

---

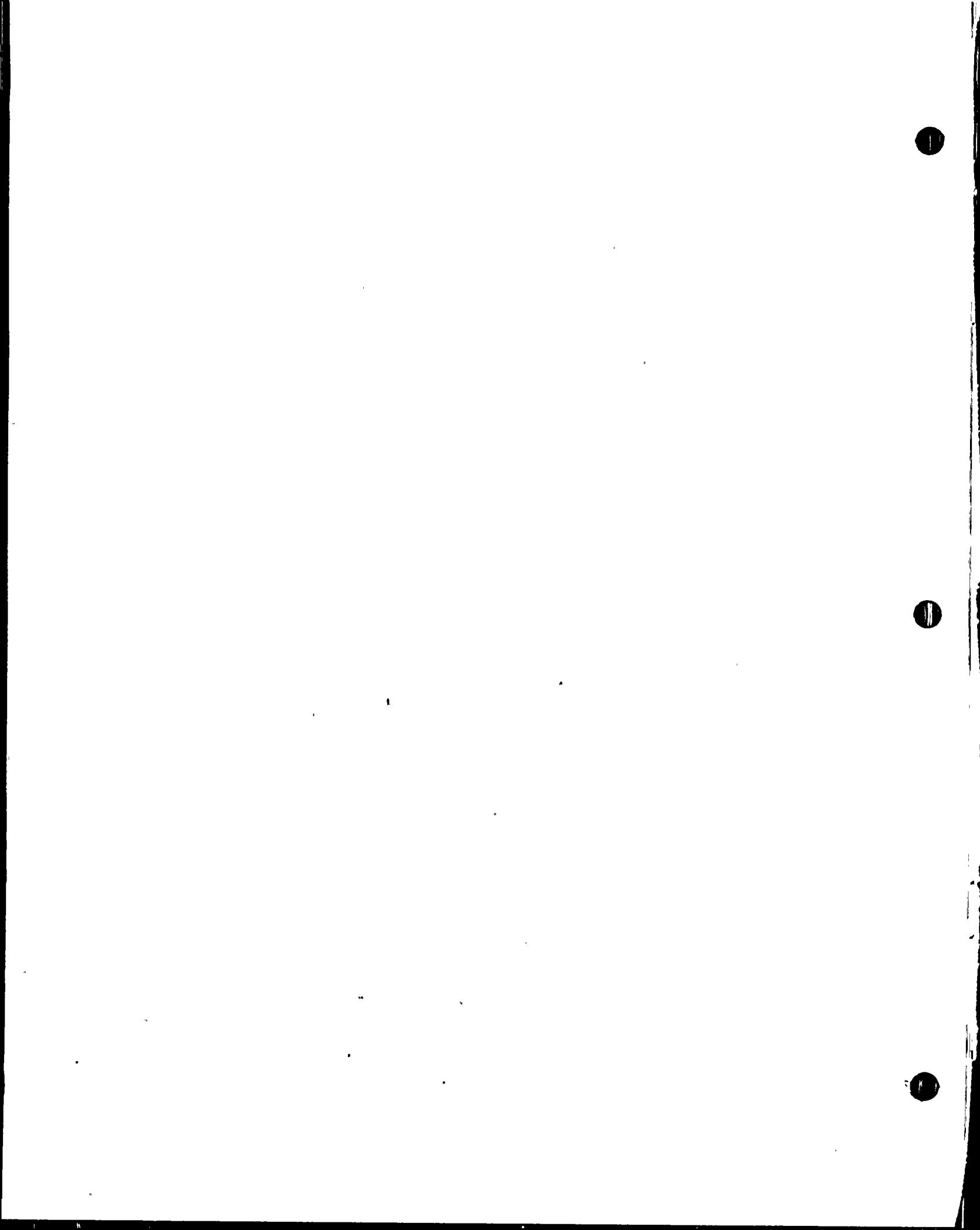
---

**RESTATED  
ARTICLES OF INCORPORATION**

**of**

**PUBLIC SERVICE COMPANY  
OF NEW MEXICO**

---



**RESTATED ARTICLES OF INCORPORATION  
of  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

---

These restated articles of incorporation are executed pursuant to the provisions of Section 32 of Chapter 64, Laws 1975, being Section 51-26-7 N.M.S.A. 1953, as amended. The restated articles of incorporation correctly set forth all of the operative provisions of the articles of incorporation as amended, of Public Service Company of New Mexico, and supersede the original articles of incorporation and all amendments thereto.

**ARTICLE FIRST.**

The name of the Corporation is: Public Service Company of New Mexico.

**ARTICLE SECOND.**

The period of its duration is perpetual.

### ARTICLE THIRD.

The nature of the business, or objects or purposes proposed to be transacted, promoted or carried on are as follows:

- (1) to do a general electric light, heat and power business in all its branches, including generation, transmission and distribution, and the building, owning, acquiring, leasing, operating and maintaining, of power plants, transmission and distribution systems, equipment, appliances and appurtenances thereto, together with the erection, construction, maintenance and operation of the necessary pole lines, posts, piers, abutments, wires, cables and conduits, and incidental thereto to acquire, lease, hold, work, and operate coal mines or properties out of, as well as within, the State of New Mexico; and to drill for gas, to produce gas, to lay pipes, conduits, manholes, mains and other appliances and fixtures necessary and proper for the generating, manufacture, producing, procuring, selling, furnishing, supplying, conducting, carrying, transmitting, and distributing to public and private buildings, avenues, lanes and squares, and public places, steam and hot water, electric power, light and energy and natural and artificial gas, for light, heat, power and other purposes by means of wires, mains, pipes or otherwise, in the several municipalities, counties and political and governmental subdivisions thereof, in the State of New Mexico; and to acquire all franchises necessary to the full exercise of said powers;
- (2) to buy or in any manner acquire, and to store, use, sell, dispose of and distribute water for all purposes, and to carry on the business of furnishing, supplying and vending water and any and all businesses incidental thereto, and to build, construct, develop, improve, acquire, hold, own, lease, maintain and operate dams and systems of water works for the supply of water for hydro-electric and all other purposes;
- (3) to acquire water rights of every kind and description, for all purposes, and to build, construct, develop, improve, acquire, hold, own, lease, maintain, and operate reservoirs, dams, canals, ditches, flumes, pipe lines, and other works, plants, equipment, appliances and appurtenances for impounding, storing, conveying and utilizing water for power, irrigation, fire, sanitary, domestic, manufacturing, and other uses, and to use, apply, sell and otherwise dispose of water rights and water power for such purposes;

- (4) to manufacture, produce, buy, or in any manner acquire, and to store, sell and dispose of, ice for all purposes, and to carry on the business of furnishing, supplying and vending ice, and any and all business incidental thereto, and to build, construct, develop, improve, acquire, hold, own, lease, maintain and operate ice plants, works and facilities for the harvesting, manufacture, production, use and supply of ice for all purposes; to build, construct, develop, improve, acquire, hold, own, lease, maintain and operate cold storage plants and warehouses and to carry on the business of cold storage and any and all businesses incidental thereto; to build, construct, develop, improve, equip, install, acquire, hold, own, maintain and operate plants, machinery, appliances and facilities for electric refrigeration service and to carry on the business of furnishing, supplying and vending electric refrigeration service and any and all business incidental thereto;
- (5) to purchase, sell and deal in electrical, gas, steam, water and ice supplies, appliances and apparatus of every description and kind;
- (6) to acquire by purchase or otherwise, and to own and hold all property, real, personal and mixed, and all rights, contracts, privileges and franchises, suitable or convenient for any of the objects or purposes of the corporation, and to lease, exchange, mortgage, pledge, sell, convey, or otherwise dispose of the same;
- (7) to acquire, by purchase or otherwise, and to use and enjoy any and all franchises, rights and privileges from public corporations, or quasi public corporations or authorities, which may be necessary or convenient for the purposes of the Corporation, and to sell or otherwise dispose of the same, and to make, enter into and dispose of, to, from or with any person, firm, association, corporation, private, public or municipal or body politic, any contract for or in relation to any or all of the objects and purposes of the Corporation;
- (8) to exercise the right of eminent domain under the laws of the State of New Mexico;
- (9) with respect to any electric, gas, water or ice plants, or other property constructed, owned or leased by the Corporation, to assume and undertake to the State of New Mexico and to the inhabitant thereof the duties and obligations of a public service corporation;

(10) to purchase or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, hypothecate and otherwise dispose of or otherwise deliver any shares of capital stock, bonds, debentures, or other evidences of indebtedness or ownership of any public or private corporation, or association or joint stock company, domestic or foreign, and to pay therefor (in whole or in part) in cash or other property, or by the issue and delivery of the capital stock, bonds, notes, or other obligations of the Corporation, or in any other lawful manner;

(11) to borrow such sums of money for such time and upon such terms as to the Corporation may seem advisable, and to issue for money borrowed, property acquired or other lawful purposes of the Corporation, notes, bonds, debentures or other obligations of the Corporation in any form, and to secure any indebtedness or other obligation of the Corporation, or the performance of any contract, either made by the Corporation or in the performance of which the Corporation might be interested, by the mortgage, pledge, assignment or conveyance in trust of any or all real and personal property and franchises of the Corporation;

(12) to carry on the business of the Corporation either within or beyond the limits of the State of New Mexico, and, in general, to do and perform any and all things necessary, convenient or proper for the carrying out or accomplishment of the objects or purposes specified in this ARTICLE THIRD, or any of them, or any objects or purposes incidental thereto, and to possess and enjoy all of the rights, powers, privileges, authority and immunities which may be granted to bodies corporate under the laws of the State of New Mexico.

#### ARTICLE FOURTH.

The total authorized capital stock of the Corporation shall consist of Ten Million (10,000,000) shares of Common Stock of the par value of Five Dollars (\$5) each and Two Million Five Hundred Thousand (2,500,000) shares of Cumulative Preferred Stock without par value; and the amount of capital stock with which the Corporation shall commence business is Two Thousand Dollars (\$2,000).

Each share of the \$100 par value Cumulative Preferred Stock previously issued by the Corporation and outstanding on the effective date of this Amendment shall be reclassified into one (1) share of the Cumula-

tive Preferred Stock of the Corporation without par value and shall have a stated value of \$100 per share; and the words "stated value of \$100 each" shall be substituted for and shall replace the words "par value" for the purpose of calculating the dividend rate and redemption prices of each series of the Cumulative Preferred Stock of the Corporation outstanding on the effective date of this Amendment and for all other purposes and otherwise and all of the other designations, relative rights and preferences of shares of each series of Cumulative Preferred Stock of the Corporation presently outstanding shall remain unchanged and certificates representing outstanding shares of the Cumulative Preferred Stock, \$100 par value, need not be exchanged for new certificates representing Cumulative Preferred Stock without par value of the Corporation.

A description of the respective classes of stock and a statement of the designations, preferences and voting powers or restrictions, or qualifications thereof are as follows:

#### **CUMULATIVE PREFERRED STOCK**

The Cumulative Preferred Stock is senior to the Common Stock and the Common Stock is subject to all the rights and preferences of the Cumulative Preferred Stock.

A. The Cumulative Preferred Stock shall be issuable, from time to time, in one or more series and shall have the preferences and voting powers or restrictions, or qualifications thereof, set forth in paragraphs A to G hereof, both inclusive, and under the heading "General Provisions," and, in addition, the Cumulative Preferred Stock of a particular series created by the Board of Directors hereinafter provided in this paragraph A shall have the designations, terms and characteristics set forth in the resolution or resolutions of the Board of Directors creating such series. All shares of any one series of Cumulative Preferred Stock shall be identical with each other in all respects, except the date from which dividends thereon shall be cumulative; and all shares of all series of Cumulative Preferred Stock shall rank pari passu with each other as to dividends and distribution of assets upon liquidation, dissolution or

winding up of the Corporation. The express terms and provisions of shares of different series shall be identical except that there may be variations in respect of the consideration to be received therefor, the dividend rate, dates of payment of dividends and dates from which they are cumulative, redemption rights and price, liquidation price, sinking fund requirements, conversion rights, and restrictions on issuance of shares of the same series or of any other class of series. The Board of Directors of the Corporation is hereby authorized from time to time to cause shares of Cumulative Preferred Stock to be issued in one or more series and, to the extent permitted by law and not inconsistent with the provisions of this ARTICLE FOURTH, to fix, by the adoption of a resolution or resolutions creating each such series of the Cumulative Preferred Stock, (a) the designation and number of shares of such series; (b) the consideration to be received upon the issuance of such series and the dividend rate of such series; (c) the dates of payment of dividends on shares of such series and the dates from which they are cumulative; (d) the redemption rights of the Corporation with respect to shares of such series and the price or prices at which shares of such series may be redeemed; (e) the amount or amounts payable to holders of shares of such series on any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, which may be different for voluntary and involuntary liquidation, dissolution or winding up, and the involuntary liquidation price shall be the stated value of such shares and constitute the stated capital of the Corporation with respect to each such series; (f) the amount of the sinking fund, if any, to be applied to the purchase or redemption of shares of such series and the manner of its application; (g) whether or not the shares of such series shall be made convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of stock of the Corporation, and, if made so convertible or exchangeable, the conversion price or prices, or the rate of exchange, and the adjustments, if any, at which such conversion or exchange may be made; and whether or not the issue of any additional shares of such series or any future series in addition to such series or any other class of stock shall be subject to any

restrictions and, if so, the nature of such restrictions. Whenever herein-after the words "Cumulative Preferred Stock" shall be used, they shall refer to all series or kinds of Cumulative Preferred Stock.

B. The holders of the Cumulative Preferred Stock, in preference to the holders of any stock ranking junior to the Cumulative Preferred Stock, shall be entitled to receive cash dividends at the rate per annum specified in the designation of the particular series, and no more, payable on dates to be fixed by the Board of Directors at the time of creation of such series, when and as declared by the Board of Directors, out of any funds of the Corporation legally available therefor. Such dividends shall be cumulative from the first day of the dividend period in which such stock shall have been originally issued and shall be paid, or declared and set apart for payment, before any dividends shall be declared or paid on or set apart for any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets, so that if for any past dividend period or the current dividend period dividends on the Cumulative Preferred Stock shall not have been paid, or declared and set apart for payment, the deficiency shall be fully paid or declared and funds set apart for the payment thereof before any dividends shall be declared or paid on or set apart for any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets. No dividends shall at any time be paid on or set apart for any share of Cumulative Preferred Stock unless at the same time there shall be paid on or set apart for all shares of Cumulative Preferred Stock then outstanding dividends in such amount that the holders of all shares of Cumulative Preferred Stock shall receive or have set apart for them a uniform percentage of the full annual dividend to which they are, respectively, entitled. The term "dividend period," as used herein, refers to each period of three consecutive calendar months ending on the day next preceding each date on which dividends, if declared, shall be payable. All shares of Cumulative Preferred Stock, regardless of designation, shall constitute one class of stock and, excepting only as to the rates of dividends payable thereon, the amounts payable on voluntary or involuntary liquidation, dissolution or winding up, the redemption prices thereof, the provisions of the pur-

chase or sinking fund, if any, and other provisions not inconsistent with the provisions of this Article, with respect thereto, shall be of equal rank and confer equal rights upon the holders thereof. All shares of Cumulative Preferred Stock bearing the same dividend rate and being otherwise alike in all respects (except as to the date from which dividends thereon will be cumulative) shall constitute one series of Cumulative Preferred Stock. Unless and until full cumulative dividends as aforesaid upon the Cumulative Preferred Stock of all series then outstanding for all past dividend periods and for the current dividend period shall have been paid, or declared and set apart for payment, no dividend whatsoever (other than a dividend payable in shares of any class of stock ranking junior to the Cumulative Preferred Stock as to dividends and assets) shall be paid or declared on, and no distribution shall be made or ordered in respect of, any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets, and no money (other than the net proceeds received from the sale of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets) shall be set aside or applied to the purchase or redemption (through a sinking fund or otherwise) of any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets.

C. In the event of the liquidation, dissolution or winding up, whether voluntary or involuntary, of the corporation, the holders of shares of Cumulative Preferred Stock shall be entitled, in preference to any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets, to be paid in full, out of the net assets of the Corporation, the liquidation price of their shares plus an amount equal to the accrued dividends on such shares to the date of distribution. In the event such liquidation, dissolution or winding up of the Corporation is voluntary, the holders of the Cumulative Preferred Stock of a particular series shall also be entitled to receive for each share, in preference to any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets, such premium or premiums as may be fixed by the Board of Directors at the time of creation of such series. Unless and until such payment in full is made to the holders of shares of Cumulative Preferred

Stock, no distribution shall be made to any class of stock ranking junior to the Cumulative Preferred Stock as to dividends or assets. If upon any liquidation, dissolution or winding up, the assets distributable among the holders of the Cumulative Preferred Stock of all series shall be insufficient to permit the payment of the full preferential amounts to which they shall be entitled, then the entire assets of the Corporation to be distributed shall be distributed among the holders of the Cumulative Preferred Stock of all series then outstanding ratably in proportion to the full preferential amounts to which they are respectively entitled. A statutory consolidation or merger of the Corporation shall not be deemed to be a liquidation, dissolution or winding up of the Corporation within the meaning of this paragraph C.

D. (1) The Board of Directors of the Corporation shall have the right at any time, subject to any initial limiting period set forth in the resolution creating such series, and from time to time to redeem all or any part of the Cumulative Preferred Stock or all or any part of the shares of one or more series of Cumulative Preferred Stock upon and by paying to the holders of the shares to be redeemed the redemption price or prices of said shares, which shall include, in each case, an amount equal to the accrued dividends on said shares to the date fixed for redemption. In the case of the redemption of shares of a particular series, the redemption price or prices shall be such redemption price or prices as may be fixed by the Board of Directors at the time of creation of such series plus an amount equal to the accrued dividends to the date fixed for redemption. Not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption of any shares of Cumulative Preferred Stock notice of the intention of the Corporation to redeem such shares, specifying the date and place of redemption, shall be deposited in a United States post office or mail box at any place in the United States addressed to each holder of record of the shares to be redeemed at his address as the same appears upon the records of the Corporation and the time of such mailing shall be deemed to be the time of the giving of such notice.

(2) In every case of redemption of less than all of the outstanding shares of any one series of Cumulative Preferred Stock, then, at the

option of the Board of Directors, such redemption shall be made pro rata or the shares of such series to be redeemed shall be chosen by lot in such manner as may be prescribed by resolution of the Board of Directors, provided, however, that such selection shall be made as hereinafter set forth in this subparagraph, in respect of any registered holder of the Cumulative Preferred Stock of the series from which the selection is to be made having one thousand (1,000) shares or more of such Cumulative Preferred Stock registered in his name. If at the time when any selection by lot is to be made, one thousand (1,000) shares or more of the aggregate number of shares of the Cumulative Preferred Stock of the series from which such selection is to be made are registered in the name of one holder, then before making the selection by lot, as aforesaid, the Company shall allocate to each registered holder holding one thousand (1,000) shares or more of such series a proportion of the shares to be redeemed equal, as nearly as practicable, to the proportion that the shares of such series then outstanding registered in the name of such holder bears to all shares of such series then outstanding. In such case, the selection by lot of the number of shares to be redeemed not so allocated shall be made from the registered holders holding less than one thousand (1,000) shares of such series.

(3) The Corporation may deposit with a bank or trust company, which shall be named in the notice of redemption and shall be located in the City of New York, New York, and which bank or trust company shall have capital, surplus and undivided profits aggregating at least \$2,000,000, the aggregate redemption price of the shares to be redeemed, in trust for the payment thereof on or before the redemption date to the holders of such shares, upon surrender of the certificates for such shares. Such deposit in trust may, at the option of the Corporation, be upon terms whereby in case the holder of any shares of Cumulative Preferred Stock called for redemption shall not, within six years after the date fixed for redemption of such shares, claim the

amount on deposit with any bank or trust company for the payment of the redemption price of said shares, such bank or trust company shall on demand pay to or upon the written order of the Corporation or its successor such amount and thereupon such bank or trust company shall be released from any and all further liability with respect to the payment of such redemption price and the holder of said shares shall be entitled to look only to the Corporation or its successor for the payment thereof. Upon the giving of notice of redemption and upon the deposit of the redemption price, as aforesaid (subject, as to shares of a particular series which are convertible into, or exchangeable for, shares of stock of any class, to such conversion or exchange provisions as may be fixed by the Board of Directors at the time of creation of such series), or, if no such deposit is made, upon the redemption date (unless the Corporation defaults in making payment of the redemption price as set forth in such notice), such holders shall cease to be stockholders with respect to said shares, and from and after the making of said deposit and the giving of said notice (subject, as to shares of a particular series which are convertible into, or exchangeable for, shares of stock of any class, to such conversion or exchange provisions as may be fixed by the Board of Directors at the time of creation of such series), or, if no such deposit is made, after the redemption date (the Corporation not having defaulted in making payment of the redemption price as set forth in such notice), said shares shall no longer be transferable on the books of the Corporation, and the said holders shall have no interest in or claim against the Corporation with respect to said shares, but shall be entitled only to receive the redemption price as aforesaid from said bank or trust company, or from the Corporation, without interest thereon, upon surrender of the certificates as aforesaid.

(4) The term "accrued dividends", as used in this Paragraph D or in Paragraph C of this ARTICLE FOURTH, shall be deemed to mean, in respect of any share of the Cumulative Preferred Stock as of any given date, the amount of dividends payable on such share, whether

or not earned or declared, computed, at the annual dividend rate fixed for such share, from the date on which dividends thereon became cumulative to and including such given date, less the aggregate amount of all dividends which have been paid or which have been declared and set apart for payment on such share. Accumulations of dividends shall not bear interest.

(5) Upon the redemption of shares of any series of Cumulative Preferred Stock as herein provided such shares shall resume the status which they had prior to the adoption by the Board of Directors of resolutions creating such series, as provided in Paragraph A of this ARTICLE FOURTH and shall thereafter have the status of authorized but unissued shares of the Cumulative Preferred Stock of the Corporation and may be reissued from time to time upon adoption of a resolution or resolutions by the Board of Directors of the Corporation creating a new series of Cumulative Preferred Stock or increasing the number of shares constituting any series of Cumulative Preferred Stock then outstanding, as provided in Paragraph A of ARTICLE FOURTH and subject to the provisions of Paragraph E of said ARTICLE.

(6) Nothing contained in this Paragraph D shall limit any legal right of the Corporation to purchase any shares of the Cumulative Preferred Stock.

E. (1) So long as any shares of Cumulative Preferred Stock of any series are outstanding the Corporation shall not, without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Cumulative Preferred Stock of all series, voting as one class:

(a) Amend the provisions of the Certificate of Incorporation so as to create or authorize any stock ranking prior in any respect to the Cumulative Preferred Stock; or issue any such stock; or

(b) Change, by amendment to the Certificate of Incorporation, or otherwise, the terms and provisions of the Cumulative Preferred Stock so as to affect adversely the rights and preferences of the holders thereof; provided, however, that if any such change will

affect adversely the holders of one or more, but less than all, of the series of Cumulative Preferred Stock at the time outstanding, the consent only of the holders of at least two-thirds of the total number of shares of each series so adversely affected shall be required.

No consent of the holders of Cumulative Preferred Stock shall be required in respect of any transaction enumerated in this subparagraph (1) if at or prior to the time when such transaction is to take effect provision is made for the redemption or other retirement of all shares of Cumulative Preferred Stock at the time outstanding, the consent of which would otherwise be required hereunder.

(2) So long as any shares of the Cumulative Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote of the holders of a majority of the total number of shares of Cumulative Preferred Stock then outstanding:

(a) Issue any shares of the Cumulative Preferred Stock or shares of any stock ranking on a parity with the Cumulative Preferred Stock, other than in exchange for, or for the purpose of effecting the redemption or other retirement of shares having an aggregate redemption price approximately equal to the redemption price of the shares being issued, unless

(I) the net income (determined in accordance with accepted accounting principles) of the Corporation available for the payment of dividends shall, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue of such shares, have been at least two (2) times an amount equal to the dividend requirements for one year on all shares of the Cumulative Preferred Stock of all series and on all other shares of stock, if any, ranking prior to or on a parity with the Cumulative Preferred Stock, which shall be outstanding after the issue of the shares proposed to be issued; and

(II) the gross income after federal income taxes (determined in accordance with accepted accounting principles) of the Corporation available for the payment of interest charges shall, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue

of such shares, have been at least one and one-half (1½) times the aggregate, for a twelve months period, of such dividend requirement and the annual interest charges on all funded indebtedness and notes payable of the Corporation maturing more than twelve months after, and outstanding at, the date of the issue of such shares; and

(III) the capital represented by the Common Stock and the surplus accounts of the Corporation shall be not less than the aggregate amount payable on the involuntary dissolution, liquidation or winding up of the Corporation, in respect of all shares of Cumulative Preferred Stock and all shares of stock, if any, ranking prior thereto, or on a parity therewith, which shall be outstanding after the issue of the shares proposed to be issued.

(b) Issue or assume any unsecured debentures or other unsecured indebtedness, but excluding unsecured indebtedness maturing within eighteen months after the issuance thereof, for any purpose other than the refunding of secured or unsecured indebtedness theretofore created or assumed by the Corporation and then outstanding, or the retiring, by redemption or otherwise, of shares of the Cumulative Preferred Stock or shares of any stock ranking prior thereto or on a parity therewith, if

(I) immediately after such issue or assumption the total amount of all indebtedness of the Corporation both secured and unsecured indebtedness due more than one year after the issuance thereof shall exceed sixty-five per centum (65%) of the aggregate of (i) the total amount of all such indebtedness maturing more than one year from the date as of which such unsecured indebtedness will be issued, and then outstanding, and (ii) the total of the capital and surplus of the corporation, as then recorded on its books; and

(II) the gross income after federal income taxes (determined in accordance with accepted accounting principles) of the Corporation available for the payment of interest charges shall not, for a period of twelve consecutive calendar months within the fifteen calendar months next preceding the issue of such unsecured debentures, have been at least one and three-quarters (1¾) times the aggregate, of the dividend requirements for one year on all shares of the Cumulative Preferred Stock of all series and on all other shares of stock,

if any, ranking prior to or on a parity with the Cumulative Preferred Stock, which shall be then outstanding, and the annual interest charges on all funded indebtedness and notes payable of the Corporation maturing more than twelve months after, and outstanding at, the date of the issue of such unsecured debentures or other unsecured indebtedness.

No consent of the holders of Cumulative Preferred Stock shall be required in respect of any transaction enumerated in this subparagraph (2) if at or prior to the time when such transaction is to take effect provision is made for the redemption or other retirement of all shares of Cumulative Preferred Stock at the time outstanding, the consent of which would otherwise be required hereunder.

No provision contained in paragraph E of this ARTICLE FOURTH is intended or shall be construed to relieve the Corporation from compliance with any applicable statutory provision requiring the vote or consent of a greater number of the outstanding shares of the Cumulative Preferred Stock.

F. So long as any shares of the Cumulative Preferred Stock are outstanding, the Corporation shall not declare or pay any dividends on its Common Stock (other than dividends payable in Common Stock) or make any distribution on, or purchase or otherwise acquire for value, any of its Common Stock (each such payment, distribution, purchase and/or acquisition being herein referred to as a "common stock dividend"), except to the extent permitted by the following provisions of this paragraph F:

(a) No common stock dividend shall be declared or paid in an amount which, together with all other common stock dividends declared in the twelve consecutive calendar months ended with and including the calendar month in which the proposed declaration is made, would in the aggregate exceed fifty per centum (50%) of the net income of the Corporation available for dividends on its Common Stock for the twelve consecutive calendar months ending on the last day of the calendar month next preceding the declaration of such common stock dividend, if at the end of such

calendar month the ratio (herein referred to as the "capitalization ratio") of the sum of (i) the capital represented by the Common Stock (including premiums on Common Stock) and (ii) the surplus accounts, of the Corporation, to the sum of (x) the total capital and (xx) the surplus accounts, of the Corporation (after adjustment, in each case, of the surplus accounts to reflect payment of such common stock dividend) would be less than twenty per centum (20%);

(b) If such capitalization ratio, determined as aforesaid, shall be twenty per centum (20%) or more, but less than twenty-five per centum (25%), no common stock dividend shall be declared or paid in an amount which, together with all other common stock dividends declared in the twelve consecutive calendar months ended with and including the calendar month in which the proposed declaration is made, would exceed seventy-five per centum (75%) of the net income of the corporation available for dividends on its Common Stock for the twelve consecutive calendar months ending on the last day of the calendar month next preceding the declaration of such common stock dividend; and

(c) If such capitalization ratio, determined as aforesaid, shall be twenty-five per centum (25%) or more, no common stock dividend shall be declared or paid which would reduce such capitalization ratio to less than twenty-five per centum (25%) except to the extent permitted by the next preceding Clauses (a) and (b).

For the purpose of each of the foregoing Clauses (a), (b) and (c): (i) the net income of the Corporation available for dividends on its Common Stock for any twelve months' period is to be computed after deducting an amount equal to dividends accrued for such twelve months' period on shares of stock having preference as to dividends over the Common Stock and (ii) the total capital of the Corporation shall be deemed to consist of the aggregate of (x) the principal amount of all outstanding indebtedness of the Corporation maturing one year or more after the date of issue thereof and (xx) the par or stated value of all outstanding capital stock (including premiums on capital stock) of all classes of the Corporation. All indebtedness and capital stock owned by the Corporation shall be excluded in determining total capital.

Surplus accounts shall be deemed to include all earned surplus, paid in surplus, capital surplus or any other surplus of the Corporation. Purchases or other acquisitions of Common Stock shall be deemed, for the purpose of this paragraph F, to have been made as of the date on which such purchase or acquisitions are consummated.

G. No holder of the Cumulative Preferred Stock shall be entitled to vote for the election of directors or in respect of any matter, except as provided in paragraph E of this ARTICLE FOURTH or as hereinafter provided in this paragraph, or as may be required by law. If, however, dividends payable on the outstanding Cumulative Preferred Stock shall be accumulated and unpaid in an amount equivalent to four (4) quarter-yearly dividends, the holders of such stock shall be entitled thereafter and until, but only until, all such accumulated and unpaid dividends shall have been fully paid or declared and funds set apart for the payment thereof (a) voting for such purpose as a single class, at the next succeeding annual meeting of stockholders, to elect the three directors to be elected at such annual meeting of stockholders and at the next succeeding annual meeting of stockholders thereafter, should said dividends payable on the outstanding Cumulative Preferred Stock continue to be due and unpaid, to elect two of the three directors to be elected at such annual meeting of stockholders, the remaining director to be elected as usual by the holders of the Common Stock, and to continue to elect a majority of the Board of Directors as hereinabove provided until all such accumulated and unpaid dividends on the outstanding Cumulative Preferred Stock shall have been paid; and (b) to vote on all questions in such manner that the holders thereof shall have one (1) vote for each Ten Dollars (\$10) of stated value or part thereof with respect to each share of Cumulative Preferred Stock, and any such right to vote shall not be cumulative; provided that if and when profits available for dividends are in excess of such accumulated and unpaid dividends, then the declaration and payment of such dividends shall not be unreasonably withheld.

In consideration of the issue by the Corporation, and the purchase by the holders thereof, of shares of the capital stock of the Corporation, each and every present and future holder of shares of the capital stock of the Corporation shall be conclusively deemed, by acquiring or holding such shares, to have expressly consented to all and singular the terms and provisions of this paragraph G and to have agreed that the voting rights of such holder and the restrictions and qualifications thereof shall be as set forth in this paragraph.

H. No share of stock or evidence of indebtedness shall be deemed to be "outstanding" as that term is used in the Certificate of Incorporation, as amended, if, prior to or concurrently with the event in reference to which a determination as to the amount thereof outstanding is to be made, the requisite funds for the redemption thereof shall be deposited in trust for that purpose and the requisite notice for the redemption thereof shall be given or the depositary of such funds shall be irrevocably authorized and directed to give or complete such notice of redemption.

#### COMMON STOCK

Subject to the limitations hereinbefore set forth in this ARTICLE FOURTH, or which may be set forth in resolutions hereafter adopted by the Board of Directors creating any series of Cumulative Preferred Stock, dividends may be paid upon the Common Stock, out of any assets of the Corporation legally available for the purpose, when and as declared by the Board of Directors.

In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, after there shall have been paid to or set aside for the holders of shares of all classes of stock ranking prior to the Common Stock the full preferential amounts to which they are respectively entitled, the remaining assets of the Corporation available for payment and distribution to stockholders shall be distributed ratably in accordance with their holdings to the holders

of shares of the Common Stock. The Board of Directors may distribute such remaining assets of the corporation in kind to the holders of the Common Stock, or may sell, transfer or otherwise dispose of all or any of the remaining property and assets of the Corporation and receive payment therefor wholly or partly in cash or in stock or in obligations of any corporation or person, and may either distribute all or any part of the consideration received therefor in kind to the holders of the Common Stock or sell all or any part of such consideration and distribute the proceeds thereof to the holders of the Common Stock.

The holders of the Common Stock shall exclusively possess full voting power for the election of directors and for all other purposes, except as any statute of the State of New Mexico shall expressly provide to the contrary, and except as and to the extent in this ARTICLE FOURTH otherwise provided; and in voting on all questions other than for the election of directors the holders thereof shall have one (1) vote for each share of Common Stock, and any such right to vote shall not be cumulative.

#### GENERAL PROVISIONS

At all elections of directors of the Corporation, each stockholder, with respect to the shares of each class of stock of the Corporation then held by him, shall be entitled to as many votes as shall equal the number of shares of stock of such class then entitling him to vote for directors multiplied by the number of directors to be elected by the holders of such class, and may cast all of the votes of his shares of such class for a single director to be elected by such class or may distribute them among the entire number of directors to be elected by the holders of such class, or any two or more of them as he may see fit which right, when exercised, shall be termed "cumulative voting".

Upon any issue for money or other consideration of any stock of the Corporation that may be authorized from time to time, or of any securities (including stock of any class) convertible into, or exchange-

able for, stock of the Corporation, no holder of stock of the Corporation, irrespective of the class of such stock, shall have any preemptive or other right to subscribe for, purchase or receive any proportionate or other share of the stock or securities so issued, but the Board of Directors may dispose of all or any portion of such stock or securities as and when it may determine, free of such rights, whether by offering the same to stockholders or by sale or other disposition as the Board of Directors may deem advisable; provided, however, that if the Board of Directors shall determine to offer any new or additional shares of Common Stock for money, other than by a public offering of all of such additional shares, or by an offering of all of such additional shares to or through underwriters or investment bankers who shall have agreed promptly to make a public offering thereof, such additional shares 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 such holders (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 proposes to issue and dispose of such additional shares to other 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 to said Board may seem proper, not less, however, than twenty days after mailing of notice that such stock rights are available and may be exercised.

Notwithstanding the provisions with respect to preemptive rights as set forth in the preceding paragraph, no holder of Common Stock of the Corporation shall have any preemptive or other right to subscribe for, purchase or receive any proportionate or other share of any new or additional shares of Common Stock, determined by the Board of Directors of the Corporation to be offered and sold exclusively to employees of the Corporation.

The Corporation reserves the right to increase or decrease its authorized capital stock, or any class or series thereof, or to reclassify the same and to amend, alter, change or repeal any provision contained in the Certificate of Incorporation, as amended, of this Corporation, or in any amendment thereto, in the manner now or hereafter prescribed by law, but subject to such conditions and limitations as are hereinbefore prescribed, and all rights conferred upon stockholders in the Certificate of Incorporation, as amended, of this Corporation, or any amendment thereto, are granted subject to this reservation.

Unless any statute of the State of New Mexico shall expressly provide to the contrary and subject to the limitations hereinbefore set forth in this ARTICLE FOURTH, the Corporation may acquire, hold and dispose of any shares of its stock of any class heretofore issued and outstanding.

#### ARTICLE FIFTH.

The number of directors of the Corporation shall be nine. Such directors shall be classified with respect only to the time for which they shall severally hold office, by dividing the number of directors into three equal classes, known as classes "A", "B" and "C". At the annual meeting of stockholders of 1953, nine directors shall be elected, three of whom shall be class A directors, who shall hold office for one year after they have been so elected, or until the next annual meeting; three of whom shall be class B directors, who shall hold office for two years after they have been so elected, or until the second annual election subsequent to the annual election of 1953; and three of whom shall be class C directors who shall hold office for three years after they have been so elected, or until the third annual election subsequent to the annual election of 1953. At each annual election subsequent to the annual election of 1953, the successors to the class of directors whose terms shall expire in that year shall be elected to hold office for the term of three years, so that the term of office of one

class of directors shall expire in each year; provided, however, that the term of office of the directors of each class shall continue until the election and qualification of the successors to the directors of such class.

#### ARTICLE SIXTH.

The following provisions for the management of the business and for the conduct of the affairs of the Corporation and creating, defining, limiting and regulating the powers thereof and of the directors and stockholders are in furtherance of and in addition to and not in limitation of the powers now or hereafter conferred by the present or any future law or laws of the State of New Mexico:

The Corporation shall have power, acting through its Board of Directors, except that in cases where action of the stockholders shall be required by statute or by this amended Certificate of Incorporation such action shall also be obtained:

(a) From time to time to issue its stocks, bonds, and other obligations for labor done, or property received for its use and lawful purposes; to purchase, acquire, hold, sell, exchange and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and to issue in exchange therefor, its stocks, bonds, or other obligations, and to mortgage and pledge the same or any bonds, stocks, or other securities of its own issue; and to make, draw, accept, endorse, execute and issue promissory notes, bills of exchange, warrants, bonds, indentures, and other instruments, and to aid in any manner any corporation any of whose stocks, bonds or other obligations are held, or in any way guaranteed or assumed by the Corporation; and from time to time to sell, exchange, or in any manner dispose of the whole or any portion of the assets of the Corporation.

(b) From time to time to fix and vary the amount of its working capital, and to direct and determine the use and disposition of any surplus or net profits over and above the capital stock paid in; and in its discretion (but subject to any restrictions imposed by the law of the State of New Mexico) to use and apply any such surplus or accumulated profits in acquiring the bonds or other obligations or shares of the capital stock of the Corpora-

tion to such extent and in such manner and upon such terms as the Board of Directors shall deem expedient, provided that no such funds or property shall be used for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the Corporation; but shares of capital stock so acquired may from time to time successively be resold and repurchased.

(c) To procure itself to be licensed or recognized in any state, county, city or other municipality of the United States, and to conduct its business and have one or more offices therein.

(d) To borrow money and to make and issue notes, bonds, debentures, obligations and evidences of indebtedness, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise of all or any part of its property or assets; and generally to make and perform agreements and contracts of every kind and description.

#### ARTICLE SEVENTH.

Pursuant to the authority conferred upon the Board of Directors of this Corporation by Paragraph A of ARTICLE FOURTH of the Amended Articles of Incorporation of this Corporation there shall be created and authorized a new series of Cumulative Preferred Stock of the Corporation consisting of One Hundred Seventy Thousand (170,000) shares without par value but having a stated value of \$100 each, which shall be designated and known as "9.20% Cumulative Preferred Stock, 1974 Series," (hereinafter referred to as the "1974 Series Preferred Stock"), and that in addition to the preferences and voting powers or restrictions or qualifications thereof, of all shares of Cumulative Preferred Stock, regardless of series, described and expressed in the Amended Articles of Incorporation of the Corporation, the shares of the 1974 Series Preferred Stock shall have the following terms and characteristics, and no others, to-wit:

(1) The holders of shares of the 1974 Series Preferred Stock shall be entitled to cumulative dividends at the rate of 9.20% of the stated value of \$100 each per annum from the date of issuance of such shares and payable on the 15th day of January, April, July and October in each year.

(2) In the event of voluntary liquidation, dissolution or winding up of the Corporation, the holders of the 1974 Series Preferred

Stock shall be entitled to receive One Hundred Dollars (\$100) for each share plus an amount equal to the accrued dividends thereon to the date of distribution, whether or not earned or declared.

(3) Upon any involuntary liquidation, dissolution or winding up of the Corporation, the holders of the 1974 Series Preferred Stock shall be entitled to receive One Hundred Dollars (\$100) for each share plus accrued dividends to the date of distribution, whether or not earned or declared.

(4) The 1974 Series Preferred Stock may not be redeemed prior to April 15, 1979, if such redemption is effected directly or indirectly through the use of the proceeds of, or in anticipation of, the incurring of debt or the issuance of preferred stock ranking equally with or prior to the 1974 Series Preferred Stock if such debt has an effective interest cost to the Company, or such preferred stock has an effective dividend cost to the Company (determined in each case in accordance with accepted financial practice) less than 9.20% per annum. Otherwise, and in any event, on and after April 15, 1979, the 1974 Series Preferred Stock may be redeemed at any time, or from time to time, in whole or in part, as provided in the Amended Articles of Incorporation of the Corporation upon and by paying to the holders of the shares to be redeemed the following redemption price or prices:

109.20% of the stated value thereof if such event should occur prior to April 15, 1979;

107% of the stated value thereof if such event should occur on or subsequent to April 15, 1979, but prior to April 15, 1984;

104% of the stated value thereof if such event should occur on or subsequent to April 15, 1984, but prior to April 15, 1989;

101% of the stated value thereof if such event should occur on or subsequent to April 15, 1989.

Plus in each case an amount equal to the accrued dividends thereon to the date fixed for redemption, whether or not earned or declared.

(5) The 1974 Series Preferred Stock shall not be convertible into, or exchangeable for, shares of any other class or classes of any other series of the same class of stock of the Corporation.

The issue of any additional shares of the 1974 Series Preferred Stock or of any future series of Cumulative Preferred Stock shall be subject to all of the provisions of the Amended Articles of Incorporation and of any and all amendments thereto.

#### ARTICLE EIGHTH.

Pursuant to the authority conferred upon the Board of Directors of this Corporation by paragraph A of ARTICLE FOURTH of the Amended Articles of Incorporation of this Corporation there shall be created and authorized a new series of Cumulative Preferred Stock of the Corporation consisting of One Hundred Thousand (100,000) shares without par value, but having a stated value of \$100 each, which shall be designated and known as "10.12% Cumulative Preferred Stock, 1975 Series" (hereinafter referred to as the "1975 Series Preferred Stock"), and that in addition to the preference and voting powers or restrictions or qualifications thereof, of all shares of Cumulative Preferred Stock, regardless of series, described and expressed in the Amended Articles of Incorporation of the Corporation, the shares of the 1975 Series Preferred Stock shall have the following terms and characteristics, and no others, to-wit:

(1) The holders of shares of the 1975 Series Preferred Stock shall be entitled to cumulative dividends at the rate of 10.12% of the stated value of \$100 each per annum from the date of issuance of such shares and payable on the 15th day of March, June, September and December in each year.

(2) In the event of voluntary liquidation, dissolution or winding up of the Corporation, the holders of the 1975 Series Preferred Stock shall be entitled to receive One Hundred Dollars (\$100) for each share plus an amount equal to the accrued dividends thereon to the date of distribution, whether or not earned or declared.

(3) Upon involuntary liquidation, dissolution or winding up of the Corporation, the holders of the 1975 Series Preferred Stock shall be entitled to receive One Hundred Dollars (\$100) for each share plus

accrued dividends thereon to the date of distribution, whether or not earned or declared.

(4) The 1975 Series Preferred Stock may not be redeemed prior to March 15, 1980, if such redemption is effective directly or indirectly through the use of the proceeds of, or in anticipation of the incurring of debt or the issuance of preferred stock ranking equally with or prior to the 1975 Series Preferred Stock if such debt has an effective interest cost to the Company, or such preferred stock has an effective dividend cost to the Company (determined in each case in accordance with accepted financial practice) of less than 10.12% per annum. Otherwise, and in any event, the 1975 Series Preferred Stock may be redeemed at any time, or from time to time, in whole or in part, as provided in the Amended Articles of Incorporation of the Corporation upon and by paying to the holders of the shares to be redeemed the following redemption price or prices:

110.12% of the stated value thereof if such event should occur prior to March 15, 1980;

107.00% of the stated value thereof if such event should occur on or subsequent to March 15, 1980, but prior to March 15, 1985;

104.00% of the stated value thereof if such event should occur on or subsequent to March 15, 1985, but prior to March 15, 1990;

101.00% of the stated value thereof if such event should occur on or subsequent to March 15, 1990;

Plus in each case an amount equal to the accrued dividends thereon to the date fixed for redemption, whether or not earned or declared.

(5) The 1975 Series Preferred Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of stock of the Corporation.

The issue of any additional shares of the 1975 Series Preferred Stock or of any further series of Cumulative Preferred Stock shall be subject to all of the provisions of the Amended Articles of Incorporation and of any amendments thereto.