

("Series D Preferred Stock") and Series E Cumulative Convertible Preferred Stock ("Series E Preferred Stock"). The Company has given notice to the holders of the Series A Preferred Stock that it intends to redeem all outstanding shares of Series A Preferred Stock on June 24, 1996.

Common Stock

Subject to the rights of holders of Preferred Stock (including the Series A Preferred Stock, the Series C Preferred Stock, the Series D Preferred Stock and the Series E Preferred Stock), holders of Common Stock are entitled to receive such dividends as may from time to time be declared by the Board of Directors of the Company out of such funds legally available for declaration of dividends. Holders of Common Stock are entitled to one vote per share on every question submitted to them at a meeting of stockholders or otherwise. In the event of a liquidation, dissolution or winding up and distribution of the assets of the Company, after paying or setting aside for the holders of Preferred Stock the full preferential amounts to which they are entitled, and subject to the rights of any series of Preferred Stock to participate pro rata with the Common Stock with respect to distributions, the holders of Common Stock will be entitled to receive pro rata all remaining assets of the Company available for distribution to stockholders. There are no pre-emptive rights for holders of Common Stock. The issued and outstanding shares of Common Stock are fully paid and nonassessable. Shares of Common Stock are not convertible into shares of any other class of capital stock of the Company.

Series A Preferred Stock

Notice of Redemption

The Company has given notice to the holders of the Series A Preferred Stock that it intends to redeem all outstanding shares of Series A Preferred Stock on June 24, 1996.

Ranking

The Series A Preferred Stock ranks, with respect to dividends or upon liquidation, dissolution or winding up, (i) on a parity with the Series C Preferred Stock, and other Preferred Stock permitted pursuant to the terms of the Series A Preferred Stock and ranking with respect to dividends or upon liquidation, dissolution or winding up on a parity with the Series A Preferred Stock, and (ii) prior to all other capital stock of the Company. Without the consent of the holders of two-thirds of the outstanding shares of Series A Preferred Stock, the Company may not authorize, create or increase the authorized amount of any class or series of stock that ranks prior to or, except for the Series C Preferred Stock and a limited amount of Preferred Stock ranking as to dividends or upon liquidation, dissolution or winding up on a parity with the Series C Preferred Stock, on a parity with the Series A Preferred Stock or, except for non-participating Preferred Stock and participating Preferred Stock issued pursuant to certain stockholder rights plans, ranking junior to the Series A Preferred Stock with respect to the payment of dividends or upon liquidation, dissolution or winding up.

Dividends

Holders of shares of the Series A Preferred Stock are entitled to receive, when and as declared by the Board of Directors of the Company out of assets of the Company legally available for payment, cash dividends at the rate of \$8.00 per share per annum, payable quarterly on January 1, April 1, July 1 and October 1 of each year. Unless Full Cumulative Dividends on all outstanding shares of the Series A Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend may be declared on any stock ranking junior to the Series A Preferred Stock. No shares of stock ranking junior to or on parity with the Series A Preferred Stock may be redeemed or purchased by the Company (other than pursuant to certain conversion rights) unless Full Cumulative Dividends on all outstanding shares of Series A Preferred Stock have been paid or declared and set aside for payment. If dividends on the Series A Preferred Stock and on any other series of Preferred Stock ranking on a parity as to dividends with the Series A Preferred Stock are in arrears, any dividends declared on each such series must be declared ratably upon all outstanding shares of the Series A Preferred Stock and such other series of Preferred Stock in proportion to the respective amounts of dividends in arrears, other than distributions made to holders of the Series A Preferred Stock from certain escrows established pursuant to conversion rights of the Series A Preferred Stock.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (not including certain mergers, consolidations or sales of all or substantially all assets), before any distribution of assets is made to holders of Common Stock or any other stock of the Company ranking junior to the shares of Series A Preferred Stock as to such a distribution, the holders of Series A Preferred Stock shall receive a liquidation preference of the then applicable redemption price and shall receive all accrued but unpaid dividends through the date of distribution, and the holders of any series of Preferred Stock ranking on a parity with the Series A Preferred Stock upon such liquidation, dissolution or winding up shall receive the full respective liquidation preferences to which they are entitled and shall receive all accrued but unpaid dividends with respect to their respective shares through and including the date of final distribution to such holders. If upon such a voluntary or involuntary dissolution, liquidation or winding up of the Company, the assets of the Company are insufficient to pay in full the amounts payable with respect to the Series A Preferred Stock and any such stock of the Company ranking on a parity with the Series A Preferred Stock, the holders of the Series A Preferred Stock and such other Preferred Stock will share ratably in any such distribution of assets of the Company first in proportion to their respective liquidation preferences until such preferences are paid in full, and then in proportion to their respective amounts of accrued but unpaid dividends. After payment of any such liquidating preference and accrued dividends, the shares of Series A Preferred Stock will not be entitled to any further participation in any distribution of assets by the Company.

Redemption

Commencing April 1, 1995, the Series A Preferred Stock may be redeemed in whole or in part at any time at a redemption price of \$104.80 per share, declining by \$0.80 per share on April 1 of each year thereafter to \$100

per share on April 1, 2001, plus accrued and unpaid dividends to the redemption date. Upon a Change of Control Event (generally defined as voluntary liquidations, certain mergers into a subsidiary, a sale of all or substantially all the Company's assets, or certain actions affecting the public market for the Company's Common Stock or its status as a public corporation), a holder of Series A Preferred Stock may at its option require redemption of its shares at a cash per share price equal to the greater of (i) the then redemption price or (ii) the product of the higher of the then market price of Common Stock or the price per share of Common Stock received by any other stockholder in the Change of Control Event or related transactions times the number of shares of Common Stock then issuable upon conversion of a share of Series A Preferred Stock.

Voting Rights

Holders of Series A Preferred Stock will be entitled as a separate class to elect two directors in the event of defaults in the payment of dividends aggregating \$8.00 per share and are entitled to a separate class vote on matters which would adversely affect the rights and preferences of the Series A Preferred Stock. So long as any shares of Series A Preferred Stock remain outstanding, the Company may not, without the affirmative vote or consent of the holders of at least two-thirds of the Series A Preferred Stock, voting as a single class, (i) authorize, create or issue, or increase the authorized or issued amount of, any class or series of stock ranking prior to or on parity with the Series A Preferred Stock as to dividends or upon liquidation, dissolution or winding up, except for Preferred Stock ranking on a parity with the Series A Preferred Stock having an aggregate liquidation preference of not more than \$100 million; (ii) authorize, create or issue, or increase the authorized amount of, any participating Preferred Stock; (iii) create, authorize or issue any class or series of common stock other than the Common Stock; (iv) amend the Certificate or By-laws if such amendment would adversely affect the powers, rights, privileges or preferences of the Series A Preferred Stock; (v) increase the number of shares of Series A Preferred Stock authorized for issuance; (vi) create, authorize or issue any class or series of capital stock or any security exercisable for or convertible into any capital stock except as permitted under clauses (i), (ii) or (iii) above; (vii) amend the Certificate of Designations relating to the Series A Preferred Stock or (viii) issue any additional shares of Series A Preferred Stock.

Conversion

Shares of the Series A Preferred Stock are convertible at any time at the option of the holder thereof into shares of Common Stock of the Company at a rate per share of Series A Preferred Stock equal to \$100 divided by a conversion price of \$21.00 per share of Common Stock, subject to adjustment in certain events including subdivisions, splits or combinations of Common Stock, stock dividends, extraordinary dividends or distributions on the Common Stock and issuance of Common Stock and related securities for less than the current Market Value. Upon the occurrence of a Control Adjustment Event (generally defined to be the acquisition by any person or group of beneficial ownership of at least 51% of the Common Stock, incumbent directors ceasing during any year to constitute a majority of the Board of Directors or involuntary liquidation of the Company), the conversion price is subject to adjustment downward to the greater of \$3.50 and the then market price of the Common Stock. Holders of shares of Series A Preferred Stock have a similar adjustment election in the event of the Registrant's failure to make payment upon any mandatory redemption. Any share of Series A Preferred Stock outstanding on April 15, 2007 is entitled to a conversion price adjustment to the higher of \$7.00 and the then market price of the Common Stock.

Eligibility for Sale; Registration Rights, Etc.

The holders of the Series A Preferred Stock have agreed not to transfer any shares of Series A Preferred Stock, or Common Stock issuable upon conversion thereof, except (i) pursuant to an effective registration under the Securities Act, (ii) in accordance with Rule 144 or Rule 144A under the Securities Act, or (iii) in a transaction otherwise not requiring registration under the Securities Act.

In general, under Rule 144 as currently in effect, a person (or persons whose shares are aggregated) who has beneficially owned his or her shares for at least two years (in the case of the holders of the Series A Preferred Stock, no earlier than April 14, 1994), including an "affiliate," as that term is defined below, is entitled to sell, within any

three-month period, that number of shares that does not exceed the greater of 1% of the then outstanding shares or the average weekly trading volume of the then outstanding shares during the four calendar weeks preceding each such sale. A person (or persons whose shares are aggregated) who is not deemed an "affiliate" of the Company, and who has beneficially owned shares for at least three years, is entitled to sell such shares under Rule 144 without regard to the volume limitations described above. As defined in Rule 144, an "affiliate" of an issuer is a person that directly or indirectly through the use of one or more intermediaries, controls, or is controlled by, or is under common control with, such issuer.

In general, under Rule 144A as currently in effect, shares of a class of stock (such as the Series A Preferred Stock) which were not, when issued, of the same class as securities listed on a national securities exchange or quoted in a U.S. automated inter-dealer quotation system, generally may be sold without registration under the Securities Act to "qualified institutional buyers" (defined in Rule 144A generally to include certain institutions investing on a discretionary basis at least \$100 million in securities other than those of the issuer, and certain securities dealers).

Under their respective share purchase agreements, holders of shares of Series A Preferred Stock are entitled to certain rights regarding registration of their shares under the Securities Act. Such holders are entitled to include, at the Company's expense, their shares of Series A Preferred Stock, or any shares of any Common Stock issued upon conversion thereof, in certain registrations under the Securities Act by the Company prior to April 15, 1997 of offerings of Convertible Preferred Stock or Common Stock or rights thereto, provided that no such shares need be included in a registration by the Company of an underwritten offering to the extent that the underwriters determine that such inclusion would jeopardize the successful sale of the shares to be sold by the underwriters. At any time prior to April 15, 1997 the holders of the Series A Preferred Stock may demand the registration under the Securities Act, at the Company's expense, of the public sale of a portion or all of such shares; provided that the Company may delay such a registration for up to 90 days in certain events. In any registration of an offering of Series A Preferred Stock, the Company is required to keep the registration statement effective for up to 120 days.

The share purchase agreements also contain various undertakings by the Company, including limitations on dividends and repurchases of the Company's stock, changes in the primary business engaged in by the Company and its subsidiaries and certain restrictions on dividends.

Definition

The following term shall have the meaning indicated in respect of the Series A Preferred Stock:

"Full Cumulative Dividends" shall mean, with respect to the Series A Preferred Stock, or any other capital stock of the Company, as of any date the aggregate amount of all then accumulated, accrued and unpaid dividends payable on such shares of Series A Preferred Stock, or other capital stock, as the case may be, in cash, whether or not earned or declared and whether or not there shall be funds legally available for the payment thereof.

Series C Preferred Stock

Ranking

The Series C Preferred Stock ranks senior to the Common Stock, the Series D Preferred Stock and the Series E Preferred Stock, and on a parity with the Series A Preferred Stock, with respect to the payment of dividends and upon liquidation, dissolution or winding up. The Series C Preferred Stock shall so rank on a parity with the Series D Preferred Stock and the Series E Preferred Stock at such times as there shall be no shares of Series A Preferred Stock outstanding. The Company may not, without the consent of two-thirds of the votes of the holders of the outstanding shares of Series C Preferred Stock and all other outstanding shares of Preferred Stock ranking on a parity with the Series C Preferred Stock either as to dividends or upon liquidation, dissolution or winding up, voting together as a single class, create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class

of stock of the Company ranking prior to the Series C Preferred Stock or ranking prior to any other series of Preferred Stock which ranks on a parity with the Series C Preferred Stock. However, the Company may create additional classes of stock or issue series of Preferred Stock ranking on a parity with the Series C Preferred Stock with respect to the payment of dividends or upon liquidation, dissolution and winding up without the consent of any holder of Series C Preferred Stock.

Dividends

Holders of shares of the Series C Preferred Stock are entitled to receive, when and as declared by the Board of Directors of the Company out of assets of the Company legally available for payment, cash dividends at an annual rate of \$3.125 per share of Series C Preferred Stock, payable in arrears on January 1, April 1, July 1 and October 1 of each year. Each dividend is payable to holders of record as they appear on the stock books of the Company on a Record Date, not more than 60 nor less than 10 days before the payment date, fixed by the Board of Directors of the Company. Dividends on the Series C Preferred Stock are cumulative and are computed for each full dividend period by dividing the annualized dividend rate by four. The Series C Preferred Stock is not entitled to any dividend, whether payable in cash, property or stock, in excess of Full Cumulative Dividends. No interest, or sum of money in lieu of interest, is payable in respect of any accrued and unpaid dividends.

Unless Full Cumulative Dividends on all outstanding shares of the Series C Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend (other than a dividend paid in stock ranking junior to the Series C Preferred Stock as to dividends) may be declared on any stock ranking junior to the Series C Preferred Stock as to dividends, nor may any stock ranking junior to the Series C Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed or purchased by the Company nor any sinking fund payment made for such redemption or purchase (other than a purchase or redemption made by issue or delivery of stock ranking junior to the Series C Preferred Stock as to dividends or upon liquidation, dissolution or winding up); provided that, unless prohibited by the terms of any other outstanding series of Preferred Stock, any monies theretofore deposited in any sinking fund with respect to any Preferred Stock in compliance with the terms thereof may thereafter be applied in accordance with the terms thereof. If dividends on Series C Preferred Stock and on any other series of Preferred Stock ranking on a parity as to dividends with the Series C Preferred Stock are in arrears, any dividend payment on account of such arrearage must be made ratably upon all outstanding shares of the Series C Preferred Stock and such other series of Preferred Stock in proportion to the respective amounts of Full Cumulative Dividends, other than distributions made to holders of the Series A Preferred Stock from certain escrows established pursuant to conversion rights of the Series A Preferred Stock.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (not including mergers, consolidation or sale of all or substantially all assets), before any payment or distribution of assets is made to holders of Common Stock or any other stock of the Company ranking junior to the shares of Series C Preferred Stock upon liquidation, dissolution or winding up, the holders of Series C Preferred Stock shall receive a liquidation preference of \$50 per share and shall be entitled to receive all accrued and unpaid dividends through the date of distribution, and the holders of any class or series of Preferred Stock ranking on a parity with the Series C Preferred Stock as to liquidation, dissolution or winding up shall be entitled to receive the full respective liquidation preferences (including any premium) to which they are entitled and shall receive all accrued and unpaid dividends with respect to their respective shares through and including the date of distribution. If, upon such a voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company are insufficient to pay in full the amounts described above as payable with respect to the Series C Preferred Stock and any class or series of Preferred Stock of the Company ranking on a parity with the Series C Preferred Stock as to liquidation, dissolution or winding up, the holders of the Series C Preferred Stock and of such other class or series of Preferred Stock will share ratably in any such distribution of assets of the Company first in proportion to their respective liquidation preferences until such preferences are paid in full, and then in proportion to their respective amounts of accrued but unpaid dividends. After payment of any such liquidating preference and accrued dividends, the shares of Series C

Preferred Stock will not be entitled to any further participation in any distribution of assets by the Company. Neither the sale of all or substantially all the assets of the Company, nor the merger or consolidation of the Company into or with any other corporation, will be deemed to be a liquidation, dissolution or winding up of the Company.

Optional Redemption

Shares of the Series C Preferred Stock are not subject to any mandatory redemption, sinking fund or other similar provision. The Series C Preferred Stock is redeemable at the option of the Company upon notice at any time, in whole or in part, at a redemption price per share (expressed as a percentage of the \$50 liquidation preference thereof), plus any accrued and unpaid dividends up to but excluding the date fixed for redemption, if redeemed during the twelve-month period commencing on September 1 of the years indicated below:

Year	Redemption Price	Year	Redemption Price
1995.....	104.375%	1999.....	101.875%
1996.....	103.750	2000.....	101.250
1997.....	103.125	2001.....	100.625
1998.....	102.500	2002 and thereafter.....	100.000

If fewer than all of the outstanding shares of the Series C Preferred Stock are to be redeemed, the shares to be redeemed will be determined pro rata as nearly as practicable or by lot, or by such other method as the Board of Directors may determine to be fair and appropriate. In the event that any quarterly dividends payable on the Series C Preferred Stock are in arrears, the Series C Preferred Stock may not be redeemed unless all outstanding shares of Series C Preferred Stock are simultaneously redeemed and the Company may not purchase or acquire any of such shares otherwise than pursuant to a purchase or exchange offer made on the same terms to all holders of record of the Series C Preferred Stock.

Notice of redemption will be given by mail, not less than 30 nor more than 60 days prior to the date fixed for redemption thereof, to each record holder of the shares of Series C Preferred Stock to be redeemed at the address of such holder in the stock register of the Company. If a notice of redemption has been given, from and after the specified redemption date (unless the Company defaults in making payment of the redemption price), dividends on the Series C Preferred Stock so called for redemption will cease to accrue, such shares will no longer be deemed to be outstanding, and all rights of the holders thereof as stockholders of the Company (except the right to receive the redemption price) will cease.

Voting Rights

Except as indicated below or as expressly required by applicable law, the holders of the Series C Preferred Stock have no voting rights.

If the equivalent of six full quarterly dividends payable on the Series C Preferred Stock are in arrears, the maximum authorized number of directors of the Company will be increased by two and the holders of Series C Preferred Stock, voting separately as a class with the holders of shares of any other series of Preferred Stock ranking on a parity with the Series C Preferred Stock and upon which like voting rights have been conferred and are exercisable (which does not include the Series A Preferred Stock, which has separate voting rights in the case of dividend arrearages), will be entitled to elect two directors for successive one-year terms until all dividends in arrears on the Series C Preferred Stock have been paid or declared and set apart for payment. Upon payment or declaration

and setting apart of funds for payment of all such dividends in arrears, the term of office of each director elected will immediately terminate and the number of directors constituting the entire Board of Directors of the Company will be reduced by the number of directors elected by the holders of the Series C Preferred Stock and any other series of Preferred Stock ranking on a parity with the Series C Preferred Stock as discussed above.

The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the Series C Preferred Stock and each other series of Preferred Stock ranking on a parity with the Series C Preferred Stock and upon which like voting rights have been conferred (voting together as a single class), create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class of stock of the Company ranking prior to the Series C Preferred Stock or any other series of Preferred Stock which ranks on a parity with the Series C Preferred Stock. The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the outstanding shares of the Series C Preferred Stock and each other series of Preferred Stock of the Company similarly affected, if any, voting together as a single class, amend, alter or repeal any provision of the Certificate which would materially and adversely affect the preferences, rights, powers or privileges, qualification, limitations and restrictions of the Series C Preferred Stock and any such other series of Preferred Stock; provided, however, that the creation, issuance or increase in the amount of authorized shares of any other series of Preferred Stock ranking on a parity with or junior to the Series C Preferred Stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the affairs of the Company will not be deemed to materially and adversely affect such rights and preferences, privileges or voting powers.

Conversion

Shares of the Series C Preferred Stock are convertible at any time at the option of the holder thereof into such number of whole shares of Common Stock as is equal to the aggregate liquidation preference of the shares of Series C Stock surrendered for conversion divided by the conversion price of \$25.9375 per share of Common Stock, subject to adjustment as described below. Shares of Series C Preferred Stock surrendered for conversion during the period after any dividend payment record date and prior to the corresponding dividend payment date must be accompanied by payment of an amount equal to the dividend payable on such shares on such dividend payment date. Shares of Series C Preferred Stock called for redemption will not be convertible after the close of business on the Business Day preceding the date fixed for redemption, unless the Company defaults in payment of the redemption price.

The initial conversion price of \$25.9375 per share of Common Stock is subject to adjustment (under formulae set forth in the Certificate of Designations) in certain events, including: (i) the issuance of Common Stock as a dividend or distribution on Common Stock of the Company; (ii) certain subdivisions and combinations of the Common Stock; (iii) the issuance to all holders of Common Stock of certain rights or warrants to purchase Common Stock; (iv) the distribution to all holders of Common Stock of shares of capital stock of the Company (other than Common Stock) or evidences of indebtedness of the Company or assets (including securities, but excluding those rights, warrants, dividends and distributions referred to above and dividends and distributions in connection with the liquidation, dissolution or winding up of the Company or paid in cash); (v) distributions consisting of cash, excluding any quarterly cash dividend on the Common Stock to the extent that the aggregate cash dividend per share of Common Stock in any quarter does not exceed the greater of (x) the amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require an adjustment of the Conversion Price pursuant to this clause (v) (as adjusted to reflect subdivisions or combinations of the Common Stock), and (y) 3.75 percent of the average of the daily Closing Prices of the Common Stock for the ten consecutive Trading Days immediately prior to the date of declaration of such dividend, and excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company; and (vi) payment in respect of a tender or exchange offer by the Company or any subsidiary of the Company for the Common Stock to the extent that the cash and value of any other consideration included in such payment per share of Common Stock exceeds the Current Market Price per share of Common Stock on the Trading Day next succeeding the date of payment. If any adjustment is required to be made as set forth in clause (v) above as a result of a distribution which is a quarterly dividend, such adjustment would be based upon the amount by which such distribution exceeds the amount of the quarterly cash

dividend permitted to be excluded pursuant to such clause (v). If an adjustment is required to be made as set forth in (v) above as a result of a distribution which is not a quarterly dividend, such adjustment would be based upon the full amount of such distribution.

The Company from time to time may to the extent permitted by law reduce the conversion price by any amount for any period of at least 20 days, in which case the Company shall give at least 15 days' notice of such reduction, if the Board of Directors has made a determination that such reduction would be in the best interests of the Company, which determination shall be conclusive. The Company may, at its option, make such reduction in the conversion price, in addition to those set forth above, as the Board of Directors deems advisable to avoid or diminish any income tax to holders of Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

If any transaction shall occur, including without limitation (i) any recapitalization or reclassification of shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Common Stock), (ii) any consolidation or merger of the Company with or into another person or any merger of another person into the Company (other than a merger that does not result in a reclassification, conversion, exchange or cancellation of Common Stock), (iii) any sale or transfer of all or substantially all of the assets of the Company, or (iv) any compulsory share exchange, pursuant to any of which holders of Common Stock shall be entitled to receive other securities, cash or other property, then appropriate provision shall be made so that the holder of each share of Series C Preferred Stock then outstanding shall have the right thereafter to convert such share only into (x) in the case of any such transaction that does not constitute a Common Stock Fundamental Change (as defined below) and subject to funds being legally available for such purpose under applicable law at the time of such conversion, the kind and amount of the securities, cash or other property that would have been receivable upon such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange by a holder of the number of shares of Common Stock issuable upon conversion of such share of Series C Preferred Stock immediately prior to such recapitalization, reclassification, consolidation, merger, sale, transfer or share exchange, after giving effect, in the case of any Non-Stock Fundamental Change (as defined below), to any adjustment in the conversion price in accordance with clause (i) of the following paragraph, and (y) in the case of any such transaction that constitutes a Common Stock Fundamental Change, common stock of the kind received by holders of Common Stock as a result of such Common Stock Fundamental Change in an amount determined in accordance with clause (ii) of the following paragraph. The company formed by such consolidation or resulting from such merger or that acquires such assets or that acquires the Company's shares, as the case may be, shall make provisions in its certificate or articles of incorporation or other constituent document to establish such right. Such certificate or articles of incorporation or other constituent document shall provide for adjustments that, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent documents, shall be as nearly equivalent as may be practicable to the relevant adjustments provided for in the preceding paragraph and in this paragraph.

Notwithstanding any other provision in the preceding paragraphs to the contrary, if any Fundamental Change (as defined below) occurs, then the conversion price in effect will be adjusted immediately after such Fundamental Change as follows:

(i) in the case of a Non-Stock Fundamental Change, the conversion price of the shares of Series C Preferred Stock immediately following such Non-Stock Fundamental Change shall be the lower of (A) the conversion price in effect immediately prior to such Non-Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to the preceding paragraphs, and (B) the product of (1) the greater of the Applicable Price (as defined below) and the then applicable Reference Market Price (as defined below) and (2) a fraction, the numerator of which is \$50 and the denominator of which is (x) the amount of the redemption price for one share of Series C Preferred Stock if the redemption date were the date of such Non-Stock Fundamental Change, plus (y) any then accrued and then-accumulated and unpaid dividends on Series C Preferred Stock; and

(ii) in the case of a Common Stock Fundamental Change, the conversion price of the shares of Series C Preferred Stock immediately following such Common Stock Fundamental Change shall be the conversion price in effect immediately prior to such Common Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to the preceding paragraphs, multiplied by a fraction, the numerator of which is the Purchaser Stock Price (as defined below) and the denominator of which is the Applicable Price; provided, however, that in the event of a Common Stock Fundamental Change in which (A) 100% of the value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror, or other third party (and cash, if any, paid with respect to any fractional interests in such common stock resulting from such Common Stock Fundamental Change) and (B) all of the Common Stock of the Company shall have been exchanged for, converted into, or acquired for, common stock of the successor, acquiror or other third party (and any cash with respect to fractional interests), the conversion price of the shares of Series C Preferred Stock immediately following such Common Stock Fundamental Change shall be the conversion price in effect immediately prior to such Common Stock Fundamental Change multiplied by a fraction, the numerator of which is one (1) and the denominator of which is the number of shares of common stock of the successor, acquiror, or other third party received by a holder of one share of Common Stock as a result of such Common Stock Fundamental Change.

Depending upon whether a Fundamental Change is a Non-Stock Fundamental Change or a Common Stock Fundamental Change, a holder may receive significantly different consideration upon conversion. In the event of a Non-Stock Fundamental Change, the holder has the right to convert shares of Series C Preferred Stock into the kind and amount of the shares of stock and other securities or property or assets (including cash), except as otherwise provided above, as is determined by the number of shares of Common Stock receivable upon conversion at the conversion price as adjusted in accordance with clause (i) of the preceding paragraph. However, in the event of a Common Stock Fundamental Change in which less than 100% of the value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror or other third party, a holder of a share of Series C Preferred Stock who converts such share following the Common Stock Fundamental Change will receive consideration in the form of such common stock only, whereas a holder who converted such share prior to the Common Stock Fundamental Change would have received consideration in the form of such common stock as well as any other securities or assets (which may include cash) issuable upon conversion of such share of Series C Preferred Stock immediately prior to such Common Stock Fundamental Change.

No adjustment to the conversion price will be required to be made in any case until cumulative adjustments amount to 1% or more of the conversion price.

Definitions

The following terms shall have the meanings indicated in respect of the Series C Preferred Stock:

"Applicable Price" shall mean (i) in the event of a Non-Stock Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by a holder of one share of Common Stock and (ii) in the event of any other Non-Stock Fundamental Change or any Common Stock Fundamental Change, the average of the reported last sale price for one share of the Common Stock (determined as provided in the Certificate of Designations) during the 10 Trading Days immediately prior to the Record Date for the determination of the holders of Common Stock entitled to receive cash, securities, property or other assets in connection with such Non-Stock Fundamental Change or Common Stock Fundamental Change or, if there is no such Record Date, prior to the date upon which the holders of the Common Stock shall have the right to receive such cash, securities, property or other assets.

"Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York or The Commonwealth of Massachusetts are authorized or obligated by law or executive order to close or a day which is or is declared a national or New York or Massachusetts state holiday;

"Closing Price" with respect to any securities on any day shall mean the closing sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the New York Stock Exchange, or, if such security is not listed or admitted to trading on such Exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similarly generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose or a price determined in good faith by the Board of Directors.

"Common Stock Fundamental Change" shall mean any Fundamental Change in which more than 50% of the value (as determined in good faith by the Board of Directors of the Company) of the consideration received by holders of Common Stock consists of common stock that, for the 10 Trading Days immediately prior to such Fundamental Change, has been admitted for listing or admitted for listing subject to notice of issuance on a national securities exchange or quoted on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotations System; provided, however, that a Fundamental Change shall not be a Common Stock Fundamental Change unless either (i) the Company continues to exist after the occurrence of such Fundamental Change and the outstanding shares of Series C Preferred Stock continue to exist as outstanding shares of Series C Preferred Stock, or (ii) not later than the occurrence of such Fundamental Change, the outstanding shares of Series C Preferred Stock are converted into or exchanged for shares of convertible preferred stock of a corporation succeeding to the business of the Company, which convertible preferred stock has powers, preferences and relative, participating, optional or other rights, and qualifications, limitations and restrictions substantially similar to those of the Series C Preferred Stock.

"Current Market Price" shall mean, for purposes of any computation under the above section entitled "Conversion," the average of the daily Closing Prices per share of Common Stock on the day in question and the next two succeeding Trading Days, and for purposes of any other computation hereunder, the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that (1) if the "ex" date (as hereinafter defined) for any event (other than the issuance, distribution or Fundamental Change requiring such computation) that requires an adjustment to the Conversion Price occurs during the applicable measurement period, for purposes of such computation the Closing Price for each Trading Day prior to the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Conversion Price is so required to be adjusted as a result of such other event, (2) if the "ex" date for any event (other than the issuance, distribution or Fundamental Change requiring such computation) that requires an adjustment to the Conversion Price occurs on or after the "ex" date for the issuance, distribution or Fundamental Change requiring such computation and on or prior to the day in question, for purposes of such computation the Closing Price for each Trading Day on and after the "ex" date for such other event shall be adjusted by multiplying such Closing Price by the reciprocal of the fraction by which the Conversion Price is so required to be adjusted as a result of such other event, and (3) if the "ex" date for the issuance, distribution or Fundamental Change requiring such computation is on or prior to the day in question, for purposes of such computation, after taking into account any adjustment required pursuant to clause (1) or (2) of this proviso, the Closing Price for each Trading Day on or after such "ex" date shall be adjusted by adding thereto the amount of any cash and the Fair Market Value (as determined by the Board of Directors in a manner consistent with any determination of such value for purposes of the above section entitled "Conversion," whose determination shall be conclusive and described in a resolution of the Board of Directors) of the evidences of indebtedness, shares of capital stock or assets being distributed applicable to one share of Common Stock as of the close of business on the day before such "ex" date. For purposes of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective, and (3) when used with

respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer.

"Fair Market Value" shall mean the amount which a willing buyer would pay a willing seller in an arm's length transaction.

"Full Cumulative Dividends" shall mean, with respect to the Series C Preferred Stock, or any other capital stock of the Company, as of any date the amount of accumulated, accrued and unpaid dividends payable on such shares of Series C Preferred Stock, or other capital stock, as the case may be, whether or not earned or declared and whether or not there shall be funds legally available for the payment thereof.

"Fundamental Change" shall mean the occurrence of any transaction or event or series of transactions or events pursuant to which all or substantially all of the Common Stock of the Company shall be exchanged for, converted into, acquired for or shall constitute solely the right to receive cash, securities, property or other assets (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided, however, in the case of any such series of transactions or events, for purposes of adjustment of the conversion price, such Fundamental Change shall be deemed to have occurred when substantially all of the Common Stock of the Company shall have been exchanged for, converted into, or acquired for, or shall constitute solely the right to receive, such cash, securities, property or other assets, but the adjustment shall be based upon the consideration that the holders of Common Stock received in the transaction or event as a result of which more than 50% of the Common Stock of the Company shall have been exchanged for, converted into, or acquired for, or shall constitute solely the right to receive, such cash, securities, property or other assets; and provided, further, that such term does not include (i) any such transaction or event in which the Company and/or any of its subsidiaries are the issuers of all the cash, securities, property or other assets exchanged, acquired or otherwise issued in such transaction or event, or (ii) any such transaction or event in which the holders of Common Stock receive securities of an issuer other than the Company if, immediately following such transaction or event, such holders hold a majority of the securities having the power to vote normally in the election of directors of such other issuer outstanding immediately following such transaction or other event.

"Non-Stock Fundamental Change" shall mean any Fundamental Change other than a Common Stock Fundamental Change.

"Purchaser Stock Price" shall mean, with respect to any Common Stock Fundamental Change, the average of the reported last sale price for one share of the common stock received by holders of Common Stock (determined as provided in the Certificate of Designations) in such Common Stock Fundamental Change during the 10 Trading Days immediately prior to the date fixed for the determination of the holders of Common Stock entitled to receive such common stock or, if there is no such date, prior to the date upon which the holders of the Common Stock shall have the right to receive such common stock.

"Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise), and with respect to any subdivision or combination of the Common Stock, the effective date of such subdivision or combination.

"Reference Market Price" shall initially mean \$13.8333 and, in the event of any adjustment to the conversion price other than as a result of a Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the conversion price after giving effect to any such adjustment shall always be the same as the ratio of the initial Reference Market Price to the initial conversion price of \$25.9375 per share.

"Trading Day" shall mean (x) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or another national securities exchange is open for business or (y) if the applicable security is quoted on the National Market System of the National Association of Securities Dealers Automated Quotation System, a day on which trades may be made on such National Market System or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Transfer Agent" shall mean State Street Bank and Trust Company, or any other national or state bank or trust company having combined capital and surplus of at least \$100,000,000 and designated by the Company as the transfer agent and/or registrar of the Series C Preferred Stock, or if no such designation is made, the Company.

Series D Preferred Stock

Ranking

The Series D Preferred Stock ranks senior to the Common Stock, junior to the Series A Preferred Stock and the Series C Preferred Stock, and on a parity with the Series E Preferred Stock, with respect to the payment of dividends and upon liquidation, dissolution or winding up, provided that the Series D Preferred Stock shall so rank on a parity with the Series C Preferred Stock at such times as there shall be no shares of Series A Preferred Stock outstanding. The Company may not, without the consent of two-thirds of the votes of the holders of the outstanding shares of Series D Preferred Stock and all other outstanding shares of Preferred Stock ranking on a parity with the Series D Preferred Stock either as to dividends or upon liquidation, dissolution or winding up, voting together as a single class, create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class of stock of the Company ranking prior to the Series D Preferred Stock or ranking prior to any other series of Preferred Stock which ranks on a parity with the Series D Preferred Stock. However, the Company may create additional classes of stock or issue series of Preferred Stock ranking on a parity with the Series D Preferred Stock with respect to the payment of dividends or upon liquidation, dissolution and winding up without the consent of any holder of Series D Preferred Stock.

Dividends

Holders of shares of the Series D Preferred Stock are entitled to receive, when and as declared by the Board of Directors of the Company out of assets of the Company legally available for payment, cash dividends at an annual rate of \$1.8138 per share of Series D Preferred Stock, payable in arrears on January 1, April 1, July 1 and October 1 of each year commencing January 1, 1996. Each dividend is payable to holders of record as they appear on the stock register of the Company on a record date, not more than 60 nor less than 10 days before the payment date, fixed by the Board of Directors of the Company. Dividends are cumulative and accrue on a daily basis from the date of original issuance of the Series D Preferred Stock. Dividends payable on the Series D Preferred Stock for each full quarterly dividend period are computed by annualizing the dividend rate and dividing by four. Dividends payable for any period greater or less than a full dividend period are computed on the basis of a 360-day year consisting of twelve 30-day months. The Series D Preferred Stock is not entitled to any dividend, whether payable in cash, property or stock, in excess of Full Cumulative Dividends. No interest, or sum of money in lieu of interest, is payable in respect of any accrued and unpaid dividends.

Unless Full Cumulative Dividends on all outstanding shares of any series of Preferred Stock ranking senior to the Series D Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend may be declared on shares of the Series D Preferred Stock (other than a dividend paid in stock ranking junior to any series of Preferred Stock ranking senior to the Series D Preferred Stock as to dividends), nor may shares of the Series D Preferred Stock be redeemed or purchased by the Company nor any sinking fund payment made for such redemption or purchase (other than a purchase or redemption made by issue or delivery of stock ranking junior to any series of Preferred Stock ranking senior to the

Series D Preferred Stock as to dividends, or upon liquidation, dissolution or winding up). Unless Full Cumulative Dividends on all outstanding shares of the Series D Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend (other than a dividend paid in stock ranking junior to the Series D Preferred Stock as to dividends) may be declared on any stock ranking junior to the Series D Preferred Stock as to dividends, nor may any stock ranking junior to the Series D Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed or purchased by the Company nor any sinking fund payment made for such redemption or purchase (other than a purchase or redemption made by issue or delivery of stock ranking junior to the Series D Preferred Stock as to dividends or upon liquidation, dissolution or winding up); provided that, unless prohibited by the terms of any other outstanding series of Preferred Stock, any monies theretofore deposited in any sinking fund with respect to any Preferred Stock in compliance with the terms thereof may thereafter be applied in accordance with the terms thereof. If dividends on Series D Preferred Stock and on any other series of Preferred Stock ranking on a parity as to dividends with the Series D Preferred Stock are in arrears, any dividend payment on account of such arrearage must be made ratably upon all outstanding shares of the Series D Preferred Stock and such other series of Preferred Stock in proportion to the respective amounts of Full Cumulative Dividends.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (not including mergers, consolidations or sales of all or substantially all assets), before any payment or distribution of assets is made to holders of the Series D Preferred Stock upon liquidation, dissolution or winding up, the holders of each class or series of Preferred Stock ranking senior to the Series D Preferred Stock shall be entitled to receive full payment of their liquidation preferences. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, before any payment or distribution of assets is made to holders of Common Stock or any other stock of the Company ranking junior to the shares of Series D Preferred Stock upon liquidation, dissolution or winding up, the holders of Series D Preferred Stock shall receive a liquidation preference of \$100 per share and shall be entitled to receive all accrued and unpaid dividends through the date of distribution, and the holders of any class or series of Preferred Stock ranking on a parity with the Series D Preferred Stock as to liquidation, dissolution or winding up shall be entitled to receive the full respective liquidation preferences (including any premium) to which they are entitled and shall receive all accrued and unpaid dividends with respect to their respective shares through and including the date of distribution. If, upon such a voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company are insufficient to pay in full the amounts described above as payable with respect to the Series D Preferred Stock and any class or series of Preferred Stock of the Company ranking on a parity with the Series D Preferred Stock as to liquidation, dissolution or winding up, the holders of the Series D Preferred Stock and of such other class or series of Preferred Stock will share ratably in any such distribution of assets of the Company first in proportion to their respective liquidation preferences until such preferences are paid in full, and then in proportion to their respective amounts of accrued but unpaid dividends. After payment of any such liquidating preference and accrued dividends, the shares of Series D Preferred Stock will not be entitled to any further participation in any distribution of assets by the Company. Neither the sale of all or substantially all the assets of the Company, nor the merger or consolidation of the Company into or with any other corporation, will be deemed to be a liquidation, dissolution or winding up of the Company.

Mandatory Redemption in Event of Sale

Shares of the Series D Preferred Stock are subject to mandatory redemption in the following circumstances. If at any time not less than 10 Business Days before November 17, 1996 the Company shall consummate any Sale (defined as a sale of all or substantially all of the assets or stock of an operating division or subsidiary of the Company other than TJ Maxx or Marshall's at a value of not less than a \$25 million premium over the book value of such assets or stock), then the Company shall apply the full amount of the Sale Proceeds (defined as the net cash proceeds, if any (after subtracting all fees and expenses related to such transaction), received by the Company in respect of any Sale) received by the Company in respect of such Sale to redeem all then outstanding shares of Series D Preferred Stock (or, if fewer, as many such shares as can be redeemed at the Call Price out of such Sale Proceeds). Upon any such redemption, the Company shall deliver to the holders of shares of Series D Preferred Stock, in exchange for each

share so redeemed, cash in an amount equal to the sum of (i) \$100 per share plus (ii) Full Cumulative Dividends thereon to the date fixed for redemption. If fewer than all of the outstanding shares of the Series D Preferred Stock are to be redeemed, shares to be redeemed shall be selected by the Company from outstanding shares of this Series not previously redeemed by lot or pro rata (as nearly as may be practicable) or by any other method determined by the Board of Directors of the Company in its sole discretion to be equitable.

Notice of redemption will be given by mail, not less than 10 nor more than 60 days prior to the date fixed for redemption thereof, to each record holder of the shares of Series D Preferred Stock to be redeemed at the address of such holder in the stock register of the Company; provided, however, that failure to give such notice or any defect therein shall not affect the validity of the proceeding for redemption of any of the shares of the Series D Preferred Stock. If a notice of redemption has been given, from and after the specified redemption date (unless the Company defaults in making payment of the redemption price), such shares will be no longer be deemed to be outstanding, dividends on the Series D Preferred Stock so called for redemption will cease to accrue (provided that holders of shares of Series D Preferred Stock at the close of business on a record date for any payment of dividends shall be entitled to receive Full Cumulative Dividends payable on such shares on the corresponding Dividend Payment Date notwithstanding the redemption of such shares following such record date and prior to such Dividend Payment Date), and all rights of the holders thereof as stockholders of the Company (except the right to receive the redemption price) will cease.

Voting Rights

Except as indicated below or as expressly required by applicable law, the holders of the Series D Preferred Stock have no voting rights.

If the equivalent of six full quarterly dividends payable on the Series D Preferred Stock are in arrears, the maximum authorized number of directors of the Company will be increased by two and the holders of Series D Preferred Stock, voting separately as a class with the holders of shares of any other series of Preferred Stock ranking on a parity with the Series D Preferred Stock and upon which like voting rights have been conferred and are exercisable, will be entitled to elect two directors for successive one-year terms until all dividends in arrears on the Series D Preferred Stock have been paid or declared and set apart for payment. Upon payment or declaration and setting apart of funds for payment of all such dividends in arrears, the term of office of each director elected will immediately terminate and the number of directors constituting the entire Board of Directors of the Company will be reduced by the number of directors elected by the holders of the Series D Preferred Stock and any other series of Preferred Stock ranking on a parity with the Series D Preferred Stock as discussed above.

The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the Series D Preferred Stock and each other series of Preferred Stock ranking on a parity with the Series D Preferred Stock and upon which like voting rights have been conferred (voting together as a single class), create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class of stock of the Company ranking prior to the Series D Preferred Stock or any other series of Preferred Stock which ranks on a parity with the Series D Preferred Stock. The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the outstanding shares of the Series D Preferred Stock and each other series of Preferred Stock of the Company similarly affected, if any, voting together as a single class, amend, alter or repeal any provision of the Certificate which would materially and adversely affect the preferences, rights, powers or privileges, qualification, limitations and restrictions of the Series D Preferred Stock and any such other series of Preferred Stock; provided, however, that the creation, issuance or increase in the amount of authorized shares of any other series of Preferred Stock ranking on a parity with or junior to the Series D Preferred Stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the affairs of the Company will not be deemed to materially and adversely affect such rights and preferences, privileges or voting powers.

Conversion

On November 17, 1996 (the "Automatic Conversion Date"), unless earlier converted at the option of the holder, each outstanding share of the Series D Preferred Stock shall convert automatically (the "Automatic Conversion") into (i) shares of Common Stock at the Exchange Rate in effect on the Automatic Conversion Date and (ii) the right to receive an amount in cash equal to Full Cumulative Dividends on such share to the Automatic Conversion Date.

Shares of Series D Preferred Stock may be converted, in whole or in part, at the option of the holder thereof ("Optional Conversion"), at any time after the giving of any notice of redemption by the Company and not later than the close of business on the Business Day prior to November 17, 1996, into (i) shares of Common Stock at the Exchange Rate in effect on the Optional Conversion Date; and (ii) the right to receive an amount in cash equal to Full Cumulative Dividends on such shares to the Optional Conversion Date; provided that only the shares of Series D Preferred Stock that were subject to such notice of redemption may be converted in an Optional Conversion. Notwithstanding the foregoing, the Company may, at its option, in lieu of delivering shares of Common Stock on the Optional Conversion Date, deliver cash in an aggregate amount equal to the aggregate Closing Price (on the Trading Day preceding the Optional Conversion Date) of the number of shares of Common Stock otherwise so deliverable (together, in any event, with Full Cumulative Dividends thereon to the Optional Conversion Date).

The Exchange Rate shall be subject to adjustment (under formulae set forth in the Certificate of Designations) from time to time as appropriate in certain circumstances, including if the Company shall (i) pay or make a dividend or other distribution with respect to its Common Stock in shares of Common Stock (including by way of reclassification of any shares of its Common Stock) to all holders of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock or combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, (iii) issue certain rights or warrants to all holders of its Common Stock entitling them (for a period not exceeding 45 days from the date of such issuance) to subscribe for or purchase shares of Common Stock at a price less than the Fair Market Value of the Common Stock on the record date for the determination of stockholders entitled to receive such rights or warrants, or (iv) pay a dividend or make a distribution to all holders of its Common Stock consisting of evidences of its indebtedness or other assets (including shares of capital stock of the Company other than Common Stock but excluding any cash dividends or other distributions referred to in clauses (i) and (ii) above) or shall issue to all holders of its Common Stock rights or warrants to subscribe for or purchase any of its securities (other than those referred to in clause (iii) above). Anything in this paragraph notwithstanding, the Company shall be entitled to make such upward adjustments in the Exchange Rate, in addition to those required by this paragraph, as the Company in its sole discretion shall determine to be advisable, in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or distribution of securities convertible into or exchangeable for stock (or any transaction which could be treated as any of the foregoing transactions pursuant to Section 305 of the Internal Revenue Code of 1986, as amended) hereafter made by the Company to its stockholders shall not be taxable. All adjustments to the Exchange Rate shall be calculated to the nearest 1/1,000,000th of a share of Common Stock. No adjustment in the Exchange Rate shall be required unless such adjustment would require an increase or decrease of at least one percent in the Exchange Rate; provided, however, that any adjustments which by reason of the foregoing are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All adjustments to the Exchange Rate shall be made successively. Before taking any action that would cause an adjustment increasing the Exchange Rate such that the conversion price (for purposes of this paragraph, an amount equal to the liquidation value per share of Series D Preferred Stock divided by the Upper Exchange Rate as in effect from time to time) would be below the then par value of the Common Stock, the Company will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock at the Upper Exchange Rate as so adjusted.

In case of any consolidation or merger to which the Company is a party (other than a merger or consolidation in which the Company is the continuing corporation and in which the Common Stock outstanding immediately prior to the merger or consolidation remains unchanged), or in case of any sale or transfer to another corporation of the

property of the Company as an entirety or substantially as an entirety, or in case of any statutory exchange of securities with another corporation (other than in connection with a merger or acquisition), proper provision shall be made so that each share of the Series D Preferred Stock shall, after consummation of such transaction, be subject to (i) conversion at the option of the holder into the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Common Stock into which such share of Series D Preferred Stock would have been converted if the conversion had occurred immediately prior to consummation of such transaction (based on the Exchange Rate in effect immediately prior to such consummation), (ii) conversion on the Automatic Conversion Date into the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Common Stock into which such share of Series D Preferred Stock would have been converted if the conversion on the Automatic Conversion Date had occurred immediately prior to the date of consummation of such transaction (based on the Exchange Rate in effect immediately prior to such consummation) and (iii) redemption on any redemption date in exchange for the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Common Stock that would have been issuable at the Call Price in effect on such redemption date upon a redemption of such share of Series D Preferred Stock immediately prior to consummation of such transaction; assuming in each case that such holder of Common Stock failed to exercise rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon consummation of such transaction (provided that if the kind or amount of securities, cash or other property receivable upon consummation of such transaction is not the same for each nonelecting share, then the kind and amount of securities, cash or other property receivable upon consummation of such transaction for each nonelecting share shall be deemed to be the kind and amount so receivable per share by a plurality of the nonelecting shares). The kind and amount of securities into which the shares of the Series D Preferred Stock shall be convertible after consummation of such transaction shall be subject to adjustment as described above following the date of consummation of such transaction. The Company may not become a party to any such transaction unless the terms thereof are consistent with the foregoing.

Definitions

The following terms shall have the meanings indicated in respect of the Series D Preferred Stock:

"Base Number" shall mean the number derived from dividing \$100 by \$15.4375.

"Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York or The Commonwealth of Massachusetts are authorized or obligated by law or executive order to close or a day which is or is declared a national or New York or Massachusetts state holiday.

"Call Price" of each share of Series D Preferred Stock shall mean \$100 per share.

"Closing Price" with respect to any securities on any day shall mean the closing sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the New York Stock Exchange, or, if such security is not listed or admitted to trading on such Exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Association of Securities Dealers, Inc. Automated Quotation System, or a similarly generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose.

"Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that, if any event that results in an adjustment of the Exchange Rate occurs during the period beginning on the first day of such ten-day period and ending on the applicable conversion or redemption date, the Current Market Price as determined pursuant to the foregoing shall be appropriately adjusted to reflect the occurrence of such event.

"Dividend Payment Date" shall mean January 1, April 1, July 1 and October 1 in each year commencing on the first of such four dates which follows the date of initial issuance of the Series D Preferred Stock.

The "Exchange Rate" shall be equal to (a) if the Current Market Price on the date of determination is equal to or greater than 120% of \$15.4375 (the "Threshold Common Stock Price"), the number of shares of Common Stock equal to 0.83333333 of the Base Number (the "Upper Exchange Rate"), (b) if the Current Market Price on the date of determination is less than the Threshold Common Stock Price but greater than 80% of \$15.4375, the number of shares of Common Stock having a value (determined at the Current Market Price) equal to \$100 per share of Series D Preferred Stock (the "Middle Exchange Rate"), and (c) if the Current Market Price on the date of determination is equal to or less than 80% of \$15.4375, a number of shares of Common Stock (the "Lower Exchange Rate") equal to 1.25 multiplied by the Base Number. The Exchange Rate is subject to adjustment as set forth in the above section entitled "Conversion."

"Fair Market Value" on any day shall mean the average of the daily Closing Prices of a share of Common Stock of the Company on the five (5) consecutive Trading Days selected by the Company commencing not more than 20 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex" date with respect to the issuance or distribution requiring such computation. The term "'ex' date", when used with respect to any issuance or distribution, means the first day on which the Common Stock trades regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Closing Price.

"Full Cumulative Dividends" shall mean, with respect to the Series D Preferred Stock, or any other capital stock of the Company, as of any date the aggregate amount of all then accumulated, accrued and unpaid dividends payable on such shares of Series D Preferred Stock, or other capital stock, as the case may be, in cash, whether or not earned or declared and whether or not there shall be funds legally available for the payment thereof.

"Trading Day" shall mean (x) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business or (y) if the applicable security is quoted on the National Market System of the National Association of Securities Dealers Automated Quotation System, a day on which trades may be made on such National Market System or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Series E Preferred Stock

Ranking

The Series E Preferred Stock ranks senior to the Common Stock, junior to the Series A Preferred Stock and the Series C Preferred Stock, and on a parity with the Series D Preferred Stock, with respect to the payment of dividends and upon liquidation, dissolution or winding up. The Series E Preferred Stock shall so rank on a parity with the Series C Preferred Stock at such times as there shall be no shares of Series A Preferred Stock outstanding. The Company may not, without the consent of two-thirds of the votes of the holders of the outstanding shares of Series E Preferred Stock and all other outstanding shares of Preferred Stock ranking on a parity with the Series E Preferred Stock either as to dividends or upon liquidation, dissolution or winding up, voting together as a single class, create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class of stock of the Company ranking prior to the Series E Preferred Stock or ranking prior to any other series of Preferred Stock which ranks on a parity with the Series E Preferred Stock. However, the Company may create additional classes of stock or issue series of Preferred Stock ranking on a parity with the Series E Preferred Stock with respect to the payment of dividends or upon liquidation, dissolution and winding up without the consent of any holder of Series E Preferred Stock.

Dividends

Holders of shares of the Series E Preferred Stock are entitled to receive, when and as declared by the Board of Directors of the Company out of assets of the Company legally available for payment, cash dividends at an annual rate of \$7.00 per share of Series E Preferred Stock, payable in arrears on January 1, April 1, July 1 and October 1 of each year commencing January 1, 1996. Each dividend is payable to holders of record as they appear on the stock register of the Company on a record date, not more than 60 nor less than 10 days before the payment date, fixed by the Board of Directors of the Company. Dividends are cumulative and accrue on a daily basis from the date of original issuance of the Series E Preferred Stock. Dividends payable on the Series E Preferred Stock for each full quarterly dividend period are computed by annualizing the dividend rate and dividing by four. Dividends payable for any period greater or less than a full dividend period are computed on the basis of a 360-day year consisting of twelve 30-day months. The Series E Preferred Stock is not entitled to any dividend, whether payable in cash, property or stock, in excess of Full Cumulative Dividends. No interest is payable in respect of any accrued and unpaid dividends.

Unless Full Cumulative Dividends on all outstanding shares of any series of Preferred Stock ranking senior to the Series E Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend may be declared on shares of the Series E Preferred Stock (other than a dividend paid in stock ranking junior to any series of Preferred Stock ranking senior to the Series E Preferred Stock as to dividends), nor may shares of the Series E Preferred Stock be redeemed or purchased by the Company nor any sinking fund payment made for such redemption or purchase (other than a purchase or redemption made by issue or delivery of stock ranking junior to any Series of Preferred Stock ranking senior to the Series E Preferred Stock as to dividends, or upon liquidation, dissolution or winding up). Unless Full Cumulative Dividends on all outstanding shares of the Series E Preferred Stock have been paid or declared and set aside for payment for all past dividend payment periods, no dividend (other than a dividend paid in stock ranking junior to the Series E Preferred Stock as to dividends) may be declared on any stock ranking junior to the Series E Preferred Stock as to dividends, nor may any stock ranking junior to the Series E Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed or purchased by the Company nor any sinking fund payment made for such redemption or purchase (other than a purchase or redemption made by issue or delivery of stock ranking junior to the Series E Preferred Stock as to dividends or upon liquidation, dissolution or winding up); provided that, unless prohibited by the terms of any other outstanding series of Preferred Stock, any monies theretofore deposited in any sinking fund with respect to any Preferred Stock in compliance with the terms thereof may thereafter be applied in accordance with the terms thereof. If dividends on Series E Preferred Stock and on any other series of Preferred Stock ranking on a parity as to dividends with the Series E Preferred Stock are in arrears, any dividend payment on account of such arrearage must be made ratably upon all outstanding shares of the Series E Preferred Stock and such other series of Preferred Stock in proportion to the respective amounts of Full Cumulative Dividends.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company (not including mergers, consolidations and sale of all or substantially all assets), before any payment or distribution of assets (whether from capital or surplus) is made to holders of the Series E Preferred Stock upon liquidation, dissolution or winding up, the holders of each class or series of Preferred Stock ranking senior to the Series E Preferred Stock upon liquidation, dissolution or winding up shall be entitled to receive full payment of their liquidation preferences. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, before any payment or distribution of assets (whether from capital or surplus) is made to holders of Common Stock or any other stock of the Company ranking junior to the shares of Series E Preferred Stock upon liquidation, dissolution or winding up, the holders of Series E Preferred Stock shall receive a liquidation preference of \$100 per share and shall be entitled to receive all accrued and unpaid dividends through the date of distribution, and the holders of any class or series of Preferred Stock ranking on a parity with the Series E Preferred Stock as to liquidation, dissolution or winding up shall be entitled to receive the full respective liquidation preferences (including any premium) to which they are entitled and shall receive all accrued and unpaid dividends with respect to their respective shares through and including the date of distribution. If, upon such a voluntary or involuntary liquidation, dissolution or winding up of the Company, the assets of the Company are insufficient to pay in full the amounts

described above

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as payable with respect to the Series E Preferred Stock and any class or series of Preferred Stock of the Company ranking on a parity with the Series E Preferred Stock as to liquidation, dissolution or winding up, the holders of the Series E Preferred Stock and of such other class or series of Preferred Stock will share ratably in any such distribution of assets of the Company first in proportion to their respective liquidation preferences until such preferences are paid in full, and then in proportion to their respective amounts of accrued but unpaid dividends. After payment of any such liquidating preference and accrued dividends, the shares of Series E Preferred Stock will not be entitled to any further participation in any distribution of assets by the Company. Neither the sale of all or substantially all the assets of the Company, nor the merger or consolidation of the Company into or with any other corporation, will be deemed to be a liquidation, dissolution or winding up of the Company.

Redemption

Shares of the Series E Preferred Stock are not redeemable.

Voting Rights

Except as indicated below or as expressly required by applicable law, holders of Series E Preferred Stock have no voting rights.

If the equivalent of six full quarterly dividends payable on the Series E Preferred Stock are in arrears, the maximum authorized number of directors of the Company will be increased by two and the holders of Series E Preferred Stock, voting separately as a class with the holders of shares of any other series of Preferred Stock ranking on a parity with the Series E Preferred Stock and upon which like voting rights have been conferred and are exercisable, will be entitled to elect two directors for successive one-year terms until all dividends in arrears on the Series E Preferred Stock have been paid or declared and set apart for payment. Upon payment or declaration and setting apart of funds for payment of all such dividends in arrears, the term of office of each director elected will immediately terminate and the number of directors constituting the entire Board of Directors of the Company will be reduced by the number of directors elected by the holders of the Series E Preferred Stock and any other series of Preferred Stock ranking on a parity with the Series E Preferred Stock as discussed above.

The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the Series E Preferred Stock and each other series of Preferred Stock ranking on a parity with the Series E Preferred Stock and upon which like voting rights have been conferred (voting together as a single class), create, authorize or issue, or reclassify any authorized stock of the Company into, or create, authorize or issue any obligation or security convertible into or evidencing a right to purchase, any shares of any class of stock of the Company ranking prior to the Series E Preferred Stock or any other series of Preferred Stock which ranks on a parity with the Series E Preferred Stock as to dividends or upon liquidation, dissolution or winding up. The Company may not, without the affirmative vote or consent of two-thirds of the votes of the holders of the outstanding shares of the Series E Preferred Stock and each other series of Preferred Stock of the Company similarly affected, if any, voting together as a single class, amend, alter or repeal any provision of the Certificate which would materially and adversely affect the preferences, rights, powers or privileges, qualification, limitations and restrictions of the Series E Preferred Stock and any such other series of Preferred Stock; provided, however, that the creation, issuance or increase in the amount of authorized shares of any other series of Preferred Stock ranking on a parity with or junior to the Series E Preferred Stock with respect to the payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the affairs of the Company will not be deemed to materially and adversely affect such rights and preferences, privileges or voting powers.

Conversion

On November 17, 1998 (the "Automatic Conversion Date"), unless earlier converted at the option of the holder, each outstanding share of the Series E Preferred Stock shall convert automatically (the "Automatic Conversion") into (i) shares of Common Stock at the Exchange Rate in effect on the Automatic Conversion Date and

(ii) the right to receive an amount in cash equal to Full Cumulative Dividends on such share to the Automatic Conversion Date.

Shares of Series E Preferred Stock may be converted, in whole or in part, at the option of the holder thereof ("Optional Conversion"), at any time after November 17, 1995 and not later than the close of business on the Business Day prior to November 17, 1998, into shares of Common Stock at the Upper Exchange Rate.

The Exchange Rate shall be subject to adjustment (under formulae set forth in the Certificate of Designations) from time to time as appropriate in certain circumstances, including if the Company shall (i) pay or make a dividend or other distribution with respect to its Common Stock in shares of Common Stock (including by way of reclassification of any shares of its Common Stock) to all holders of Common Stock, (ii) subdivide its outstanding shares of Common Stock into a greater number of shares of Common Stock or combine its outstanding shares of Common Stock into a smaller number of shares of Common Stock, (iii) issue certain rights or warrants to all holders of its Common Stock entitling them (for a period not exceeding 45 days from the date of such issuance) to subscribe for or purchase shares of Common Stock at a price less than the Fair Market Value of the Common Stock on the record date for the determination of stockholders entitled to receive such rights or warrants, or (iv) pay a dividend or make a distribution to all holders of its Common Stock consisting of evidences of its indebtedness or other assets (including shares of capital stock of the Company other than Common Stock but excluding any cash dividends or other distributions referred to in clauses (i) or (ii) above) or shall issue to all holders of its Common Stock rights or warrants to subscribe for or purchase any of its securities (other than those referred to in clause (iii) above). Notwithstanding the foregoing, there will be no adjustment in the event the Company were to issue rights to purchase capital stock of the Company pursuant to a shareholder rights agreement. Anything in this paragraph notwithstanding, the Company shall be entitled to make such upward adjustments in the Exchange Rate, in addition to those required by this paragraph, as the Company in its sole discretion shall determine to be advisable, in order that any stock dividends, subdivision of shares, distribution of rights to purchase stock or securities, or distribution of securities convertible into or exchangeable for stock (or any transaction which could be treated as any of the foregoing transactions pursuant to Section 305 of the Internal Revenue Code of 1986, as amended) hereafter made by the Company to its stockholders shall not be taxable. All adjustments to the Exchange Rate shall be calculated to the nearest 1/1,000,000th of a share of Common Stock. No adjustment in the Exchange Rate shall be required unless such adjustment would require an increase or decrease of at least one percent in the Exchange Rate; provided, however, that any adjustments which by reason of the foregoing are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All adjustments to the Exchange Rate shall be made successively. Before taking any action that would cause an adjustment increasing the Exchange Rate such that the conversion price (for purposes of this paragraph, an amount equal to the liquidation value per share of Series E Preferred Stock divided by the Upper Exchange Rate as in effect from time to time) would be below the then par value of the Common Stock, the Company will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock at the Upper Exchange Rate as so adjusted.

In case of any consolidation or merger to which the Company is a party (other than a merger or consolidation in which the Company is the continuing corporation and in which the Common Stock outstanding immediately prior to the merger or consolidation remains unchanged), or in case of any sale or transfer to another corporation of the property of the Company as an entirety or substantially as an entirety, or in case of any statutory exchange of securities with another corporation (other than in connection with a merger or acquisition), proper provision shall be made so that each share of the Series E Preferred Stock shall, after consummation of such transaction, be subject to (i) conversion at the option of the holder into the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Common Stock into which such share of Series E Preferred Stock would have been converted if the conversion had occurred immediately prior to consummation of such transaction (based on the Exchange Rate in effect immediately prior to such consummation) and (ii) conversion on the Automatic Conversion Date into the kind and amount of securities, cash or other property receivable upon consummation of such transaction by a holder of the number of shares of Common Stock into which such share of Series E Preferred Stock would have been converted if the conversion on the Automatic Conversion Date had occurred immediately prior to the date of consummation of such transaction (based on the Exchange Rate

in effect immediately prior to such consummation); assuming in each case that such holder of Common Stock failed to exercise rights of election, if any, as to the kind or amount of securities, cash or other property receivable upon consummation of such transaction (provided that if the kind or amount of securities, cash or other property receivable upon consummation of such transaction is not the same for each nonelecting share, then the kind and amount of securities, cash or other property receivable upon consummation of such transaction for each nonelecting share shall be deemed to be the kind and amount so receivable per share by a plurality of the nonelecting shares). The kind and amount of securities into which the shares of the Series E Preferred Stock shall be convertible after consummation of such transaction shall be subject to adjustment as described above following the date of consummation of such transaction. The Company may not become a party to any such transaction unless the terms thereof are consistent with the foregoing.

Fractional Shares

No fractional shares or scrip representing fractional shares of Common Stock shall be issued upon conversion of Series E Preferred Stock. Instead of any fractional share of Common Stock that would otherwise be issuable upon conversion of any shares of Series E Preferred Stock, the Company shall pay a cash adjustment in respect of such fractional interest in an amount equal to the same fraction of the Closing Price of a share of Common Stock (or, if there is no such Closing Price, the fair market value of a share of Common Stock, as determined or prescribed by the Board of Directors) at the close of business on the Trading Day immediately preceding the date of conversion.

Listing; Transfer Agent

The Company will apply to list the Series E Preferred Stock on the NYSE. The transfer agent, registrar, dividend disbursing agent and redemption agent for the Series E Preferred Stock will be State Street Bank and Trust Company, subject to the right of the Company to designate another bank or trust company having its principal office in the United States and having a combined capital and surplus of at least \$100,000,000 to assume some or all of such functions.

Definitions

The following terms shall have the meanings indicated in respect of the Series E Preferred Stock:

"Base Number" shall mean the number derived from dividing \$100 by \$15.4375.

"Business Day" shall mean any day other than a Saturday, Sunday, or a day on which banking institutions in the State of New York or The Commonwealth of Massachusetts are authorized or obligated by law or executive order to close or a day which is or is declared a national or New York or Massachusetts state holiday.

"Closing Price" with respect to any securities on any day shall mean the closing sale price regular way on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case on the New York Stock Exchange, or, if such security is not listed or admitted to trading on such Exchange, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading, or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Association of Securities Dealers, Inc. Automated Quotation System, or a similarly generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose.

"Current Market Price" shall mean the average of the daily Closing Prices per share of Common Stock for the ten consecutive Trading Days immediately prior to the date in question; provided, however, that, if any event that results in an adjustment of the Exchange Rate occurs during the period beginning on the first day of such ten-day

period and ending on the applicable conversion date, the Current Market Price as determined pursuant to the foregoing shall be appropriately adjusted to reflect the occurrence of such event.

"Dividend Payment Date" shall mean January 1, April 1, July 1 and October 1 in each year commencing on the first of such four dates which follows the date of initial issuance of the Series E Preferred Stock.

"Exchange Rate" shall be equal to (a) if the Current Market Price on the date of determination is equal to or greater than 120% of \$15.4375 (the "Threshold Common Stock Price"), the number of shares of Common Stock equal to 0.83333333 of the Base Number (the "Upper Exchange Rate"), (b) if the Current Market Price on the date of determination is less than the Threshold Common Stock Price but greater than \$15.4375, the number of shares of Common Stock having a value (determined at the Current Market Price) equal to \$100 per share of Series E Preferred Stock (the "Middle Exchange Rate"), and (c) if the Current Market Price on the date of determination is equal to or less than \$15.4375, a number of shares of Common Stock (the "Lower Exchange Rate") equal to the Base Number; provided that for all purposes relating to Optional Conversion by a holder pursuant to the above section entitled "Conversion," the Exchange Rate shall be equal to the Upper Exchange Rate. The Exchange Rate is subject to adjustment as set forth in the above section entitled "Conversion."

"Fair Market Value" on any day shall mean the average of the daily Closing Prices of a share of Common Stock of the Company on the five (5) consecutive Trading Days selected by the Company commencing not more than 20 Trading Days before, and ending not later than, the earlier of the day in question and the day before the "ex" date with respect to the issuance or distribution requiring such computation. The term "'ex' date", when used with respect to any issuance or distribution, means the first day on which the Common Stock trades regular way, without the right to receive such issuance or distribution, on the exchange or in the market, as the case may be, used to determine that day's Closing Price.

"Full Cumulative Dividends" shall mean, with respect to the Series E Preferred Stock, or any other capital stock of the Company, as of any date the aggregate amount of all then accumulated, accrued and unpaid dividends payable on such shares of Series E Preferred Stock, or other capital stock, as the case may be, in cash, whether or not earned or declared and whether or not there shall be funds legally available for the payment thereof.

"Trading Day" shall mean (x) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business or (y) if the applicable security is quoted on the National Market System of the National Association of Securities Dealers Automated Quotation System, a day on which trades may be made on such National Market System or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

In connection with the Company's acquisition of the Marshall's division from Melville Corporation ("Melville"), Melville acquired all shares of Series D Preferred Stock and Series E Preferred Stock. The Company and Melville entered into a Standstill and Registration Rights Agreement (the "Standstill and Registration Rights Agreement") pursuant to which Melville agreed (i) not to acquire any voting securities of the Company until such voting securities held by Melville represent less than 3 percent of the total combined voting power of all of the Registrant's outstanding voting securities (in which event the Standstill and Registration Rights Agreement will terminate) and (ii) to vote all voting securities of the Company held by it in the manner recommended by the Company's Board of Directors or, if the agreement to so vote shall be prohibited or invalid, then to vote such voting securities in the same proportion as the votes cast on behalf of the other holders of the Company's voting securities. The Standstill and Registration Rights Agreement also provides Melville with certain rights of registration of securities of the Company which it holds under the Securities Act of 1933.

Certain Charter and By-Law Provisions

The Certificate and By-Laws contain various provisions that may impede the acquisition of control of TJX by means of a tender offer, proxy fight or other means. Such provisions include a classified Board of Directors, restrictions on the ability of stockholders to remove directors, fill vacancies or call a stockholder meeting, and restrictions on stockholder proposals and amendment of certain charter and by-law provisions.

The TJX Certificate further provides that no director of the company shall be liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Company or its shareholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. Section 174 of the Delaware General Corporation Law specifies conditions under which directors of Delaware corporations may be liable for unlawful payment of dividends or unlawful stock purchases or redemptions.

Section 203 of the Delaware General Corporation Law

As a Delaware corporation, TJX is subject to the provisions of Section 203 of the General Corporation Law of the State of Delaware. Section 203 generally provides that if a person or group acquires 15% or more of a corporation's voting stock (thereby becoming an "interested stockholder") without prior board approval, such interested stockholder may not, for a period of three years, engage in a wide range of business combination transactions with the corporation. However, this restriction does not apply to a person who becomes an interested stockholder in a transaction resulting in the interested stockholder owning at least 85% of the corporation's voting stock (excluding from the outstanding shares, shares held by officer-directors or pursuant to employee stock plans without confidential tender offer decisions), or to a business combination approved by the board of directors and authorized by the affirmative vote of at least 66 2/3% of the outstanding voting stock not owned by the interested stockholder. In addition, Section 203 does not apply to certain business combinations proposed subsequent to the public announcement of specified business combination transactions which are not opposed by the board of directors.

Item 2. Exhibits.

1. Second Restated Certificate of Incorporation filed June 5, 1985 (incorporated by reference to Exhibit (3i)(a) of the Form 10-K filed for the fiscal year ended January 28, 1995).
2. Certificate of Amendment of Second Restated Certificate of Incorporation filed June 3, 1986 (incorporated by reference to Exhibit (3i)(b) of the Form 10-K for the fiscal year ended January 28, 1995).
3. Certificate of Amendment of Second Restated Certificate of Incorporation filed June 2, 1987 (incorporated by reference to Exhibit (3i)(c) of the Form 10-K for the fiscal year ended January 28, 1995).
4. Certificate of Amendment of Second Restated Certificate of Incorporation filed June 20, 1989 (incorporated by reference to Exhibit (3i)(d) of the Form 10-K for the fiscal year ended January 28, 1995).
5. Certificate of Designations, Preferences and Rights of New Series A Cumulative Convertible Preferred Stock of the Company, filed August 12, 1992 (incorporated by reference to Exhibit (3i)(e) of the Form 10-K for the fiscal year ended January 28, 1995).

6. Certificate of Designations, Preferences and Rights of \$3.125 Series C Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit (3i)(f) of the Form 10-K for the fiscal year ended January 28, 1995).
7. Certificate of Designations, Preferences and Rights of Series D Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 10.1 of the Form 8-K dated November 17, 1995).
8. Certificate of Designations, Preferences and Rights of Series E Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 10.2 of the Form 8-K dated November 17, 1995).
9. The by-laws of the Company, as amended (incorporated by reference to Exhibit (3ii) of the Form 10-K for the fiscal year ended January 28, 1995).
10. Share Purchase Agreement dated as of April 15, 1992 regarding Series A Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4(c) of Form 10-K for the fiscal year ended January 30, 1993).
11. Exchange Agreement dated as of August 6, 1992 between the Company and the former holders of the Company's Series A Cumulative Convertible Preferred Stock (incorporated by reference to Exhibit 4(d) of the Form 10-K for the fiscal year ended January 30, 1993).

12. Standstill and Registration Rights Agreement dated as of November 17, 1995 regarding Series D Cumulative Convertible Preferred Stock and Series E Cumulative Convertible Preferred Stock dated as of November 17, 1995 between the Registrant and Melville Corporation (incorporated by reference to Exhibit 10.20 of the Form 10-K for the fiscal year ended January 27, 1996).

SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this amendment to be signed on its behalf by the undersigned, thereto duly authorized.

THE TJX COMPANIES, INC.

By /s/ Donald G. Campbell
Donald G. Campbell
Executive Vice President--Finance

Date: June 3, 1996

-27-

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