the redemption price upon actual delivery to the Corporation or, in the event of such a deposit, to the bank or trust company with which such deposit is made, of certificates for the shares to be redeemed (such certificates, if required, to be properly stamped for transfer and duly endorsed in blank or accompanied by proper instruments of assignment and transfer thereof duly endorsed in blank). Any moneys so deposited which shall remain unclaimed by the holders of such Preferred Stock and/or Preference Stock at the end of six (6) years after the redemption date shall be paid by such bank or trust company to the Corporation; provided, however, that all moneys so deposited, which shall not be required for such redemption because of the exercise of any right of conversion or exchange, shall be returned to the Corporation forthwith. Any interest accrued on moneys so deposited shall be paid to the Corporation from time to time.

#### K. Purchase of Preferred and/or Preference Stock

XXIV. The Corporation may, from time to time, subject to the provisions of Paragraph III and/or Paragraph IX, as the case may be, of this Article FOURTH, purchase the whole of the Preferred Stock and/or Preference Stock or any series thereof, or any part of any series thereof, upon the best terms reasonably obtainable, but in no event at a price greater than the then current redemption of the shares so purchased.

#### L. Preemptive Rights

XXV. No holder of stock of the Corporation shall be entitled as such as a matter of right to subscribe for or purchase any part of any new or additional issue of stock of the Corporation of any class or of securities convertible into stock of any class, whether now or hereafter authorized or whether issued for money, for consideration other than money or by way of dividend; *provided, however*, that if the Board of Directors shall determine to offer any new or additional shares of Common Stock, or any security convertible into Common Stock, for money, other than: (a) by a public offering or an offering of such shares of Common Stock or such security to or through underwriters or investment bankers who shall have agreed to make a public offering thereof; (b) pursuant to a plan offered to any one or more classes of security holders of the Corporation or of any subsidiary of the Corporation under which such holders can invest dividends paid on stock of the Corporation or of any such subsidiary and/or amounts of cash in any of such shares or securities; or (c) pursuant to a thrift, savings, employee stock

ownership, pension or other employee benefit plan under which an employee of the Corporation or of any subsidiary of the Corporation or a trust for the benefit of any such employee can purchase or acquire any of such shares or securities; the same shall first be offered *pro rata* to the holders of the then outstanding shares of Common Stock of the Corporation upon terms not less favorable to the purchaser (without deduction of such reasonable compensation, allowance or discount for the sale, underwriting or purchase as may be fixed by the Board of Directors) than those on which the Board of Directors issues and disposes of stock or securities to others than such holders of Common Stock; and *provided further* that the time within which such preemptive rights shall be exercised may be limited by the Board of Directors to such time as said Board may deem proper, not less, however, than ten (10) days after the mailing of notice that such preemptive rights are available and may be exercised. For the purposes of this Paragraph XXV, the term "subsidiary" shall mean any corporation at least a majority of whose outstanding voting stock shall at the time be owned by the Corporation or by one or more subsidiaries or by the Corporation and one or more subsidiaries, and the term "voting stock" shall mean stock of any class or classes, however designated, having ordinary voting power for the election of a majority of the directors of such corporation, other than stock having such power only by reason of the happening of a contingency.

#### M. Scrip

XXVI. The Board of Directors may from time to time by resolution or resolutions provide for the issue of scrip in lieu of fractional shares of Common Stock, disregarding balances of less than 1/100 of a share. Such scrip shall not confer upon the holder any right to dividends or any voting or other rights of a stockholder of the Corporation, but the Corporation shall from time to time, within such period as may be limited by resolution or resolutions of the Board of Directors, issue one or more whole shares of Common Stock upon the surrender of scrip for fractional shares aggregating the number of whole shares issuable in respect of the scrip so surrendered, provided that the scrip so surrendered shall be properly endorsed for transfer if in registered form. All scrip certificates not so exchanged within such period as may be limited by resolution or resolutions of the Board of Directors shall be and become null and void and of no further force and effect.

FIFTH:A. *Higher Vote for Certain Business Transactions.* In addition to any affirmative vote required by law or this Restated Certificate of Incorporation or the By-Laws of the Corporation, and except as otherwise expressly provided in Section C of this Article FIFTH:

(1) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (a) any Interested Stockholder (as hereinafter defined) or (b) any other company (whether or not itself an Interested Stockholder) which is or after such merger or consolidation would be an Affiliate (as hereinafter defined) or Associate (as hereinafter defined) of an Interested Stockholder; or

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder, involving any assets or securities of the Corporation, any Subsidiary or any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder, having an aggregate Fair Market Value (as hereinafter defined) in excess of \$25,000,000; or

(3) the adoption of any plan or proposal for the termination, liquidation or dissolution of the Corporation proposed by or on behalf of an Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(4) any reclassification of securities (including any reverse stock split) or recapitalization of the Corporation or any merger or consolidation of the Corporation with any Subsidiary of the Corporation or any other transaction (whether or not with or otherwise involving an Interested Stockholder) that has the effect, directly or indirectly, of increasing the proportionate share of any class or series of Common Stock (as hereinafter defined), or any securities convertible into Common Stock or into equity securities of the Corporation or any Subsidiary, that is beneficially owned by an Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(5) any tender offer or exchange offer made by the Corporation for shares of Common Stock which may have the effect of increasing an Interested Stockholder's percentage beneficial ownership (as hereinafter defined) so that following the completion of the tender offer or exchange offer the Interested Stockholder's percentage beneficial ownership of the outstanding Common Stock may exceed 100% of the Interested Stockholder's percentage beneficial ownership immediately prior to the commencement of such tender offer or exchange offer; or

(6) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder having an aggregate Fair Market Value in excess of \$25,000,000; or

(7) any agreement, contract or other arrangement providing for any one or more of the actions specified in the foregoing clauses (1) to (6) shall require: (1) the affirmative vote of the holders of Voting Stock (as hereinafter defined) representing shares equal to at least eighty percent (80%) of the then issued and outstanding Voting Stock of the Corporation authorized to be issued from time to time under Article FOURTH of this Restated Certificate of Incorporation; and (2) the affirmative vote of a majority of the then issued and outstanding Voting Stock of the Corporation, excluding any shares of Voting Stock beneficially owned by such Interested Stockholder. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or any agreement with any national securities exchange or otherwise.

B. *Definition of "Business Combination"*. For the purposes of this Article FIFTH the term "Business Combination" shall mean any transaction that is referred to in any one or more of clauses (1) through (6) of Section A of this Article FIFTH.

C. *When Higher Vote is Not Required*. The provisions of the preceding Paragraph A shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, as is required by law or by any other provision of this Restated Certificate of Incorporation or the By-Laws of the Corporation or any agreement with any national securities exchange, if all of the conditions specified in either of the following Paragraphs (1) or (2) are met or, in the case of a Business Combination not involving the payment of consideration to the holders of the Corporation's outstanding Common Stock, if the condition specified in the following Paragraph (1) is met:

(1) The Business Combination shall have been approved by a majority (whether such approval is made prior to or subsequent to the acquisition of beneficial ownership of the Voting Stock that caused the Interested Stockholder to become an Interested Stockholder) of the Continuing Directors (as hereinafter defined).

(2) All of the following conditions shall have been met with respect to the outstanding Common Stock, whether or not the Interested Stockholder has previously acquired beneficial ownership of any shares of the Common Stock:

(a) The aggregate amount of cash and the Fair Market Value, as of the date of the consummation of the Business Combination, of consideration other than cash to be received per share by holders of the Common Stock in such Business Combination shall be at least equal to the highest amount determined under clauses (i), (ii), (iii), and (iv) below:

(i) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for any share of the Common Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of the Common Stock (x) within the two-year period immediately prior to the first public announcement of the proposed Business Combination (the "Announcement Date") or (y) in the transaction in which it became an Interested Stockholder, whichever is higher, in either case as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification with respect to the Common Stock;

(ii) the Fair Market Value per share of the Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (the "Determination Date"), whichever is higher, as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification with respect to the Common Stock;

(iii) (if applicable) the price per share equal to the Fair Market Value per share of the Common Stock determined pursuant to the immediately preceding clause (ii), multiplied by the ratio of (x) the highest price per share (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder for any share of the Common Stock in connection with the acquisition by the Interested Stockholder of beneficial ownership of shares of the Common Stock within the two-year period immediately prior to the Announcement Date, as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification with respect to the Common Stock to (y) the Fair Market Value per share of the Common Stock on the first day in such two-year period on which the Interested Stockholder acquired beneficial ownership of any shares of the Common Stock, as adjusted for any subsequent stock split, stock dividend, subdivision or reclassification with respect to Common Stock; and

(iv) the Corporation's net income per share of the Common Stock for the four full consecutive fiscal quarters immediately preceding the Announcement Date, multiplied by the higher of the then price/earnings multiple (if any) of such Interested Stockholder or the highest price/earnings multiple of the Corporation within the two-year period immediately preceding the Announcement Date (such price/earnings multiples being determined by dividing (x) an amount equal to the highest price per share during a day as reported in The Wall Street Journal from the Composite Tape for the New York Stock Exchange by (y) the immediately preceding publicly reported twelve-months earnings per share).

(b) The consideration to be received by holders of the Common Stock shall be in cash or in the same form as previously has been paid by or on behalf of the Interested Stockholder in connection with its direct or indirect acquisition of beneficial ownership of shares of such Common Stock. If the consideration previously paid by the Interested Stockholder to acquire Common Stock varied among the recipients thereof as to form, the form of consideration to be paid for such Common Stock in connection with the Business Combination shall be either cash or the form used to acquire beneficial ownership of the largest number of shares of such Common Stock previously acquired by the Interested Stockholder.

(c) After the Determination Date and prior to the consummation of such Business Combination: (i) there shall have been no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any stock split, stock dividend or subdivision of the Common Stock), except as approved by a majority of the Continuing Directors; (ii) there shall have been an increase in the annual rate of dividends paid on the Common Stock as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction that has the effect of reducing the number of outstanding shares of Common Stock, unless the failure so to increase such annual rate is approved by a majority of Continuing Directors; and (iii) such Interested Stockholder shall not have become the beneficial owner of any additional shares of Common Stock except as part of the transaction that results in such Interested Stockholder becoming an Interested Stockholder and except in a transaction that, after giving effect thereto, would not result in any increase in the Interested Stockholder's percentage of beneficial ownership of Common Stock.

(d) After the Determination Date, such Interested Stockholder shall not have received the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation, whether in anticipation of or in connection with such Business Combination or otherwise.

(e) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Act") (or any subsequent provisions amending or replacing such Act, rules or regulations) shall be mailed to all stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions). The proxy or information statement shall contain on the first page thereof, in a prominent place, any statement as to the advisability of the Business Combination that the Continuing Directors, or any of them, may choose to make and, if deemed advisable by a majority of the Continuing Directors, the opinion of an investment banking firm selected by a majority of the Continuing Directors as to the fairness (or not) of the terms of the Business Combination from a financial point of view to the holders of the outstanding shares of the Common Stock other than the Interested Stockholder and its Affiliates or Associates (as hereinafter defined), such investment banking firm to be paid a reasonable fee for its services by the Corporation.

(f) Such Interested Stockholder shall not have made any major change in the Corporation's business or equity capital structure without the approval of a majority of the Continuing Directors.

D. *Certain Definitions.* The following definitions shall apply with respect to this Article FIFTH.

(1) The term "Common Stock" or "Voting Stock" shall mean all common stock of the Corporation authorized to be issued from time to time under Article FOURTH of the Restated Certificate of Incorporation that by its terms may be voted on all matters submitted to stockholders of the Corporation generally.

(2) The term "person" shall mean any individual, firm, company or other entity and shall include any group comprised of any person and any other person with whom such person or any Affiliate or Associate of such person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of the Common Stock.

(3) The term "Interested Stockholder" shall mean any person (other than the corporation or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit or dividend reinvestment plan of the Corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who (a) is the beneficial owner of Voting Stock representing five percent (5%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock; or (b) is an Affiliate or Associate of the Corporation and at any time within the two-year period immediately prior to the Announcement Date was the beneficial owner of Voting Stock representing five percent (5%) or more of the votes entitled to be cast by the holders of all then outstanding shares of Voting Stock.

(4) A person shall be a "beneficial owner" of any Common Stock (a) which such person or any of its Affiliates or Associates beneficially owns, directly or indirectly, (b) which such person or any of its Affiliates or Associates has, directly or indirectly, (i) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding; or (c) which is beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Common Stock. For purposes of determining whether a person is an Interested Stockholder pursuant to Paragraph 4 of this Section D, the number of shares of Common Stock deemed to be outstanding shall include shares deemed beneficially owned by such person through application of Paragraph 5 of this Section D, but shall not include any other shares of Common Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants, or options, or otherwise.

(5) An "Affiliate" of a specified person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. The term "Associate", used to indicate a relationship with any person, means (a) any company (other than the Corporation or any Subsidiary) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent (10%) or more of any class of equity securities, (b) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and (c) any relative or spouse of such person, or any relative of such spouse, who has the same house as such person or who is a director or officer of the Corporation or of any parent or Subsidiary of the Corporation.

(6) The term "Subsidiary" means any company of which a majority of any class of equity security is beneficially owned by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in Paragraph (3) of this Section D, the term "Subsidiary" shall mean only a company of which a majority of each class of equity security is beneficially owned by the Corporation.

(7) The term "Continuing Director" means any member of the Board of Directors of the Corporation (the "Board of Directors"), who, while such person is a member of the Board of Directors, is not an Affiliate or Associate or representative of any Interested Stockholder and who was a member of the Board of Directors prior to the time than any Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director, who, while such successor is a member of the Board of Directors, is not an Affiliate or Associate or representative of any Interested Stockholder and who is recommended or elected to succeed the Continuing Director by a majority of Continuing Directors.

(8) The term "Fair Market Value" means (a) in the case of cash, the amount of such cash; (b) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Act on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any similar system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (c) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of the Continuing Directors.

(9) In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash to be received" as used in Paragraphs 2(a) and 2(b) of Section C of this Article FIFTH shall include the shares of Common Stock and/or the shares of any other class of Voting Stock retained by the holders of such shares.

*E. Powers of the Continuing Directors.* A majority of the Continuing Directors shall have the power and duty to determine for purposes of this Article FIFTH, on the basis of information known to them after reasonable inquiry, (1) whether a person is an Interested Stockholder, (2) the number of shares of Common Stock or other securities beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another, and (4) whether the assets that are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value in excess of the amounts set forth in clauses (2) and (6) of Section A of this Article FIFTH.

Any such determination made in good faith by a majority of the Continuing Directors shall be binding and conclusive for all the purposes of this Article FIFTH.

*F. No Effect of Fiduciary Obligations of Interested Stockholders.* Nothing contained in this Article FIFTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

*G. No Effect on Fiduciary Obligations of Directors.* The fact that any Business Combination complies with the provisions of Section C, Paragraph 2 of this Article FIFTH shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the stockholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

SIXTH: The existence of this Corporation is to be perpetual.

SEVENTH: The private property of the stockholders of this Corporation shall not be subject to the payment of corporate debts to any extent whatever.

EIGHTH: (1) The number of directors of this Corporation shall be fixed and may be altered from time to time as may be provided in the By-Laws. Vacancies on the Board of Directors and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority vote of the directors then in office, though less than a quorum or by a sole remaining director at any

meeting of the Board of Directors and the directors so chosen shall hold office until the next election of the Class for which such directors shall have been chosen and until their successors shall have been duly elected and qualified, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office. Subject to the provisions of Paragraph XII of Article FOURTH hereof, any director may be removed by the stockholders at any annual or special meeting thereof only for cause. Directors of this Corporation need not be stockholders therein.

(2) At each annual meeting of stockholders, directors of the Corporation shall be elected to hold office until the expiration of the term for which they are elected, and until their successors have been duly elected and qualified; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. The directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. The term of office of the initial Class I directors shall expire at the next succeeding annual meeting of stockholders, the term of office of the initial Class II directors shall expire at the second succeeding annual meeting of stockholders and the term of office of the initial Class III directors shall expire at the third succeeding annual meeting of the stockholders. For the purposes hereof, the initial Class I, Class II and Class III directors shall be those directors elected at the May 7, 1991 annual meeting and designated as members of such Class. At each annual meeting after the May 7, 1991 annual meeting, directors to replace those of a Class whose terms expire at such annual meeting shall be elected to hold office until the third succeeding annual meeting and until their respective successors shall have been duly elected and shall qualify. If the number of directors is hereafter changed, any newly created directorships or decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as is practicable.

Anything to the contrary notwithstanding, after May 7, 1991, any director's term shall be subject to being mandatorily shortened to a period of less than the term for which he or she was elected, depending upon the attainment of a particular age of the director or upon relocation of the director from the Company's service area, subject to short-term extensions for a period no longer than the term for which he or she was elected, based on the judgment of the directors as to what is in the best interests of the Company, as may be provided by By-Laws implementing these provisions.

The foregoing provisions relating to the classification of the Board are subject to the provisions of Paragraph XII of Article FOURTH hereof.

NINTH: In furtherance and not in limitation of the powers conferred by statute the Board of Directors is expressly authorized:

(a) To fix, determine and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart as working capital.

(b) To make, amend, alter, change, add to or repeal By-Laws for this Corporation, without any action on the part of the stockholders. The By-Laws made by the directors may be amended, altered, changed, added to or repealed by the stockholders.

(c) By resolution passed by a majority of the whole Board, to designate three or more directors to constitute an Executive Committee which committee shall have and exercise (except

when the Board of Directors shall be in session) such powers and rights of the Board of Directors in the management of the business and affairs of this Corporation as may be provided in the By-Laws or in said resolution, and shall have power to authorize the seal of this Corporation to be affixed to all papers which may require it.

(d) To authorize and cause to be executed mortgages and liens, without limit as to amount, upon the real and personal property of this Corporation.

(e) From time to time to determine whether and to what extent, at what time and place, and under what conditions and regulations the accounts and books of this Corporation or any of them, shall be open to the inspection of any stockholder; and no stockholder shall have any right to inspect any account or book or document of this Corporation except as conferred by statute or the By-Laws or as authorized by a resolution of the stockholders or Board of Directors.

(f) To sell, assign, convey and otherwise dispose of a part of the property, assets and effects of this Corporation less than the whole or less than substantially the whole thereof, on such terms and conditions as they shall deem advisable, without the assent of the stockholders in writing or otherwise; and also to sell, assign, transfer, convey and otherwise dispose of the whole or substantially the whole of the property, assets, effects, franchises and good-will of this Corporation on such terms and conditions as they shall deem advisable, but only with the assent in writing or pursuant to the affirmative vote of the holders of not less than a majority in interest of the Common Stock then outstanding, but in any event not less than the amount required by law.

(g) All of the powers of this Corporation, in so far as the same lawfully may be vested by this certificate in the Board of Directors, are hereby conferred upon the Board of Directors of this Corporation.

TENTH: In the absence of fraud, no contract or transaction between this Corporation and any other association or corporation shall be affected by the fact that any of the directors or officers of this Corporation are interested in or are directors or officers of such other association or corporation, and any director or officer of this Corporation individually may be a party to, or may be interested in any such contract or transaction of this Corporation; and no such contract or transaction of this Corporation with any person or persons, firm, association or corporation, shall be affected by the fact that any director or officer of this Corporation is a party to, or interested in such contract or transaction, or in any way connected with such person or persons, firm, association or corporation; and each and every person who may become a director or officer of this Corporation is hereby relieved from any liability that might otherwise exist from thus contracting with this Corporation for the benefit of himself or any person, firm, association or corporation in which he may be in any way interested.

ELEVENTH: This Corporation may in its By-Laws fix the number (not less than the number required by law or in this certificate) of shares, the holders of which must consent to, or which must be voted in favor of, any specific act or acts by this Corporation, or its Board of Directors or Executive Committee, and during the period for which such number remains so fixed, such specified act or acts shall not and may not be performed or carried out by this Corporation, or its Board of Directors or Executive Committee without the consent or affirmative vote of the holders of at least the number of shares so fixed.

TWELFTH: Except where other notice is specifically required by statute written notice only of any stockholders' meeting given as provided in the By-Laws shall be sufficient without publication or other form of notice.

THIRTEENTH: Any officer or agent elected or appointed by the Board of Directors, or by the Executive Committee, or by the stockholders, or any member of the Executive Committee, or of any other committee, may be removed at any time, with or without cause, in such manner as shall be provided in the By-Laws of this Corporation.

FOURTEENTH: This Corporation may in its By-Laws make any other provisions or requirements for the management or conduct of the business of this Corporation, provided the same be not inconsistent with the provisions of this certificate, or contrary to the laws of the State of Delaware or of the United States.

FIFTEENTH: This Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation.

SIXTEENTH: To the full extent permitted by the General Corporation Law of the State of Delaware or any other applicable laws as presently or hereafter in effect, no director of the Corporation shall be personally liable to the Corporation or its stockholders for or with respect to any acts or omissions in the performance of his or her duties as a director of the Corporation. No amendment to or repeal of this Article SIXTEENTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, said INTERSTATE POWER COMPANY has caused this certificate to be signed by W. H. STOPPELMOOR, its President and attested by J. C. McGowan, its Secretary, this 21st day of October, 1993.

Attest:

J. C. McGowan,

Secretary



INTERSTATE POWER COMPANY

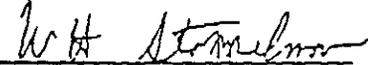
1925

CORPORATE SEAL

DELAWARE

INTERSTATE POWER COMPANY

By



W. H. STOPPELMOOR,

President

STATE OF IOWA            }ss.:  
COUNTY OF DUBUQUE }

BE IT REMEMBERED that on October 21, 1993, personally came before me DONNA KLEIN, a Notary Public in and for the County and State aforesaid, W. H. STOPPELMOOR, President of INTERSTATE POWER COMPANY, a Delaware corporation, the corporation described in and which executed, and on behalf of which was made, the foregoing Certificate, known to me to be such President, and said W. H. STOPPELMOOR as such President duly signed said Certificate before me and acknowledged said Certificate to be his act and deed and the act and deed of said Corporation, and he further acknowledged to me that the signatures affixed to said Certificate are in the handwriting of, and are the genuine signatures of W. H. STOPPELMOOR, as President, and J. C. McGowan, as Secretary, of said Corporation, respectively; that the seal affixed to said Certificate is the corporate seal of said Corporation; that said Certificate was sealed, executed, acknowledged and delivered pursuant to due authority from the Board of Directors of said Corporation.

Given under my hand and seal the day and year first in this Certificate written.

DONNA KLEIN,  
Notary Public



DONNA KLEIN  
Notary Public, Dubuque County, Iowa  
My Commission Expires January 30, 1994

(NOTARIAL SEAL)

