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September 12, 2016

Hon. Roberto Eugenio T. Cadiz
COMMISSIONER
COMMISSION ON HUMAN RIGHTS
SAAC Building, Commonwealth Avenue
UP Complex, Diliman
Quezon City
Philippines

In Re: National Inquiry on the Impact of Climate Change on the Human
Rights of the Filipino People, CHR-NI-2016-0001:
***Ad Cautelam* Comment on Petition filed by Greenpeace Southeast
Asia et. al.**

Dear Commissioner Cadiz:

By way only of special and limited appearance, and without submitting our client Marathon Oil Corporation (“**Marathon**”) to the Honorable Commission’s jurisdiction, we write in response to the Honorable Commission on Human Rights’ *Order* dated July 21, 2016. Attached to the Honorable Commission’s *Order* was a Petition dated May 9, 2016 filed by Greenpeace Southeast Asia (Philippines) (“**Greenpeace**”), the Philippine Rural Reconstruction Movement, and the other individuals named therein (together, the “**Petitioners**”) (the “**Petition**”). We understand that the Petitioners previously filed a petition dated September 22, 2015 on the same matter.

Marathon emphasizes at the outset that this Comment is being filed strictly on an *ad cautelam* basis, in order to inform the Honorable Commission that the Petition cannot be maintained as to Marathon for lack of personal jurisdiction and improper extra-territorial service of the Petition. Marathon also reserves its right to comment on the subject matter jurisdiction of the Commission as well as the substantive issues raised in the Petition should it be necessary to do so.

I. BACKGROUND

The Petitioners have filed the Petition before this Commission which in summary calls for an inquiry into the responsibility of certain companies in allegedly causing climate change-induced extreme weather events that have impacted the lives of Filipino nationals. The Petitioners have named around 50 companies as respondents in this case – the so-called “Carbon Majors,” including Marathon – alleging that they shoulder primary responsibility for such weather events.

On July 21, 2016, the Honorable Commission issued its *Order* directing the Petitioners to serve the Petition upon the Respondents and enjoining the Respondents to submit their Comment or Answer within 45 days from receipt of the Petition (the “**Order**”). A copy of the Petition was transmitted by the Commission via courier (DHL) to “Marathon Oil Corporation” at 5555 San Felipe Street, Houston, TX 77056-2723, USA. DHL delivered the Petition to that address on July 29, 2016.

This letter constitutes Marathon’s *Ad Cautelam* Comment pursuant to the Order.

II. THE HONORABLE COMMISSION HAS NOT ACQUIRED AND CANNOT EXERCISE PERSONAL JURISDICTION OVER MARATHON

Any compulsory process ordered by the Honorable Commission requires that the party so being compelled fall within both its jurisdiction *ratione materiae* (subject matter jurisdiction) and jurisdiction *ratione personae* (personal jurisdiction). Reserving comment on the issue of the Commission’s subject matter jurisdiction, in this case the Commission clearly lacks personal jurisdiction over Marathon, as the company and its operating subsidiaries¹ do not transact business in the Philippines within the meaning of Philippine law. A foreign corporation is one which owes its existence to the laws of another state, and generally, it has no legal existence within the state in which it is foreign; and if a foreign corporation does not conduct any business in the Philippines, there would be no reason for it to be subject to Philippine regulation.²

¹ Marathon Oil Corporation does not conduct operations and thus does not produce the fuels that are the subject of this petition.

² *Avon Insurance v. Court of Appeals*, G.R. No. 97642, August 29, 1997.

The Commission's authority to compel persons to comply with its orders emanates from its power to cite for contempt "in accordance with the Rules of Court."³ In turn, for foreign private juridical entities, the Rules of Court⁴ allow summons to be served only on those that transact business in the Philippines.⁵ The Corporation Code predicates a foreign corporation's right to sue in the Philippines on the corporation "transacting business in the Philippines."⁶ "Transacting business" or "doing business" requires acts "that imply a continuity of commercial dealings or arrangements," such as:

soliciting orders, service contracts, opening offices whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the country for a period or periods totalling one hundred eighty (180) days or more; participating in the management, supervision or the control of any domestic business, firm, entity or corporations in the Philippines; and any other act that imply a continuity of commercial dealings or arrangements, and contemplate to that extent the performance of acts or works, or the exercise of the functions normally incident to, and in progressive prosecution of, commercial gain or of the purposes and object of the business organization.⁷

³ 1987 PHILIPPINE CONSTITUTION, art. XIII, Section 18: "The Commission on Human Rights shall have the following powers and functions: ... (2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court."

⁴ The Commission's *Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance* approved on April 12, 2012 ("CHR Rules of Procedure") provide in relevant part: "[Rule 7,] Section 22. Applicability of the Rules of Court. - In all matters of procedure not covered by the foregoing rules, the provisions of the Revised Rules of Court shall apply in a suppletory character. "

⁵ See Rules of Court, Rule 14, Section 12.

⁶ Corporation Code of the Philippines, art. 133.

⁷ Philippine Foreign Investments Act, Republic Act No. 7042, June 13, 1991, Section 3(d).

Marathon does not transact or do business in the Philippines as contemplated by Philippine law. Marathon is a company incorporated in the State of Delaware, U.S.A., as demonstrated in the certificate of incorporation appended to this letter as its **Annex 1**. It does not have any offices or branches in the Philippines and does not have a business license to operate or a resident agent in the Philippines. The corporation has not, to the best of its knowledge, appointed any representatives or distributors either domiciled or resident in the Philippines over 180 days in any calendar year. The Securities and Exchange Commission (the “SEC”) confirms this fact, as the SEC has no record of Marathon in their corporate register. The Petitioners themselves acknowledge, in their list of respondents found in Annex C, that Marathon has “NO RECORDS WITH S.E.C.”⁸ This absence of records is precisely because Marathon is not “transacting business” or “doing business” in the Philippines.

Importantly, the Petitioners themselves acknowledged that some of the entities they named as respondents would likely not be subject to the Commission’s jurisdiction, noting that some entities they asked the Commission to investigate have no address in the Philippines. Indeed, in their original Petition dated September 22, 2015, the Petitioners had noted that they “will find it amenable that the investigation and related processes for this Petition will involve only those Respondent Carbon Majors with branches, regional offices, and/or subsidiaries in or substantial connection (through their agents) to, the Philippines.”⁹ Marathon has no branch, regional office, subsidiary, or substantial connection in or with the Philippines, whether by itself or through agents. Thus, the Honorable Commission has not acquired jurisdiction over the person of Marathon because the latter is a foreign entity not transacting business in the Philippines, and summons has not been properly served on it, as explained further below.

⁸ See Petition, Annex C, Respondent investor-owned Carbon Majors with principal business addresses with information of known Philippine presence based on the Securities and Exchange Commission records, at second page no. 5.

⁹ Original Petition dated September 22, 2015, at pages 11-12. This language has been removed in the Petition dated May 9, 2016.

III. THE EXTRATERRITORIAL SERVICE OF SUMMONS OVER MARATHON WAS IMPROPER

Summons has not been properly served on Marathon.¹⁰ Rule 7, Section 10 of the CHR Rules of Procedure predicates the Commission's jurisdiction over a respondent on a valid service of summons.¹¹

The Supreme Court has clarified that proper service of process is intended to protect a respondent's right to due process.¹² The proper service of summons fulfills two fundamental objectives, namely: (a) to vest in the court jurisdiction over the person of the defendant; and (b) to afford to the defendant the opportunity to be heard on the claim brought against him.¹³ Proper service of process on the respondent is also critical to establish jurisdiction over the respondent and to compel it to appear in the proceedings. If service has not been properly made, the court or tribunal does not have jurisdiction over the respondent's person and the petition must be dismissed. As held by the Supreme Court:

fundamental is the rule that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. In the absence or when the service of summons upon the person of the defendant is defective, the court acquires no jurisdiction over his person, and a judgment rendered against him is null and void.¹⁴

¹⁰ The Philippines is not a signatory to any treaty with the United States regarding service of process. Service of process must comply with Philippine law in order to be effective.

¹¹ CHR Rules of Procedure, Rule 7, Section 10 (emphasis added) ("Any person implicated in the complaint for or report of human rights violations shall: (a) be accorded due process; (b) be given due notice of the [Commission] processes in his/her case [...].")

¹² *Ma. Imelda M. Manotoc v. Carpio Morales*, G.R. No. 130974, August 16, 2006.

¹³ *Macasaet v. Co, Jr.*, G.R. No. 156759, 5 June 2013, citing *Umandap v. Sabio, Jr.*, G.R. No. 140244, August 29, 2000.

¹⁴ *Spouses Belen v. Judge Chavez, et al.*, 573 Phil. 58, 67 (2008).

Significantly, it has been held by the Supreme Court that a defendant who does not reside and is not found in the Philippines in an action *in personam* cannot be tried in Philippine courts because of the impossibility of acquiring jurisdiction over the person.¹⁵ An action *in personam* is a proceeding to enforce personal rights or obligations such as those alleged and prayed in the present Petition; such action is brought against the person the purpose of which is to impose, through the judgment of a court, some responsibility or liability directly upon the person of the defendant.¹⁶

Rule 14, Section 12 of the Rules of Court establishes the proper procedure for extraterritorial service of summons as follows:

Service upon foreign private juridical entity. —
When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

If the foreign private juridical entity is not registered in the Philippines or has no resident agent, service may, with leave of court, be effected out of the Philippines through any of the following means:

a) By personal service coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs;

b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of

¹⁵ *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007.

¹⁶ *Domagas v. Jensen*, G.R. No. 158407, January 17, 2005.

the summons and the court order by registered mail at the last known address of the defendant;

c) By facsimile or any recognized electronic means that could generate proof of service; or

d) By such other means as the court may in its discretion direct.¹⁷

Even assuming *arguendo* that the Petitioners could in principle serve process upon Marathon extraterritorially, Philippine law limits extraterritorial service of summons upon foreign private entities to only four modes with leave of court: (1) by personal service out of the country coursed through the appropriate court in the foreign country with the assistance of the Department of Foreign Affairs; (2) by publication **and** sending a copy of the summons and order of the court by registered mail to the defendant's last known address; (3) by facsimile or any recognized electronic means that could generate proof of service; or (4) by any other means the court may consider sufficient. The Petitioners have failed to comply with the legal requirements for extraterritorial service of process.

The Petitioners made no attempt to effectuate personal service of process upon Marathon. The Petitioners have also failed to take leave of court to serve process by publication and registered mail, or any other manner permitted under Rule 14, Section 12 as required under Rule 14, Section 17.¹⁸ Instead, the Petitioners requested the Commission to send "notices, summons, and pleadings to the business address of the Respondents or through the national human rights institutions or institutional counterparts in the countries where they are based."¹⁹ The Commission transmitted a copy of the Petition and the July 21, 2016 Order by DHL to "Marathon Oil Corporation" in Houston, Texas, USA as seen in the DHL delivery receipt appended here as **Annex 2**. This is improper service of process under Philippine law and there is no indication that the Petitioners filed a

¹⁷ Emphasis added.

¹⁸ Rules of Court, Rule 14, Section 17: "Leave of court. – Any application to the court under this Rule for leave to effect service in any manner for which leave of court is necessary **shall be made by motion in writing, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.**" (emphasis added).

¹⁹ Petition at page 26.

written motion for leave of court with the necessary supporting affidavit setting out the grounds for the application.

As there has been no proper service of summons here, this Commission lacks jurisdiction over the person of Marathon and must dismiss the Petition.

* * *


For these reasons, Respondent Marathon respectfully requests, on an *ad cautelam* basis, that the Honorable Commission:

- (1) rule that the Commission does not have jurisdiction over the person of Marathon; and
- (2) remove Marathon as a respondent in these proceedings.

Very truly yours,


Carlos Roberto Z. Lopez


Ramon G. Songco


John Paul R. Rotap


Ramon I. Rocha IV

(By way of special and limited appearance)

Encl.: Annex 1, Marathon Certificate of Incorporation, duly authenticated
Annex 2, Copy of DHL delivery receipt

Copies Furnished:

Atty. Zeldania DT Soriano
Legal Representative of the Petitioners
Greenpeace Southeast Asia (Philippines)
Rooms 301-302, JGS Building
No. 30 Sct. Tuason,
Brgy. Laging Handa, Quezon City
Philippines

Atty. Grizelda Mayo-Anda
Counsel for the Petitioners Environmental Legal Assistance Center
Carlos Sayang Compound, Mitra Road
Brgy. Sta. Monica, Puerto Princesa City
Philippines

Explanation for Filing and Service by Registered Mail

Due to time constraints and the distances involved, copies of this letter are being filed and served by registered mail.


John Paul R. Rotap


Ramon Rocha IV


REPUBLIC OF THE PHILIPPINES)
MAKATI CITY) S.S.

SUBSCRIBED AND SWORN to before me, a Notary Public in and for Makati City, Philippines, by Ramon G. Songco with Philippine Passport No. EB3764639, issued on June 26, 2012 at DFA Manila.

IN WITNESS WHEREOF, I have hereto set my hand and affixed by notarial seal this 13th day of September 2016 at Makati City, Philippines.

Doc. No. 35 ;
Page No. 8 ;
Book No. 1 ;
Series of 2016.




LEAH ZILPAH A. CALDERON
Notary Public for Makati City
Appointment No. M-393 until Dec. 31, 2017
Roll of Attorney No. 64179
PTR No. 5321995MD • 01/06/16 • Makati City
IBP No. 1020630 • 01/06/16 • Makati Chapter
SyCipLaw Center, 105 Paseo de Roxas
Makati City, 1226 Metro Manila
Philippines

29409764



CONSULATE GENERAL OF THE REPUBLIC OF THE PHILIPPINES
NEW YORK

Foreign Service of the Philippines)
Consulate General of the Philippines)
New York, New York) S.S.
United States of America)

CERTIFICATE OF AUTHENTICATION

I, **KHRYSTINA P. CORPUZ**, Vice Consul of the Republic of the Philippines, in
for the Consular District of New York, duly commissioned and qualified in the
States of New York, Connecticut, Delaware, Maine, Massachusetts, New Hampshire,
New Jersey, Pennsylvania, Rhode Island, and Vermont, do hereby certify that

*** JEFFREY W. BULLOCK ***

at the time he/she signed and affixed his/her official seal to the annexed certificate,

**SECRETARY OF STATE
STATE OF DELAWARE**

and that full faith and credit ought to be given to his/her official act.

This Consulate General assumes no responsibility for the contents of the
attached document.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of
the Consulate General of the Philippines to be affixed 07th day of September 2016.

KHRYSTINA P. CORPUZ
Vice Consul

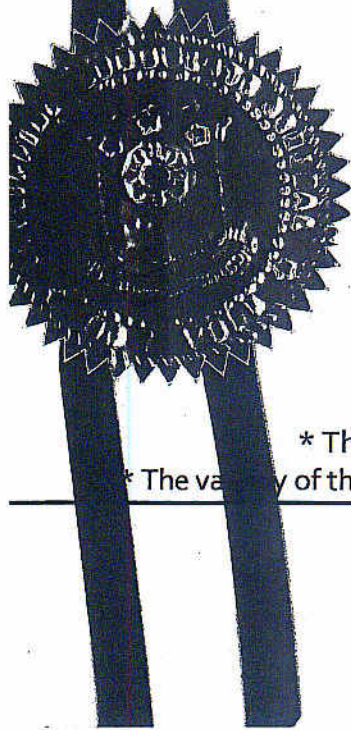
11116

Doc. No.
Service No. 036
Series of 2016
Fee. \$25.00

Annexed document is a/an
**CERTIFICATION OF INCORPORATION
OF USX HOLDCO, INC.**

*** This document is not valid if it is altered in any way whatsoever ***

*** The validity of this certification is for five (5) years, unless specified by the attached document. ***



Delaware

Page 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "MARATHON OIL CORPORATION" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF INCORPORATION, FILED THE THIRTIETH DAY OF MAY, A.D. 2001, AT 1 O'CLOCK P.M.

RESTATED CERTIFICATE, CHANGING ITS NAME FROM "USX HOLDCO, INC." TO "USX CORPORATION", FILED THE SECOND DAY OF JULY, A.D. 2001, AT 8:30 O'CLOCK A.M.

CERTIFICATE OF MERGER, FILED THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2001, AT 11:25 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2001 AT 11:57 O'CLOCK P.M.



3395371 8100H
SR# 20165641272

You may verify this certificate online at www.delaware.gov

A handwritten signature in black ink, appearing to read "JWB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 202933273
Date: 09-02-16

Delaware

Page 2

The First State

CERTIFICATE OF MERGER, CHANGING ITS NAME FROM "USX CORPORATION" TO "MARATHON OIL CORPORATION", FILED THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2001, AT 11:29 O'CLOCK A.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF DECEMBER, A.D. 2001 AT 11:59 O'CLOCK P.M.

CERTIFICATE OF CORRECTION, FILED THE FIFTH DAY OF MARCH, A.D. 2002, AT 2:15 O'CLOCK P.M.

CERTIFICATE OF AMENDMENT, FILED THE TWENTY-SIXTH DAY OF APRIL, A.D. 2006, AT 12:41 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE THIRTY-FIRST DAY OF MAY, A.D. 2006, AT 4:33 O'CLOCK P.M.

RESTATED CERTIFICATE, FILED THE TWENTY-FIFTH DAY OF APRIL, A.D. 2007, AT 3:28 O'CLOCK P.M.

CERTIFICATE OF DESIGNATION, FILED THE EIGHTEENTH DAY OF OCTOBER, A.D. 2007, AT 8:38 O'CLOCK A.M.

CERTIFICATE OF OWNERSHIP, FILED THE SEVENTEENTH DAY OF DECEMBER, A.D. 2009, AT 7:13 O'CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

3395371 8100H
SR# 20165641272

You may verify this certificate online at

Authentication: 202933273
Date: 09-02-16

Delaware

Page 3

The First State

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE FIRST DAY OF JANUARY, A.D. 2010 AT 12:01 O'CLOCK A.M.

CERTIFICATE OF OWNERSHIP, FILED THE SEVENTEENTH DAY OF DECEMBER, A.D. 2009, AT 7:14 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE FIRST DAY OF JANUARY, A.D. 2010 AT 12:02 O'CLOCK A.M.

CERTIFICATE OF DESIGNATION, FILED THE TWENTY-FOURTH DAY OF JUNE, A.D. 2010, AT 7:44 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION, "MARATHON OIL CORPORATION".



3395371 8100H
SR# 20165641272

You may verify this certificate online at www.delaware.gov

A handwritten signature in black ink, appearing to read "J. Butlock", is written over a horizontal line. Below the line, the text "Jeffrey W. Butlock, Secretary of State" is printed.

Authentication: 202933273
Date: 09-02-16

**Certificate of Incorporation
of
USX HoldCo, Inc.**

FIRST: The name of the Corporation (which is hereinafter referred to as the "Corporation") is

USX HOLDCO, INC.

SECOND: Its registered office and place of business in the State of Delaware is located at 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle. The registered agent in charge thereof upon whom process against the Corporation may be served is Corporation Service Company.

THIRD: The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and without limiting the foregoing to engage in integrated steel operations and to develop, mine, produce, manufacture, construct, transport, buy, hold, sell and generally deal in products, materials, property, both tangible and intangible, and services of all kinds.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is 1,000 shares of Common Stock, each having a par value of one penny (\$0.01).

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

Name:

Address:

Deborah M. Reusch

P.O. Box 636
Wilmington, Delaware 19899-0636

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

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

EIGHTH: The number of directors of the Corporation shall be fixed from time to time by, or in the manner provided in, its by-laws and may be increased or decreased as therein provided; but the number thereof shall not be less than three.

The directors of the Corporation shall be divided into three classes: Class I, Class II and Class III. Each class shall consist, as nearly as may be possible, of one-third of the whole number of the Board of Directors. In the election of directors at the 2002 annual meeting of the stockholders, the Class I directors shall be elected to hold office for a term to expire at the first annual meeting of the stockholders thereafter; the Class II directors shall be elected to hold office for a term to expire at the second annual meeting of the stockholders thereafter; and the Class III directors shall be elected to hold office for a term to expire at the third annual meeting of the stockholders thereafter, and in the case of each class, until their respective successors are duly elected and qualified. At each annual election held after the 2002 annual meeting of the stockholders the directors elected to succeed those whose terms expire shall be identified as being of the same class as the directors they succeed and shall be elected to hold office for a term to expire at the third annual meeting of the stockholders after their election, and until their respective successors are duly elected and qualified. If the number of directors is changed, any increase or decrease in directors shall be apportioned among the classes so as to maintain all classes as equal in number as possible, and any additional director elected to any class shall hold office for a term which shall coincide with the terms of the other directors in such class and until his successor is duly elected and qualified.

In the case of any increase in the number of directors of the Corporation, the additional director or directors shall be elected by the Board of Directors.

In the case of any vacancy in the Board of Directors from death, resignation, disqualification or other cause, a successor to hold office for the unexpired portion of the term of the director whose place shall be vacant, and until the election of his successor, shall be elected by a majority of the Board of Directors then in office, though less than a quorum.

Directors of the Corporation may be removed only for cause.

NINTH: The Board of Directors shall have power to adopt, amend and repeal the by-laws at any regular or special meeting of the Board of Directors, *provided* that notice of intention to adopt, amend or repeal the by-laws in whole or in part shall have been included in the notice of meeting; or, without any such notice, by a vote of two-thirds of the directors then in office.

Stockholders may adopt, amend and repeal the by-laws at any regular or special meeting of the stockholders by an affirmative vote of two-thirds of the shares outstanding and entitled to vote thereon, *provided* that notice of intention to adopt, amend or repeal the by-laws in whole or in part shall have been included in the notice of the meeting.

Any action required to be taken at any annual or special meeting of the stockholders of the Corporation, or any action which may be taken at any annual or special meeting of the stockholders or otherwise, may not be taken without a meeting, prior notice and a vote, and stockholders may not act by written consent.

TENTH: The Board of Directors from time to time shall determine whether and to what extent, and at what times and places, and under what conditions and regulation, the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders, and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by law or authorized by the Board of Directors, or by the stockholders.

ELEVENTH: The directors may from time to time declare such dividends as they shall deem advisable and proper, subject to such restrictions as may be imposed by law, and pay the same to the stockholders at such times as they shall fix.


The Board of Directors shall have power to issue bonds, debentures, or other obligations, either non-convertible or convertible into the Corporation's stock, subject to the provisions of Article Fourth and upon such terms, in such manner and under such conditions in conformity with law, as may be fixed by the Board of Directors prior to the issue of such bonds, debentures or other obligations.

TWELFTH: No director shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director, except (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law, (iii) pursuant to Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article Twelfth shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

THIRTEENTH: The powers and authorities hereinbefore conferred upon the Board of Directors are in furtherance and not in limitation of those conferred by the laws of the State of Delaware.

FOURTEENTH: The Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law, and all rights preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article.

I, THE UNDERSIGNED, being the Sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 30th day of May, 2001.



Deborah M. Reusch
Sole Incorporator

RESTATED
CERTIFICATE OF INCORPORATION
OF
USX HOLDCO, INC.

The undersigned, Robert M. Stanton, certifies that he is the President of USX HoldCo, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), and does hereby further certify as follows:

- (1) The name of the Corporation is USX HoldCo, Inc.
- (2) The name under which the Corporation was originally incorporated was USX HoldCo, Inc. and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on May 30, 2001.
- (3) This Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.
- (4) This Restated Certificate of Incorporation shall become effective at 8:30 a.m. Eastern Daylight Time on July 2, 2001.
- (5) The text of the Restated Certificate of Incorporation of the Corporation as amended hereby is restated to read in its entirety, as follows:

FIRST: The name of the Corporation (which is hereinafter referred to as the "Corporation") is

USX CORPORATION

SECOND: Its registered office and place of business in the State of Delaware is located at 2711 Centerville Road, Suite 400, Wilmington, De. The registered agent in charge thereof upon whom process against the Corporation may be served is Corporation Service Company.

THIRD: The purposes of the Corporation are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware, and without limiting the foregoing to engage in integrated steel operations and to develop, mine, produce, manufacture, construct, transport, buy, hold, sell and generally deal in products, materials, property, both tangible and intangible, and services of all kinds.

FOURTH: The total number of shares of capital stock which the Corporation shall have authority to issue is Eight Hundred Forty Million (840,000,000), of which Forty Million (40,000,000) shares shall be shares of Preferred Stock, without par value (hereinafter called "Preferred Stock"), Five Hundred Fifty Million (550,000,000) shares shall be shares of a class of common stock designated as USX-Marathon Group Common Stock, par value \$1.00 per share ("Marathon Stock"), Two Hundred Million (200,000,000) shares shall be shares of a class of common stock designated as USX-U.S. Steel Group Common Stock, par value \$1.00 per share ("Steel Stock"), and Fifty Million (50,000,000) shares shall be shares of a class of common stock designated as USX-Delhi Group Common Stock, par value \$1.00 per share ("Delhi Stock"). The Marathon Stock, the Steel Stock and the Delhi Stock shall hereinafter collectively be called the "Common Stock".

DIVISION I

The powers and rights of the shares of each class of Common Stock, and the qualifications, limitations or restrictions thereof, are as follows:

1. *Dividend Rights.* Subject to the express terms of any outstanding series of Preferred Stock, dividends may be declared and paid upon each class of the Common Stock upon the terms provided for below with respect to each such class solely in the discretion of the Board of Directors:

(a) *Dividends on Marathon Stock.* Dividends on the Marathon Stock may be declared and paid out of funds of the Corporation legally available therefor.

(b) *Dividends on Steel Stock.* Dividends on the Steel Stock may be declared and paid only out of the lesser of (i) funds of the Corporation legally available therefor and (ii) the Available Steel Dividend Amount.

(c) *Dividends on Delhi Stock.* Dividends on the Delhi Stock may be declared and paid only out of the lesser of (i) funds of the Corporation legally available therefor and (ii) the Available Delhi Dividend Amount.

(d) *Discrimination Between Classes of Common Stock.* The Board of Directors, subject to the provisions of Sections 1(a), 1(b) and 1(c), may, in its sole discretion, declare and pay dividends exclusively on any class or classes of Common Stock in equal or unequal amounts, notwithstanding the amounts of funds available for dividends on each class, the respective voting and liquidation rights of each class, the amount of prior dividends declared on each class or any other factor.

2. *Exchange and Redemption.* Shares of each class of Common Stock are subject to exchange or redemption, as the case may be, upon the terms provided below with respect to each such class; provided that no such class may be exchanged or redeemed in its entirety if all of the other classes have been, or are at the time being, exchanged or redeemed in their entirety:

(a) *Exchange and Redemption of Marathon Stock.*

(i) At any time on or after the date on which the Corporation has transferred all of the assets and liabilities of the Marathon Group to a wholly owned subsidiary of the Corporation (the "Marathon Group Subsidiary"), the Board of Directors may, in its sole discretion and by a majority vote of the directors then in office, provided that there are funds of the Corporation legally available therefor, declare that all of the outstanding shares of Marathon Stock shall be exchanged on an Exchange Date set forth in a notice to holders of Marathon Stock pursuant to Section 2(d)(i), for all of the outstanding shares of common stock of the Marathon Group Subsidiary, on a pro rata basis, each of which shall, upon such issuance, be fully paid and nonassessable.

(ii) After any Exchange Date for Marathon Stock, any share of Marathon Stock that is issued on conversion or exercise of any Convertible Securities shall, to the extent of funds of the Corporation legally available therefor, immediately upon issuance pursuant to such conversion or exercise and without any notice or any other action on the part of the Corporation or its Board of Directors or the holder of such share of Marathon Stock, be redeemed for \$.01 in cash.

(b) *Exchange and Redemption of Steel Stock.*

(i) In the event of the Disposition, in one transaction or a series of related transactions, by the Corporation of all or substantially all of the properties and assets of the U.S. Steel Group (other than in connection with the Disposition by the Corporation of all of its properties and assets in one transaction) to any person, entity or group (other than (A) the holders of all outstanding shares of Steel Stock on a pro rata basis or (B) any person, entity or group in which the Corporation, directly or indirectly, owns a majority equity interest), the Corporation shall, on or prior to the first Business Day following the 60th day following the consummation of such Disposition, either:

(A) subject to paragraph 1(b) above, declare and pay a dividend in cash and/or in securities or other property received as proceeds of such Disposition to the holders of Steel Stock in an amount equal to the Net Proceeds of such Disposition; or

(B) to the extent that there are funds of the Corporation legally available therefor, redeem the number of whole shares of outstanding Steel Stock that has an aggregate average Market Value, during the ten-Business Day period beginning on the first Business Day following such consummation, closest to the value of the Net Proceeds of such Disposition, for cash and/or securities or other property received as proceeds of such Disposition in an amount equal to such Net Proceeds; or

(C) exchange each outstanding share of Steel Stock for a number of fully paid and nonassessable shares of Marathon Stock or, if there are no shares of Marathon Stock outstanding on the Exchange Date and shares of Delhi Stock are then outstanding, of Delhi Stock equal to 110% of the average daily ratio (calculated to the nearest five decimal places) of the Market Value of one share of Steel Stock to the Market Value of one share of Marathon Stock or one share of Delhi Stock, as the case may be, during such ten-Business Day period.

For purposes of this Section 2(b)(i):

(x) as of any date, "substantially all of the properties and assets of the U.S. Steel Group" shall mean a portion of such properties and assets that represents at least 80% of either of the then-current market value of, or the aggregate revenues for the immediately preceding twelve fiscal quarterly periods of the Corporation derived from, the properties and assets of the U.S. Steel Group as of such date (excluding the properties and assets of any person, entity or group in which the Corporation, directly or indirectly, owns less than a majority equity interest);

(y) if immediately after any event, the Corporation, directly or indirectly, owns less than a majority equity interest in any person, entity or group in which the Corporation, directly or indirectly, owned a majority equity interest immediately prior to the occurrence of such event, a Disposition of all of the properties and assets of the U.S. Steel Group owned by such person, entity or group shall be deemed to have occurred; and

(z) in the case of a Disposition of properties and assets in a series of related transactions, such Disposition shall not be deemed to have been consummated until the consummation of the last of such transactions.

(ii) The Board of Directors may, by a majority vote of the directors then in office, at any time after a dividend or redemption pursuant to clause (A) or (B), respectively, of Section 2(b)(i), declare that each of the remaining outstanding shares of Steel Stock shall be exchanged, on an Exchange Date set forth in a notice to holders of Steel Stock pursuant to Section 2(d)(i), for a number of fully paid and nonassessable shares of Marathon Stock or, if there are no shares of Marathon Stock outstanding on such Exchange Date and shares of Delhi Stock are then outstanding, of Delhi Stock, equal to 110% of the Market Value Ratio as of the fifth Business Day prior to the date such notice is mailed to such holders. For purposes of the preceding sentence, "Market Value Ratio", as of any date, shall mean the highest of the following (calculated to the nearest five decimal places): (A) the average ratio of S/X for the five-Business Day period ending on such date, (B) the quotient of (1) the sum of (w) four times the average ratio of S/X for the five-Business Day period ending on such date, (x) three times the average ratio of S/X for the next preceding five-Business Day period, (y) two times the average ratio of S/X for the next preceding five-Business Day period and (z) the average ratio of S/X for the next preceding five-Business Day period, divided by (2) ten and (C) if the dividend pursuant to clause (A) of Section 2(b)(i) was declared and paid or the redemption pursuant to (B) of Section 2(b)(i) was made prior to the commencement of the most recently completed fiscal quarter of the Corporation, the average ratio of S/X for such fiscal quarter, where S is the Market Value of one share of Steel Stock and X is the Market Value of one share of Marathon Stock or one share of Delhi Stock, as the case may be.

(iii) At any time on or after the date on which the Corporation has transferred all of the assets and liabilities of the U.S. Steel Group (and no other assets or liabilities) to a wholly owned subsidiary of the Corporation (the "U.S. Steel Group Subsidiary"), the Board of Directors may, in its sole discretion and by a majority vote of the directors then in office, provided that there are funds of the Corporation legally available therefor, declare that all of the outstanding shares of Steel Stock shall be exchanged on an Exchange Date set forth in a notice to holders of Steel Stock pursuant to Section 2(d)(i), for all of the outstanding shares of common stock of the U.S. Steel Group Subsidiary, on a pro rata basis, each of which shall, upon such issuance, be fully paid and nonassessable.

(iv) After any Exchange Date or Redemption Date on which all outstanding Steel Stock was exchanged or redeemed, any share of Steel Stock that is issued on conversion or exercise of any Convertible Securities shall, immediately upon issuance pursuant to such conversion or exercise and without any notice or any other action on the part of the Corporation or its Board of Directors or the holder of such share of Steel Stock:

(A) in the event the then-outstanding Steel Stock was exchanged for Marathon Stock or Delhi Stock on such Exchange Date pursuant to Section 2(b)(i) or 2(b)(ii), be exchanged for the kind and amount of shares of capital stock and other securities and property that a holder of such Convertible Security would have been entitled to receive pursuant to the terms of such Convertible Security had such terms provided that the conversion privilege in effect immediately prior to any exchange by the Corporation of any of its capital stock for shares of any other capital stock of the Corporation would be adjusted so that the holder of any such Convertible Security thereafter surrendered for conversion would be entitled to receive the number of shares of capital stock of the Corporation and other securities and property he would have owned immediately following such action had such Convertible Security been converted immediately prior thereto; or

(B) in the event the then-outstanding Steel Stock was redeemed in whole pursuant to clause (B) of Section 2(b)(i) or exchanged for common stock of the U.S. Steel Group Subsidiary pursuant to Section 2(b)(iii), be redeemed, to the extent of funds of the Corporation legally available therefor, for \$.01 in cash.

The provisions of clause (A) of this Section 2(b)(iv) shall not apply to the extent that equivalent adjustments are otherwise made pursuant to the provisions of such Convertible Securities.

(c) Exchange and Redemption of Delhi Stock.

(i) In the event of the Disposition, in one transaction or a series of related transactions, by the Corporation of all or substantially all of the properties and assets of the Delhi Group (other than in connection with the Disposition by the Corporation of all of its properties and assets in one transaction) to any person, entity or group (other than (A) the holders of all outstanding shares of Delhi Stock on a pro rata basis or (B) any person, entity or group in which the Corporation, directly or indirectly, owns a majority equity interest), the Corporation shall, on or prior to the first Business Day following the 60th day following the consummation of such Disposition, either:

(A) subject to paragraph 1(c) above, declare and pay a dividend in cash and/or in securities or other property received as proceeds of such Disposition to the holders of Delhi Stock in an amount equal to the product of the Delhi Fraction and the Net Proceeds of such Disposition; or

(B) to the extent that there are funds of the Corporation legally available therefor, redeem the number of whole shares of outstanding Delhi Stock that has an aggregate average Market Value, during the ten-Business Day period beginning on the first Business Day following such consummation, closest to the value of the product of the Delhi Fraction and the Net Proceeds of such Disposition, for cash and/or securities or other property received as proceeds of such Disposition in an amount equal to such product; or

(C) exchange each outstanding share of Delhi Stock for a number of fully paid and nonassessable shares of Marathon Stock or, if there are no shares of Marathon Stock outstanding on such Exchange Date and shares of Steel Stock are then outstanding, of Steel Stock, equal to 110% of the average daily ratio (calculated to the nearest five decimal places) of the Market Value of one share of Delhi Stock to the Market Value of one share of Marathon Stock or one share of Steel Stock, as the case may be, during such ten-Business Day period.

For purposes of this Section 2(c)(i):

(x) as of any date, "substantially all of the properties and assets of the Delhi Group" shall mean a portion of such properties and assets that represents at least 80% of either of the then-current market value of, or the aggregate revenues for the immediately preceding twelve fiscal quarterly periods of the Corporation derived from, the properties and assets of the Delhi Group as of such date (excluding the properties and assets of any person, entity or group in which the Corporation, directly or indirectly, owns less than a majority equity interest);

(y) if immediately after any event, the Corporation, directly or indirectly, owns less than a majority equity interest in any person, entity or group in which the Corporation, directly or indirectly, owned a majority equity interest immediately prior to the occurrence of such event, a Disposition of all of the properties and assets of the Delhi Group owned by such person, entity or group shall be deemed to have occurred; and

(z) in the case of a Disposition of properties and assets in a series of related transactions, such Disposition shall not be deemed to have been consummated until the consummation of the last of such transactions.

(ii) The Board of Directors may, by a majority vote of the directors then in office, at any time after a dividend or redemption pursuant to clause (A) or (B), respectively, of Section 2(c)(i), declare that each of the remaining outstanding shares of Delhi Stock shall be exchanged, on an Exchange Date set forth in a notice to holders of Delhi Stock pursuant to Section 2(d)(i), for a number of fully paid and nonassessable shares of Marathon Stock or, if there are no shares of Marathon Stock outstanding on such Exchange Date and shares of Steel Stock are then outstanding, of Steel Stock equal to 110% of the Market Value Ratio as of the fifth Business Day prior to the date such notice is mailed to such holders.

(iii) The Board of Directors may, by a majority vote of the directors then in office, at any time declare that each of the outstanding shares of Delhi Stock shall be exchanged, on an Exchange Date set forth in a notice to holders of Delhi Stock pursuant to Section 2(d)(i), for a number of fully paid and nonassessable shares of Marathon Stock or, if there are no shares of Marathon Stock outstanding on such Exchange Date, of Steel Stock equal to 115% of the Market Value Ratio as of the fifth Business Day prior to the date such notice is mailed to such holders.

(iv) For purposes of Section 2(c)(ii) and (iii), the "Market Value Ratio", as of any date, shall mean the highest of the following (calculated to the nearest five decimal places): (A) the average ratio of D/X for the five-Business Day period ending on such date, (B) the quotient of (1) the sum of (w) four times the average ratio of D/X for the five-Business Day period ending on such date, (x) three times the average ratio of D/X for the next preceding five-Business Day period, (y) two times the average ratio of D/X for the next preceding five-Business Day period and (z) the average ratio of D/X for the next preceding five-Business Day period, divided by (2) ten and (C) if the dividend pursuant to clause (A) of Section 2(c)(i) was declared and paid or the redemption pursuant to clause (B) of Section 2(c)(i) was made prior to the commencement of the most recently completed fiscal quarter of the Corporation, the average ratio of D/X for such fiscal quarter, where D is the Market Value of one share of Delhi Stock and X is the Market Value of one share of Marathon Stock or one share of Steel Stock, as the case may be.

(v) At any time on or after the date on which the Corporation has transferred all of the assets and liabilities of the Delhi Group (and no other assets or liabilities) to a wholly owned subsidiary of the Corporation (the "Delhi Group Subsidiary"), the Board of Directors may, in its sole discretion and by a majority vote of the directors then in office, provided that there are funds of the Corporation legally available therefor, declare that all of the outstanding shares of Delhi Stock shall be exchanged on an Exchange Date set forth in a notice to holders of Delhi Stock pursuant to Section 2(d)(i), for a number of outstanding shares of common stock of the Delhi Group Subsidiary equal to the product of the Delhi Fraction and the number of all outstanding shares of common stock of the Delhi Group Subsidiary, on a pro rata basis, each of which shall, upon such issuance, be fully paid and nonassessable.

(vi) After any Exchange Date or Redemption Date on which all outstanding Delhi Stock was exchanged or redeemed, any share of Delhi Stock that is issued on conversion or exercise of any Convertible Securities shall, immediately upon issuance pursuant to such conversion or exercise and without any notice or any other action on the part of the Corporation or its Board of Directors or the holder of such share of Delhi Stock:

(A) in the event the then-outstanding Delhi Stock was exchanged for Marathon Stock or Steel Stock on such Exchange Date pursuant to Section 2(c)(i), 2(c)(ii) or 2(c)(iii), be exchanged for the kind and amount of shares of capital stock and other securities and property that a holder of such Convertible Security would have been entitled to receive pursuant to the terms of such Convertible Security had such terms provided that the conversion privilege in effect immediately prior to any exchange by the Corporation of any of its capital stock for shares of any other capital stock of the Corporation would be adjusted so that the holder of any such Convertible Security thereafter surrendered for conversion would be entitled to receive the number of shares of capital stock of the Corporation and other securities and property he would have owned immediately following such action had such Convertible Security been converted immediately prior thereto; or

(B) in the event the then-outstanding Delhi Stock was redeemed in whole pursuant to clause (B) of Section 2(c)(i) or exchanged for common stock of the Delhi Group Subsidiary pursuant to Section 2(c)(v), be redeemed, to the extent of funds of the Corporation legally available therefor, for \$.01 in cash.

The provisions of clause (A) of this Section 2(c)(vi) shall not apply to the extent that equivalent adjustments are otherwise made pursuant to the provisions of such Convertible Securities.

(d) General Exchange and Redemption Provisions.

(i) In the event of any exchange or redemption pursuant to this Section 2 (other than Section 2(a)(ii), 2(b)(iv), or 2(c)(vi)), the Corporation shall cause to be given to each holder of the class of Common Stock to be so exchanged or redeemed a notice stating (A) that shares of such class

of Common Stock shall be exchanged or redeemed, as the case may be, (B) the Exchange Date or the Redemption Date, (C) in the event of a partial redemption of Steel Stock or Delhi Stock, as the case may be, pursuant to clause (B) of Section 2(b)(i) or clause (B) of Section 2(c)(i), respectively, the number of shares of Steel Stock or Delhi Stock, as the case may be, to be redeemed, (D) the kind and amount of shares of capital stock or cash and/or securities or other property to be received by such holder with respect to each share of such class of Common Stock held by such holder, including details as to the calculation thereof, (E) the place or places where certificates for shares of such class of Common Stock, properly endorsed or assigned for transfer (unless the Corporation shall waive such requirement), are to be surrendered for delivery of certificates for shares of such capital stock or cash and/or securities or other property and (F) that, subject to Section 2(d)(iv) hereof, dividends on such shares of Common Stock will cease to be paid as of such Exchange Date or Redemption Date. Such notice shall be sent by first-class mail, postage prepaid, not less than 30 nor more than 60 days prior to the Exchange Date or Redemption Date, as the case may be, and in any case to each holder of the class of Common Stock to be exchanged or redeemed, at such holder's address as the same appears on the stock transfer books of the Corporation. Neither the failure to mail such notice to any particular holder of such class of Common Stock nor any defect therein shall affect the sufficiency thereof with respect to any other holder of such class of Common Stock.

(ii) If less than all of the outstanding shares of Steel Stock or Delhi Stock, as the case may be, are to be redeemed pursuant to clause (B) of Section 2(b)(i) or clause (B) of Section 2(c)(i), respectively, such shares shall be redeemed by the Corporation pro rata among the holders of such class of Common Stock or by such other method as may be determined by the Board of Directors to be equitable.

(iii) The Corporation shall not be required to issue or deliver fractional shares of any class of capital stock or any fractional securities to any holder of any class of Common Stock upon any exchange, redemption, dividend or other distribution pursuant to this Section 2. If more than one share of any class of Common Stock shall be held at the same time by the same holder, the Corporation may aggregate the number of shares of any class of capital stock that shall be issuable or the amount of securities that shall be deliverable to such holder upon any exchange, redemption, dividend or other distribution (including any fractions of shares or securities). If the number of shares of any class of capital stock or the amount of securities remaining to be issued or delivered to any holder of any class of Common Stock is a fraction, the Corporation shall, if such fraction is not issued or delivered to such holder, pay a cash adjustment in respect of such fraction in an amount equal to the fair market value of such fraction on the fifth Business Day prior to the date such payment is to be made. For purposes of the preceding sentence, "fair market value" of any fraction shall be (i) in the case of any fraction of a share of capital stock of the Corporation, the product of such fraction and the Market Value of one share of such capital stock and (ii) in the case of any other fractional security, such value as is determined by the Board of Directors.

(iv) No adjustments in respect of dividends shall be made upon the exchange or redemption of any shares of any class of Common Stock; provided, however, that if the Exchange Date or Redemption Date with respect to any class of Common Stock shall be subsequent to the record date for the payment of a dividend or other distribution thereon or with respect thereto, the holders of shares of such class of Common Stock at the close of business on such record date shall be entitled to receive the dividend or other distribution payable on or with respect to such shares on the date set for payment of such dividend or other distribution, notwithstanding the exchange or redemption of such shares or the Corporation's default in payment of the dividend or distribution due on such date.

(v) Before any holder of shares of any class of Common Stock shall be entitled to receive certificates representing shares of any capital stock or cash and/or securities or other property to be received by such holder with respect to such shares of such class of Common Stock pursuant to this Section 2, such holder shall surrender at such office as the Corporation shall specify certificates for such shares of such class of Common Stock, properly endorsed or assigned for transfer (unless the Corporation shall waive such requirement). The Corporation will as soon as practicable after such surrender of certificates representing such shares of such class of Common Stock deliver to the person for whose account such shares of such class of Common Stock

surrendered, or to his nominee or nominees, certificates representing the number of shares of the kind of capital stock or cash and/or securities or other property to which he shall be entitled as aforesaid, together with any fractional payment contemplated by Section 2(d)(iii). If less than all of the shares of any class of Common Stock, represented by any one certificate are to be redeemed, the Corporation shall issue and deliver a new certificate for the shares of such class of Common Stock not redeemed.

(vi) From and after any applicable Exchange Date or Redemption Date, all rights of a holder of shares of any class of Common Stock that were exchanged or redeemed shall cease except for the right, upon surrender of the certificates representing such shares of Common Stock, to receive certificates representing shares of the kind and amount of capital stock or cash and/or securities or other property for which such shares were exchanged or redeemed, together with any fractional payment contemplated by Section 2(d)(iii) and rights to dividends as provided in Section 2(d)(iv). No holder of a certificate, that immediately prior to the applicable Exchange Date for any class of Common Stock represented shares of such class of Common Stock, shall be entitled to receive any dividend or other distribution with respect to shares of any kind of capital stock into which such class of Common Stock was exchanged until surrender of such holder's certificate for a certificate or certificates representing shares of such kind of capital stock. Upon such surrender, there shall be paid to the holder the amount of any dividends or other distributions (without interest) which theretofore became payable with respect to a record date after the Exchange Date, but that were not paid by reason of the foregoing, with respect to the number of whole shares of the kind of capital stock represented by the certificate or certificates issued upon such surrender. From and after an Exchange Date for any class of Common Stock, the Corporation shall, however, be entitled to treat the certificates for such class of Common Stock that have not yet been surrendered for exchange as evidencing the ownership of the number of whole shares of the kind or kinds of capital stock for which the shares of such class of Common Stock represented by such certificates shall have been exchanged, notwithstanding the failure to surrender such certificates.

(vii) The Corporation will pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issue or delivery of any shares of capital stock on exchange of shares of any class of Common Stock pursuant hereto. The Corporation shall not, however, be required to pay any tax that may be payable in respect of any transfer involved in the issue and delivery of any shares of capital stock in a name other than that in which the shares of the class of Common Stock so exchanged were registered, and no such issue or delivery shall be made unless and until the person requesting such issue has paid to the Corporation the amount of any such tax, or has established to the satisfaction of the Corporation that such tax has been paid.

3. Voting Rights.

(a) Except as provided in clauses (c), (d) or (e) below, the holders of all classes of Common Stock shall vote together as a single class on all matters as to which holders of Common Stock are entitled to vote. On all matters to be voted on by the holders of all classes of Common Stock together as a single class, (i) each outstanding share of Marathon Stock shall have one vote, (ii) each outstanding share of any other class of Common Stock shall have a number of votes equal to the quotient (calculated to the nearest three decimal places), as of the fifth Business Day prior to the applicable record date or as of any other applicable date, of (A) the sum of (1) four times the average ratio of X/Y for the five-Business Day period ending on such fifth Business Day, (2) three times the average ratio of X/Y for the next preceding five-Business Day period, (3) two times the average ratio of X/Y for the next preceding five-Business Day period and (4) the average ratio of X/Y for the next preceding five-Business Day period, divided by (B) ten, where X is the Market Value of such class of Common Stock and Y is the Market Value of the Marathon Stock or if there are no shares of Marathon Stock outstanding on such record or other applicable date or on any of the twenty-five Business Days prior thereto, the sum of the Market Values of the Steel Stock and of the Delhi Stock; provided that until the Delhi Stock has been traded regular way on the New York Stock Exchange for at least twenty-five Business Days, each outstanding share of the Delhi Stock shall have a number of votes equal to the ratio of A/B (calculated to the nearest three decimal places), where A is the average of the high and low reported sales prices of a share of the Delhi Stock on the New York Stock Exchange, and B is the average of the high and low reported sales prices of a share of Marathon Stock or, if there are no shares of Marathon Stock outstanding, the sum of the average of the high and low

reported sales prices of a share of the Steel Stock and a share of the Delhi Stock on such Exchange, in each case on the Effective Date, or on the first Business Day thereafter on which shares of the Delhi Stock are traded on such Exchange. If shares of only one class of Common Stock are outstanding, each share of that class shall have one vote.

(b) Unless the vote or consent of a greater number of shares shall then be required by law, the vote or consent of the holders of a majority of all of the shares of any class of Common Stock then outstanding, voting as a separate class, shall be necessary for authorizing, effecting or validating the merger or consolidation of the Corporation into or with any other corporation if such merger or consolidation would adversely affect the powers or special rights of such class of Common Stock either directly by amendment of this Restated Certificate of Incorporation or indirectly by requiring the holders of such class to accept or retain, in such merger or consolidation, anything other than (i) shares of such class or (ii) shares of the surviving or resulting corporation having, in either case, powers and special rights identical to those of such class prior to such merger or consolidation.

(c) Unless the vote or consent of a greater number of shares shall then be required by law, the vote or consent of the holders of at least 66 $\frac{2}{3}$ % of all of the shares of Steel Stock then outstanding, voting as a separate class, shall be necessary for:

(i) the declaration or payment of any dividend on, or the making of any other payment or distribution with respect to any shares of any other class of Common Stock, if such dividend, payment or distribution is to be made with (A) proceeds from the Disposition of any of the properties and assets of the U.S. Steel Group or (B) any portion of an equity interest in a person, entity or group that owns any of the properties or assets of the U.S. Steel Group; or

(ii) the use, or reservation for use, of any proceeds from the Disposition of any of the properties and assets of the U.S. Steel Group, or any of the properties and assets acquired with such proceeds, in any business of the Corporation other than a business of the U.S. Steel Group;

provided such vote shall not be required if such proceeds are loaned at a rate or rates representative of actual borrowings and short-term investments by the Corporation.

(d) Unless the vote or consent of a greater number of shares shall then be required by law, the vote or consent of the holders of at least 66 $\frac{2}{3}$ % of all the shares of Marathon Stock then outstanding, voting as a separate class, shall be necessary for:

(i) the declaration or payment of any dividend on, or the making of any other payment or distribution with respect to, any shares of any other class of Common Stock, if such dividend, payment or distribution is to be made with (A) proceeds from the Disposition of any of the properties and assets of the Marathon Group or (B) any portion of an equity interest in a person, entity or group that owns any of the properties and assets of the Marathon Group; or

(ii) the use, or reservation for use, of any proceeds from the Disposition of any of the properties and assets of the Marathon Group, or any of the properties and assets acquired with such proceeds, in any business of the Corporation other than a business of the Marathon Group;

provided such vote shall not be required to the extent such proceeds are loaned at a rate or rates representative of actual borrowings and short-term investments by the Corporation.

(e) Unless the vote or consent of a greater number of shares shall then be required by law, the vote or consent of the holders of at least 66 $\frac{2}{3}$ % of all of the shares of Delhi Stock then outstanding, voting as a separate class, shall be necessary for:

(i) the declaration or payment of any dividend on, or the making of any other payment or distribution with respect to any shares of any other class of Common Stock, if such dividend, payment or distribution is to be made with (A) proceeds from the Disposition of any of the properties and assets of the Delhi Group or (B) any portion of an equity interest in a person, entity or group that owns any of the properties or assets of the Delhi Group; or

(ii) the use, or reservation for use, of any proceeds from the Disposition of any of the properties and assets of the Delhi Group, or any of the properties and assets acquired with such proceeds, in any business of the Corporation other than a business of the Delhi Group;

... vote shall not be required if such proceeds are loaned at a rate or rates representative of borrowings and short-term investments by the Corporation.

(f) The number of authorized shares of any class of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of Common Stock having a majority of the votes entitled to be cast by the holders of all classes of Common Stock, voting together as provided for in Section 3(a) and without a separate vote of the holders of any class.

4. *Liquidation Rights.* In the event of the dissolution, liquidation or winding-up of the Corporation, whether voluntary or involuntary, after there shall have been paid or set apart for the holders of Preferred Stock the full preferential amounts to which they are entitled, the holders of the outstanding shares of each class of Common Stock shall be entitled to receive a fraction of the funds of the Corporation remaining for distribution to its stockholders, where such fraction is equal to the quotient of (A) the sum of (1) four times the average ratio of x/y for the five-Business Day period ending on the Business Day prior to the date of the public announcement of (I) a voluntary dissolution, liquidation or winding-up by the Corporation or (II) the institution of the proceeding for the involuntary dissolution, liquidation or winding-up of the Corporation, (2) three times the average ratio of x/y for the next preceding five-Business Day period, (3) two times the average ratio of x/y for the next preceding five-Business Day period and (4) the average ratio of x/y for the next preceding five-Business Day period, divided by (B) ten, where x is the Market Capitalization of such class of Common Stock, and y is the aggregate Market Capitalization of all classes of Common Stock. For purposes of the preceding sentence, "Market Capitalization" of any class of Common Stock on any day shall mean the product of (i) the Market Value of such class of Common Stock on such day and (ii) the number of shares of such class of Common Stock outstanding on such day.

5. *Definitions.* As used in this Division I, the following terms shall have the following meanings (with terms defined in the singular having comparable meaning when used in the plural and vice versa), unless another definition is provided or the context otherwise requires:

"Available Delhi Dividend Amount", on any date, shall mean the product of the Delhi Fraction and either (a) the greater of (i) an amount equal to (x) \$172.9 million, increased or decreased, as appropriate, to reflect, from June 30, 1992, (A) Delhi Net Income, (B) any dividends or other distributions declared or paid with respect to, or repurchases or issuances of, any shares of Marathon Stock prior to the close of business on the date Delhi Stock is first issued attributed to the Delhi Group, (C) any dividends or other distributions declared or paid with respect to, or repurchases or issuances of, any shares of Delhi Stock or any shares of Preferred Stock attributed to the Delhi Group, (D) assets or properties of the Delhi Group that are no longer included as part of the Delhi Group as a result of any such dividend, distribution or repurchase pursuant to the proviso to the definition of "Delhi Group" and (E) any other adjustments to stockholders' equity of the Delhi Group made in accordance with generally accepted accounting principles, less (y) the sum of the aggregate stated capital of all outstanding Preferred Stock attributed to the Delhi Group and the quotient of the aggregate par value of all outstanding Delhi Stock divided by the Delhi Fraction and (ii) the excess of the fair market value of the net assets of the Delhi Group over the sum of the aggregate stated capital of all outstanding Preferred Stock attributed to the Delhi Group, and the quotient of the aggregate par value of all outstanding Delhi Stock divided by the Delhi Fraction, or (b) in case there shall be no such amount, an amount equal to Delhi Net Income (if positive) for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

"Available Steel Dividend Amount", on any date, shall mean either (a) the greater of (i) an amount equal to (x) \$2.244 billion, increased or decreased, as appropriate, to reflect (A) Steel Net Income from the close of business on December 31, 1990, (B) any dividends or other distributions declared or paid with respect to, or repurchases or issuances of, any shares of common stock of the Corporation after December 31, 1990 and prior to the close of business on May 6, 1991 attributed to the U.S. Steel Group, (C) any dividends or other distributions declared or paid with respect to, or repurchases or issuances of, any shares of Steel Stock or any shares of Preferred Stock attributed to the U.S. Steel Group and (D) any other adjustments to stockholders' equity of the U.S. Steel Group made in accordance with generally accepted accounting principles, less (y) the sum of the aggregate par value of all outstanding Steel Stock and the aggregate stated capital of all outstanding Preferred Stock attributed to the U.S. Steel Group and (ii) the excess of the fair market value of the net assets of the U.S. Steel Group over the sum of the aggregate par value of all outstanding Steel Stock and the aggregate stated capital of all outstanding Preferred Stock attributed to the U.S. Steel Group, in

the case of each of clause (i) and clause (ii) increased by an amount equal to any effects of the recognition of the transition obligation upon the adoption of Statement of Financial Accounting Standards (SFAS) No. 106, "Employer's Accounting for Postretirement Benefits Other than Pensions" (including any amendments thereto) and any cumulative effects of the adoption of SFAS No. 109, "Accounting for Income Taxes" (including any amendments thereto) in the year of adoption or (b) in case there shall be no such amount, an amount equal to Steel Net Income (if positive) for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

"Business Day" shall mean each weekday other than any day on which any relevant class of Common Stock is not traded on any national securities exchange or the National Association of Securities Dealers Automated Quotations National Market System or in the over-the-counter market.

"Convertible Securities" shall mean any securities of the Corporation that are convertible into or evidence the right to purchase any shares of any class of Common Stock, pursuant to antidilution provisions of such securities or otherwise.

The "Delhi Fraction" as of any date is a fraction the numerator of which shall be the number of shares of Delhi Stock outstanding on such date and the denominator of which shall be initially 14,000,000 provided that such fraction shall in no event be greater than one. The denominator of the Delhi Fraction shall be adjusted from time to time as appropriate to reflect (i) subdivisions (by stock split or otherwise) and combinations (by reverse stock split or otherwise) of the Delhi Stock and stock dividends payable in shares of Delhi Stock to holders of Delhi Stock and other reclassifications of Delhi Stock, (ii) the issuance of Delhi Stock, the proceeds of which are attributed to the Delhi Group and (iii) repurchases by the Corporation of outstanding shares of Delhi Stock.

"Delhi Group" shall mean, (i) all of the businesses in which any of Delhi Gas Pipeline Corporation, The Nueces Company, Delhi Gasmark, Inc. (previously Texas Gasmark, Inc.), Tonkawa Gas Processing Company, Delhi Gas Marketing Corp. (previously TXO Gas Marketing Corp.), Delhi Gas Ventures Corp. (previously TXO Gas Ventures Corp.), Red River Gas Pipeline Corporation, Ozark Gas Pipeline Corporation, Sweetwater Pipeline Corporation, Western Gas Transmission, Inc., and Western Gas Corporation (or any of their predecessors or successors) is or has been engaged, directly or indirectly, (ii) all assets and liabilities of the Corporation to the extent attributed to any of such businesses, whether or not such assets or liabilities are or were assets and liabilities of such companies, and (iii) such businesses, assets and liabilities acquired by the Corporation for the Delhi Group as determined by the Board of Directors to be included in the Delhi Group; provided that, from and after any dividend or distribution with respect to any shares of Delhi Stock, or any repurchase of shares of Delhi Stock from holders of Delhi Stock generally, the Delhi Group shall no longer include an amount of assets or properties of the Delhi Group equal to the aggregate amount of such kind of assets or properties so paid in respect of shares of Delhi Stock multiplied by a fraction, the numerator of which is equal to one less the Delhi Fraction and the denominator of which is equal to the Delhi Fraction. From and after the date on which all of the outstanding shares of Steel Stock are exchanged for shares of Delhi Stock pursuant to any provision of Section 2, all of the businesses, assets and liabilities of the U.S. Steel Group shall be included in the Delhi Group.

"Delhi Group Subsidiary" shall have the meaning set forth in Section 2(c)(v).

"Delhi Net Income" shall mean the net income or loss of the Delhi Group determined in accordance with generally accepted accounting principles, including income and expenses of the Corporation attributed to the operations of the Delhi Group on a substantially consistent basis, including, without limitation, corporate administrative costs, net interest and other financial costs and income taxes.

"Disposition" shall mean the sale, transfer, assignment or other disposition (whether by merger, consolidation, sale or contribution of assets or stock or otherwise) of properties or assets.

"Exchange Date" shall mean any date fixed for an exchange of shares of any class of Common Stock, as set forth in a notice to holders of such class of Common Stock pursuant to Section 2(d)(i).

"Marathon Group" shall mean, at any time, (i) all of the businesses in which any of Marathon Oil Company, Texas Oil & Gas Corp., Carnegie Natural Gas Company and Apollo Gas Company (or any of their predecessors or successors) is or has been engaged, directly or indirectly, other than the businesses of the Delhi Group after the date of the first issuance of Delhi Stock, (ii) all assets and liabilities of the Corporation to the extent attributed to any of such businesses, whether or not such

assets or liabilities are or were assets and liabilities of such companies, (iii) a proportionate interest in the business, assets and liabilities of the Delhi Group equal to one less the Delhi Fraction, and (iv) such businesses, assets, and liabilities acquired by the Corporation for the Marathon Group after May 6, 1991 and as determined by the Board of Directors to be included in the Marathon Group; provided that, from and after any dividend or distribution with respect to any shares of Delhi Stock, or any repurchase of shares of Delhi Stock from holders of Delhi Stock generally, the Marathon Group shall include an amount of assets or properties of the Delhi Group equal to the aggregate amount of such kind of assets or properties so paid in respect of shares of Delhi Stock multiplied by a fraction, the numerator of which is equal to one less the Delhi Fraction and the denominator of which is equal to the Delhi Fraction. From and after the date on which there are no shares of Steel Stock outstanding (other than as a result of an exchange for shares of Delhi Stock pursuant to any provision of Section 2), all of the businesses, assets and liabilities of the U.S. Steel Group shall be included in the Marathon Group.

"Marathon Group Subsidiary" shall have the meaning set forth in Section 2(a)(i).

"Market Value" of any class of capital stock of the Corporation on any Business Day shall mean the average of the high and low reported sales prices regular way of a share of such class on such Business Day or in case no such reported sale takes place on such Business Day the average of the reported closing bid and asked prices regular way of a share of such class on such Business Day, in either case on the New York Stock Exchange Composite Tape, or if the shares of such class are not listed or admitted to trading on such Exchange on such Business Day, on the principal national securities exchange in the United States on which the shares of such class are listed or admitted to trading, or if not listed or admitted to trading on any national securities exchange on such Business Day, on the National Association of Securities Dealers Automated Quotations National Market System, or if the shares of such class are not listed or admitted to trading on any national securities exchange or quoted on such National Market System on such Business Day, the average of the closing bid and asked prices of a share of such class in the over-the-counter market on such Business Day as furnished by any New York Stock Exchange member firm selected from time to time by the Corporation, or if such closing bid and asked prices are not made available by any such New York Stock Exchange member firm on such Business Day, the market value of a share of such class as determined by the Board of Directors; provided that (i) for purposes of determining the ratios set forth in Sections 2(b)(i), 2(b)(ii), 2(c)(i), 2(c)(ii), 2(c)(iii), 3(a) and 4, the "Market Value" of any share of any class of Common Stock on any day prior to the "ex" date or any similar date for any dividend or distribution paid or to be paid with respect to such class of Common Stock (other than a regular quarterly cash dividend or a dividend or distribution in shares of such class of Common Stock) shall be reduced by the fair market value of the per share amount of such dividend or distribution and (ii) for purposes of determining the ratios set forth in Sections 2(b)(i), 2(b)(ii), 2(c)(i), 2(c)(ii), 2(c)(iii) and 3(a), the "Market Value" of any share of any class of Common Stock on any day prior to (A) the effective date of any subdivision (by stock split or otherwise) or combination (by reverse stock split or otherwise) of outstanding shares of such class of Common Stock or (B) the "ex" date or any similar date for any dividend or distribution with respect to either such class of Common Stock in shares of such class of Common Stock shall be appropriately adjusted to reflect such subdivision, combination, dividend or distribution. For the purposes of the foregoing clause (i) the Board of Directors shall determine the fair market value of any dividend or distribution.

"Net Proceeds", as of any date, from any Disposition of any of the properties and assets of the U.S. Steel Group or the Delhi Group, as the case may be, shall mean an amount, if any, equal to the gross proceeds of such Disposition after any payment of, or reasonable provision for, (i) any taxes payable by the Corporation in respect of such Disposition, (ii) any taxes payable by the Corporation in respect of any dividend or redemption pursuant to clause (A) or (B), respectively, of Sections 2(b)(i) or 2(c)(i), respectively, (iii) any transaction costs, including, without limitation, any legal, investment banking and accounting fees and expenses and (iv) any liabilities (contingent or otherwise) of, or allocated to, the U.S. Steel Group or the Delhi Group, as the case may be, including, without limitation, any indemnity obligations incurred in connection with the Disposition. For purposes of this definition, any properties and assets of the Steel Group or the Delhi Group, as the case may be, remaining after such Disposition shall constitute "reasonable provision" for such amount of taxes, costs and liabilities (contingent or otherwise) as can be supported by such properties and assets. To the extent the proceeds of any Disposition include any securities or other property other than cash, the Board of Directors shall determine the value of such securities or property.

"Redemption Date" shall mean any date fixed for a redemption of shares of any class of Common Stock, as set forth in a notice to holders of such class of Common Stock pursuant to Section 2(d)(i).

"Steel Net Income" shall mean the net income or loss of the U.S. Steel Group determined in accordance with generally accepted accounting principles, including income and expenses of the Corporation attributed to the operations of the Steel Group on a substantially consistent basis, including, without limitation, corporate administrative costs, net interest and other financial costs and income taxes.

"U.S. Steel Group" shall mean, at any time, all of the businesses in which the Corporation is or has been engaged, directly or indirectly, and all assets and liabilities of the Corporation, other than any businesses, assets or liabilities of the Marathon Group or the Delhi Group if any shares of Marathon Stock or Delhi Stock are outstanding.

"U.S. Steel Group Subsidiary" shall have the meaning set forth in Section 2(b)(iii).

6. *Determinations by the Board of Directors.* Any determinations made by the Board of Directors of the Corporation under any provision in this Division I of Article Fourth shall be final and binding on all stockholders of the Corporation.

DIVISION II

A statement of the designations of the Preferred Stock or of any series thereof, and the powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, or of the authority of the Board of Directors to fix by resolution or resolutions such designations and other terms not fixed by the Certificate of Incorporation, is as follows:

1. The Preferred Stock may be issued in one or more series, from time to time, with each such series to have such designation, powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation, subject to the limitations prescribed by law and in accordance with the provisions hereof, the Board of Directors being hereby expressly vested with authority to adopt any such resolution or resolutions. The authority of the Board of Directors with respect to each such series shall include, but not limited to, the determination or fixing of the following:

(i) The distinctive designation and number of shares comprising such series, which number may (except where otherwise provided by the Board of Directors in creating such series) be increased or decreased (but not below the number of shares then outstanding) from time to time by like action of the Board of Directors;

(ii) The dividend rate of such series, the conditions and times upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock or series thereof, or any other series of the same class, and whether dividends shall be cumulative or non-cumulative;

(iii) The conditions upon which the shares of such series shall be subject to redemption by the Corporation and the times, prices and other terms and provisions upon which the shares of the series may be redeemed;

(iv) Whether or not the shares of the series shall be subject to the operation of a retirement or sinking fund to be applied to the purchase or redemption of such shares and, if such retirement or sinking fund be established, the annual amount thereof and the terms and provisions relative to the operation thereof;

(v) Whether or not the shares of the series shall be convertible into or exchangeable for shares of any other class or classes, with or without par value, or of any other series of the same class, and, if provision is made for conversion or exchange, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;

whether or not the shares of the series shall have voting rights, in addition to the voting rights provided by law, and, if so, subject to the limitation hereinafter set forth, the terms of such voting rights;

(vii) The rights of the shares of the series in the event of voluntary or involuntary liquidation, dissolution, or upon the distribution of assets of the Corporation;

(viii) Any other powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series, as the Board of Directors may deem advisable and as shall not be inconsistent with the provisions of this Certificate of Incorporation.

2. The holders of shares of the Preferred Stock of each series shall be entitled to receive, when and as declared by the Board of Directors, out of funds legally available for the payment of dividends, dividends at the rates fixed by the Board of Directors for such series, and no more, before any dividends, other than dividends payable in Common Stock, shall be declared and paid, or set apart for payment, on the Common Stock with respect to the same dividend period.

3. Whenever, at any time, dividends on the then outstanding Preferred Stock as may be required with respect to any series outstanding shall have been paid or declared and set apart for payment on the then outstanding Preferred Stock, and after complying with respect to any retirement or sinking fund or funds for any series of Preferred Stock, the Board of Directors may, subject to the provisions of the resolution or resolutions creating any series of Preferred Stock, declare and pay dividends on the Common Stock, and the holders of shares of the Preferred Stock shall not be entitled to share therein.

4. The holders of shares of the Preferred Stock of each series shall be entitled upon liquidation or dissolution or upon the distribution of the assets of the Corporation to such preferences as provided in the resolution or resolutions creating such series of Preferred Stock, and no more, before any distribution of the assets of the Corporation shall be made to the holders of shares of the Common Stock.

5. Except as otherwise provided by a resolution or resolutions of the Board of Directors creating any series of Preferred Stock or by the General Corporation Law of Delaware, the holders of shares of the Common Stock issued and outstanding shall have and possess the exclusive right to notice of stockholders' meetings and the exclusive power to vote. The holders of shares of the Preferred Stock issued and outstanding shall, in no event, be entitled to more than one vote for each share of Preferred Stock held by them unless otherwise required by law.

Terms of the Preferred Stocks are as follows:

Series A Junior Preferred Stock

Section 1. *Designation and Amount.* This resolution shall provide for a single series of preferred stock, the designation of which shall be "Series A Junior Preferred Stock", without par value, and the number of shares constituting such series shall be Eight Million (8,000,000).

Section 2. Dividends and Distributions.

(A) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Stock ranking prior and superior to the shares of Series A Junior Preferred Stock with respect to dividends, the holders of shares of Series A Junior Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$5.00 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by

classification or otherwise), to be or being declared on the Common Stock, par value \$1.00 per share, of the Corporation (the "Common Stock") with respect to the same dividend period. If the Quarterly Dividend Payment Date is a Saturday, Sunday or legal holiday then such Quarterly Dividend Payment Date shall be the first immediately preceding calendar day which is not a Saturday, Sunday or legal holiday. In the event the Corporation shall at any time after October 10, 1989 (the "Rights Declaration Date") (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the Series A Junior Preferred Stock as provided in paragraph (A) above immediately prior to the time it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall be declared on the Common Stock with respect to a particular dividend period, a dividend of \$5.00 per share on the Series A Junior Preferred Stock shall nevertheless be payable on such Quarterly Dividend Payment Date with respect to such quarterly period.

(C) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof. Dividends in arrears may be declared and paid at any time, without reference to any Quarterly Dividend Payment Date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Directors.

(D) Except as hereinafter provided, no dividends shall be declared or paid or set apart for payment on the shares of Series A Junior Preferred Stock for any period if the Corporation shall be in default in the payment of any dividends (including cumulative dividends, if applicable) on any shares of Preferred Stock ranking, as to dividends, prior to the Series A Junior Preferred Stock, unless the same shall be contemporaneously declared and paid.

(E) Dividends payable on the Series A Junior Preferred Stock for the initial dividend period and for any period less than a full quarterly period, shall be computed on the basis of a 360-day year of 30-day months.

Section 3. Voting Rights. The holders of shares of Series A Junior Preferred Stock shall have the following voting rights:

(A) Each share of Series A Junior Preferred Stock shall entitle the holder thereof to one vote on all matters submitted to a vote of the stockholders of the Corporation. The holders of Series A Junior Preferred Stock shall be entitled to notice of all meetings of the stockholders of the Corporation.

(B) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

On the date used to determine stockholders of record for any meeting of stockholders for election of directors, a default in preference dividends on the Preferred Stock shall exist, the number of directors constituting the Board of Directors of the Corporation shall be increased by two, and the holders of the Preferred Stock of all series (whether or not the holders of such series of Preferred Stock would be entitled to vote for the election of directors if such default in preference dividends did not exist), shall have the right at such meeting, voting together as a single class without regard to series, to the exclusion of the holders of Common Stock, to elect two directors of the Corporation to fill such newly created directorships. Each director elected by the holders of shares of Preferred Stock (herein called a "Preferred Director"), shall continue to serve as such director for the full term for which he shall have been elected, notwithstanding that prior to the end of such term a default in preference dividends shall cease to exist. Any Preferred Director may be removed by, and shall not be removed except by, the vote of the holders of record of the outstanding shares of Preferred Stock, voting together as a single class without regard to series, at a meeting of the stockholders, or of the holders of shares of Preferred Stock, called for the purpose. So long as a default in any preference dividends on the Preferred Stock shall exist (i) any vacancy in the office of a Preferred Director may be filled (except as provided in the following clause (ii)) by an instrument in writing signed by the remaining Preferred Director and filed with the Corporation and (ii) in the case of the removal of any Preferred Director, the vacancy may be filled by the vote of the holders of the outstanding shares of Preferred Stock, voting together as a single class without regard to series, at the same meeting at which such removal shall be voted. Each director appointed as aforesaid by the remaining Preferred Director shall be deemed, for all purposes hereof, to be a Preferred Director. Whenever the term of office of the Preferred Directors shall end and no default in preference dividends shall exist, the number of directors constituting the Board of Directors of the Corporation shall be reduced by two. For the purposes of this paragraph (C), a "default in preference dividends" on the Preferred Stock shall be deemed to have occurred whenever the amount of accrued and unpaid dividends upon any series of the Preferred Stock shall be equivalent to six full quarterly dividends or more, and, having so occurred, such default shall be deemed to exist thereafter until, but only until, all accrued dividends on all shares of Preferred Stock of each and every series then outstanding shall have been paid through the last Quarterly Dividend Payment Date.

Section 4. *Certain Restrictions.*

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on (other than a dividend in Common Stock or in any other stock of the Corporation ranking junior to the Series A Junior Preferred Stock as to dividends and upon liquidation, dissolution or winding up and other than as provided in subparagraph (ii) of this section), or redeem or purchase or otherwise acquire for consideration (except by conversion into or exchange for stock of the Corporation ranking junior to the Series A Junior Preferred Stock as to dividends and upon dissolution, liquidation or winding up), any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Preferred Stock, except dividends paid ratably on the Series A Junior Preferred Stock and all stock ranking on a parity with the Series A Junior Preferred Stock as to dividends on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (as to dividends and upon dissolution, liquidation or winding up) to the Series A Junior Preferred Stock;

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. *Reacquired Shares.* Any shares of Series A Junior Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 6. *Liquidation, Dissolution or Winding Up.*

(A) In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of the Series A Junior Preferred Stock shall be entitled to receive the greater of (a) \$100 per share, plus accrued dividends to the date of distribution, whether or not earned or declared, or (b) an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of Common Stock (the "Series A Liquidation Preference"). In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Preferred Stock were entitled immediately prior to such event pursuant to clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Junior Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

Section 7. *Consolidation, Merger, etc.* In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 100 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. *Optional Redemption.*

(A) The Corporation shall have the option to redeem the whole or any part of the Series A Junior Preferred Stock at any time on at least 30 days notice in accordance with the provisions of paragraph

Section 8 at a redemption price equal to, subject to the provision for adjustment hereinafter, 100 times the "current per share market price" of the Common Stock on the date of the mailing of the notice of redemption, together with unpaid accumulated dividends to the date of such redemption. In the event the Corporation shall at any time after October 10, 1989 (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Preferred Stock were otherwise entitled immediately prior to such event under the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event. The "current per share market price" on any date shall be deemed to be the average of the closing price per share of such Common Stock for the 10 consecutive Trading Days (as such term is hereinafter defined) immediately prior to such date. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices regular way, in either cases as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the principal national securities exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotations System ("NASDAQ") or such other system then in use or, if on any such date the Common Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Corporation. If on such date no such market maker is making a market in the Common Stock, the fair value of the Common Stock on such date as determined in good faith by the Board of Directors of the Corporation shall be used. The term "Trading Day" shall mean a day on which the principal national securities exchange on which the Common Stock is listed or admitted to trading is open for the transaction of business or, if the Common Stock is not listed or admitted to trading on any national securities exchange, a Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in the State of New York are not authorized or obligated by law or executive order to close.

(B) Whenever shares of Series A Junior Preferred Stock are to be redeemed, the Corporation shall mail a notice ("Notice of Redemption") by first-class mail, postage prepaid, to each holder of record of shares of Series A Junior Preferred Stock to be redeemed and to the transfer agent for the Series A Junior Preferred Stock. The Notice of Redemption shall be addressed to the holder at the address of the holder appearing on the stock transfer books of the Corporation maintained by the transfer agent for the Series A Junior Preferred Stock. The Notice of Redemption shall include a statement of (i) the redemption date, (ii) the redemption price, (iii) the number of shares of Series A Junior Preferred Stock to be redeemed, (iv) the place or places where shares of the Series A Junior Preferred Stock are to be surrendered for payment of the redemption price, (v) that the dividends on the shares to be redeemed will cease to accrue on such redemption date, and (vi) the provision under which redemption is made. No defect in the Notice of Redemption or in the mailing thereof shall affect the validity of the redemption proceedings, except as required by law. From the date on which a Notice of Redemption shall have been given as aforesaid and the Corporation shall have deposited with the transfer agent for the Series A Junior Preferred Stock a sum sufficient to redeem the shares of Series A Junior Preferred Stock as to which Notice of Redemption has been given, with irrevocable instructions and authority to pay the redemption price to the holders thereof, or if no such deposit is made, then upon such date fixed for redemption (unless the Corporation shall default in making payment of the redemption price), all rights of the holders thereof as stockholders of the Corporation by reason of the ownership of such shares (except their right to receive the redemption price thereof, but without interest), shall terminate including, but not limited to, their right to receive dividends, and such shares shall no longer be deemed outstanding. The Corporation shall be entitled to receive, from time to time, from the transfer agent for Series A Junior Preferred Stock the interest, if any, on such monies deposited with it and the holders of any shares so redeemed shall have no claim to any such interest. In case the holder of any shares so called for redemption shall not claim the redemption price

the shares within one year after the date of redemption, the transfer agent for the Series A Junior Preferred Stock shall, upon demand, pay over to the Corporation such amount remaining on deposit and the transfer agent for the Series A Junior Preferred Stock shall thereupon be relieved of all responsibility to the holders of such shares and such holder of the shares of the Series A Junior Preferred Stock so called for redemption shall look only to the Corporation for the payment thereof.

(C) In the event that fewer than all the outstanding shares of the Series A Junior Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be determined by lot or pro rata as may be determined by the Board of Directors or by any other method as may be determined by the Board of Directors in its sole discretion to be equitable.

(D) If the Corporation shall be in default in the payment of any dividends (including cumulative dividends, if applicable) on any shares of Preferred Stock ranking, as to dividends, prior to the Series A Junior Preferred Stock, then no shares of the Series A Junior Preferred Stock shall be redeemed and the Corporation shall not purchase or otherwise acquire any shares of the Series A Junior Preferred Stock.

Section 9. *Ranking.*

(A) The Series A Junior Preferred Stock shall rank junior to all other series of the Corporation's Preferred Stock as to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up, unless the terms of any such series shall provide otherwise.

(B) For purposes of this resolution, any stock of any class or classes of the Corporation shall be deemed to rank:

(i) prior to the shares of the Series A Junior Preferred Stock, either as to dividends or upon liquidation, dissolution or winding up, if the holders of such class or classes shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, as the case may be, in preference or priority to the holders of shares of the Series A Junior Preferred Stock. Each holder of any share of the Series A Junior Preferred Stock, by his acceptance thereof, expressly covenants and agrees that the rights of the holders of any shares of any other series of Preferred Stock of the Corporation to receive dividends or amounts distributable upon dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, shall be and hereby are expressly prior to his rights unless in the case of any particular series of Preferred Stock the certificate or other instrument creating or evidencing the same expressly provides that the rights of the holders of such series shall not be prior to the shares of the Series A Junior Preferred Stock; and

(ii) on a parity with shares of the Series A Junior Preferred Stock, either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share or sinking fund provisions, if any, be different from those of the Series A Junior Preferred Stock, if the holders of such stock shall be entitled to the receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, as the case may be, in proportion to their respective dividend rates or liquidation prices, without preference or priority, one over the other, as between the holders of such stock and the holders of shares of the Series A Junior Preferred Stock; and

(iii) junior to shares of the Series A Junior Preferred Stock, either as to dividends or upon liquidation, if such class or classes shall be Common Stock or if the holders of shares of the Series A Junior Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon dissolution, liquidation or winding up of the Corporation, whether voluntary or involuntary, as the case may be, in preference or priority to the holders of shares of such class or classes.

Section 10. *Amendment.* Except as otherwise set forth in this Certificate of Designation, Preferences and Rights with respect to the Series A Junior Preferred Stock, holders of Series A Junior Preferred Stock shall not have any special powers and their consent shall not be required for taking any corporate action, provided, however, that:

...less the vote or consent of the holders of a greater number of shares shall then be required. The consent of the holders of at least 66 2/3% of all of the shares of the Series A Junior Preferred Stock at the time outstanding, given in person or by proxy, either in writing or by a vote at a meeting called for the purpose at which the holders of shares of the Series A Junior Preferred Stock shall vote together as a separate class, shall be necessary for authorizing, effecting or validating the amendment, alteration or repeal of any of the provisions of the Restated Certificate of Incorporation or of any certificate amendatory thereof or supplemental thereto (including any Certificate of Designation, Preferences and Rights or any similar document relating to any series of Preferred Stock) so as to affect adversely the powers, preferences, or rights, of this Series A Junior Preferred Stock. The increase of the authorized amount of the Preferred Stock, or the creation, authorization or issuance of any shares of any other class of stock of the Corporation ranking prior to or on a parity with the shares of the Series A Junior Preferred Stock as to dividends or upon liquidation, or the reclassification of any authorized or outstanding stock of the Corporation into any such prior or parity shares, or the creation, authorization or issuance of any obligation or security convertible into or evidencing the right to purchase any such prior or parity shares shall not be deemed to affect adversely the powers, preferences or rights of the Series A Junior Preferred Stock.

Section 11. Fractional Shares. Series A Junior Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Preferred Stock.

6.50% Cumulative Convertible Preferred Stock (Without Par Value)

1. **Designation.** This resolution shall provide for a single series of Preferred Stock, the designation of which shall be "6.50% Cumulative Convertible Preferred Stock", without par value (hereinafter called this "Series"), and the number of authorized shares constituting this Series is 3,000,000. Shares of this Series shall have a stated value of \$1.00 per share (which shall also be the stated capital of each share). The number of authorized shares of this Series may be reduced by further resolution adopted by the Board of Directors and by the filing of a certificate pursuant to the provisions of the General Corporation Law of the State of Delaware stating that such reduction has been so authorized, but the number of authorized shares of this Series shall not be so increased.

2. Dividends.

(a) The holders of shares of this Series shall be entitled to receive dividends payable in cash at a rate of 6.50% per annum per share on the initial liquidation preference of \$50.00 per share. Such dividends shall be cumulative from the date of original issue of such shares, and shall be payable, when, as and if declared by the Board of Directors, out of funds legally available for such purpose, on the last calendar day of March, June, September and December of each year, commencing June 30, 1993, except that if such date is a Saturday, Sunday or legal holiday, then such dividend shall be payable on the first immediately preceding calendar day which is not a Saturday, Sunday or legal holiday.

(b) Each dividend on shares of this Series shall be paid to the holders of record of such shares as they appear on the stock transfer books of the Corporation on such record date, not exceeding 30 days preceding the payment date thereof, as shall be fixed by the Board of Directors. Dividends in arrears for any past dividend period or any part thereof may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on such date, not exceeding 45 days preceding the payment date thereof, as may be fixed by the Board of Directors.

(c) Except as hereinafter provided, no dividends shall be declared or paid or set apart for payment on the Preferred Stock of any series ranking, as to dividends, on a parity with or junior to this Series for any period unless full cumulative dividends have been or contemporaneously are declared and paid on this Series for all past dividend periods. When dividends are not paid in full, as aforesaid, upon the shares of this Series and any other Preferred Stock ranking on a parity as to dividends with this Series, all dividends declared upon shares of this Series and any other Preferred Stock ranking on a parity as to dividends with this Series shall be declared pro rata so that the amount of dividends declared per share on this Series and such other Preferred Stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of this Series and such