

**SECOND AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
CIB MARINE BANCSHARES, INC.**

Pursuant to Section 180.1007 of the Wisconsin Business Corporation Law, these Second Amended and Restated Articles of Incorporation shall supersede and take the place of the Corporation's heretofore existing Amended and Restated Articles of Incorporation and all amendments thereto.

**ARTICLE 1  
Name**

The name of the Corporation is CIB Marine Bancshares, Inc.

**ARTICLE 2  
Registered Office and Agent**

The address of the registered office of the Corporation in the State of Wisconsin is 19601 W. Bluemound Road, Brookfield, Wisconsin 53045. The name of its registered agent at such address is Daniel J. Rasmussen.

**ARTICLE 3  
Purpose**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Wisconsin Business Corporation Law.

**ARTICLE 4  
Classes of Stock**

The total number of shares of all classes of capital stock which the Corporation has the authority to issue is eighty million (80,000,000) shares, which are divided into two classes as follows:

- (a) five million (5,000,000) shares of capital stock designated as "Preferred Stock," with a par value of \$1.00 per share; and
- (b) seventy-five million (75,000,000) shares of capital stock designated as "Common Stock," with a par value of \$1.00 per share (the "Common Stock").

At 4:59 a.m. Central Time on Monday, September 14, 2020 (the "Effective Time"), each fifteen (15) shares of Common Stock either issued and outstanding or held by the Corporation in treasury immediately prior to the Effective Time shall, automatically and without any action on the part of the respective holders thereof, be combined and converted into one (1) share of Common Stock (the "Reverse Stock Split"). No fractional shares shall be issued in connection with the Reverse Stock Split. Shareholders who otherwise would be entitled to receive fractional shares of Common Stock shall be entitled to receive cash (without interest or deduction) from the

Corporation's transfer agent in lieu of such fractional share interests upon the submission of a transmission letter by a shareholder holding the shares in book-entry form and, where shares are held in certificated form, upon the surrender of the shareholder's Old Certificate (as defined below), in an amount equal to the product obtained by multiplying (a) the closing price per share of Common Stock as reported on the OTC Market as of the close of the date of the Effective Time, by (b) the fraction of one share owned by the shareholder. Each certificate that immediately prior to the Effective Time represented shares of Common Stock ("Old Certificates"), shall thereafter represent that number of shares of Common Stock into which the shares of Common Stock represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.

## **ARTICLE 5**

### **Rights and Preferences of Classes of Stock**

The designations, preferences, voting powers and relative, participating, optional or other special rights and qualifications, limitations and restrictions of each of the classes of stock of the Corporation are as follows:

**5.1 Preferred Stock.** Pursuant to Section 180.0602(1) of the Wisconsin Business Corporation Law, the Board of Directors is authorized, at any time and from time to time, to provide for the issuance of shares of Preferred Stock in one or more series with such designations, preferences, voting powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as are stated and expressed in the resolution or resolutions providing for the issuance of such Preferred Stock adopted by the Board of Directors, and as are not stated and expressed in these Second Amended and Restated Articles of Incorporation or any amendment thereto, including, but not limited to, determination of any of the following:

- (a) the distinctive serial designation and the number of shares constituting a series;
- (b) the dividend rate or rates, whether dividends are cumulative (and if so on what terms and conditions), the payment date or dates for dividends, and the participating or other special rights, if any, with respect to dividends;
- (c) the voting rights, full or limited, if any, of the shares of the series, which may include the right to elect a specified number of directors if dividends on the series are not paid for in a specified period of time;
- (d) whether the shares of the series are redeemable and, if so, the price or prices at which, and the terms and conditions on which, the shares may be redeemed, which prices, terms and conditions may vary under different conditions and at different redemption dates;
- (e) the amount or amounts, if any, payable upon the shares of the series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation prior to any payment or distribution of the assets of the Corporation to any class or classes of stock of the Corporation ranking junior to the series;



(f) whether the shares of the series are entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of shares of the series and the amount of the fund and the manner of its application including the price or prices at which the shares of the series may be redeemed or purchased through the application of the fund;

(g) whether the shares are convertible into, or exchangeable for, shares of any other class or classes of any other series of the same or any other class or classes of stock of the Corporation and the conversion price or prices, or the rates of exchange, and the adjustments thereof, if any, at which the conversion or exchange may be made, and any other terms and conditions of the conversion or exchange; and

(h) any other preferences, privileges and powers, and relative, participating, optional or other special rights, and qualifications, limitations or restrictions of a series, as the Board of Directors may deem advisable and as are not inconsistent with the provisions of these Second Amended and Restated Articles of Incorporation.

## **5.2 Common Stock.**

(a) *Dividends.* Subject to the preferential rights of the Preferred Stock, the holders of the Common Stock are entitled to receive, to the extent permitted by law, such dividends as may be declared from time to time by the Board of Directors.

(b) *Liquidation.* In the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of Preferred Stock, holders of Common Stock shall be entitled to receive all of the remaining assets of the Corporation of whatever kind available for distribution to shareholders, ratably in proportion to the number of shares of Common Stock held by them respectively. The Board of Directors may distribute in kind to the holders of Common Stock such remaining assets of the Corporation or may sell, transfer or otherwise dispose of all or any part of such remaining assets to any other corporation, trust or other entity and receive payment therefor in cash, stock or obligations of such other corporation, trust or other entity, or any combination hereof, and may sell all or any part of the consideration so received and distribute any balance thereof in kind to holders of Common Stock. Neither the merger or consolidation of the Corporation into or with any other corporation or corporations, nor the purchase or redemption of shares of stock of any class of the Corporation, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reorganization or recapitalization of the Corporation, shall be deemed to be a dissolution, liquidation or winding up of the Corporation for the purposes of this paragraph.

(c) *Voting Rights.* Except as may be otherwise required by law or these Second Amended and Restated Articles of Incorporation, each holder of Common Stock has one vote in respect of each share of stock held by the holder of record on the books of the Corporation on all matters voted upon by the shareholders.

**5.3 Changes in Authorized Capital Stock.** The number of authorized shares of any class or series of stock may be increased or decreased without the approval of such class or series as a separate voting group, except to the extent that the Board of Directors shall specify, in the resolution or resolutions providing for the issuance of a series of stock, that the approval of the holders of such series shall be required to increase or decrease the number of authorized shares of such series.

**5.4 Series A Preferred Stock.** Beginning on the fourth (4<sup>th</sup>) anniversary of the date of the Required Initial Redemption; *provided, however*, that if the Required Initial Redemption shall not have been consummated on or before December 31, 2021, beginning on January 1, 2022, the following rights and preferences shall apply to shares of Series A Preferred Stock issued and outstanding from time to time.

(a) *Designation.* There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of Preferred Stock designated “7 Percent Fixed Rate Noncumulative Nonconvertible Perpetual Preferred Stock, Series A” (“Series A Preferred Stock”).

(b) *Number of Shares.* The authorized number of shares of Series A Preferred Stock shall be Fifty-Five Thousand Six Hundred and Twenty-Four (55,624).

(c) *Ranking.* Each share of Series A Preferred Stock shall be identical in all respects to every other share of Series A Preferred Stock. Subject to the provisions of this Section 5.4, and in the manner and to the extent provided herein, the Series A Preferred Stock shall rank equally with Parity Stock (as defined in Subsection (d)(xiv) below) and shall rank senior to Junior Stock (as defined in Subsection (d)(x) below) with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

(d) *Definitions.* The following terms used in this Section 5.4 shall have the meanings set forth in this Subsection (d):

(i) “Applicable Dividend Rate” means Seven and 00/100ths Percent (7.00%) per annum.

(ii) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 USC §1813(q)), or any successor provision.

(iii) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of Wisconsin generally are authorized or required by law or other governmental actions to close.

(iv) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.



(v) “Common Stock” means the common stock, \$1.00 par value per share, of the Corporation.

(vi) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year or, if any such date is not a Business Day, then the next subsequent Business Day.

(vii) “Dividend Period” has the meaning set forth in Subsection (e)(i) of this Section 5.4.

(viii) “Dividend Record Date” has the meaning set forth in Subsection (e)(iii) of this Section 5.4.

(ix) “Initial Redemption” has the meaning set forth in Section 5.7(g)(i) of these Second Amended and Restated Articles of Incorporation.

(x) “Junior Stock” means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Series A Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(xi) “Liquidation Amount” means \$1,000 per share of Series A Preferred Stock.

(xii) “Liquidation Preference” has the meaning set forth in Subsection (f)(i) of this Section 5.4.

(xiii) “Original Issue Date” means the date on which shares of Series A Preferred Stock are first issued.

(xiv) “Parity Stock” means Series B Convertible Preferred Stock and any other class or series of stock of the Corporation (other than Series A Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Series A Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

(xv) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Series A Preferred Stock and the Series B Convertible Preferred Stock.

(xvi) “Required Initial Redemption” means an Initial Redemption in which the Corporation redeems (i) 1,591.27367 shares of Series B Convertible Preferred Stock and (ii) no less than 12.71114 shares of Series A Preferred Stock for every share of Series B Convertible Preferred Stock redeemed in such Initial Redemption.

(xvii) “Series B Convertible Preferred Stock” means the Corporation’s 7 Percent Fixed Rate Noncumulative Convertible Perpetual Preferred Stock, Series B authorized by Section 5.5 of these Second Amended and Restated Articles of Incorporation.

(e) *Dividends and Priority of Dividends.* Holders of Series A Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) if, as and when declared and payable on Series A Preferred Stock as specified in this Subsection (e), but subject to the other provisions of this Section 5.4. DIVIDENDS ON SERIES A PREFERRED STOCK ARE NON-CUMULATIVE AND, IF A DIVIDEND THEREON WITH RESPECT TO ANY DIVIDEND PERIOD IS NOT DECLARED BY THE BOARD OF DIRECTORS, NO HOLDER SHALL HAVE ANY FURTHER RIGHT WHATSOEVER TO DEMAND OR COMPEL PAYMENT THEREOF.

(i) Holders of Series A Preferred Stock shall be entitled to receive, with respect to each share of Series A Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate multiplied by the Liquidation Amount per share of Series A Preferred Stock. Such dividends shall begin to accrue on the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 45 calendar days after the Original Issue Date. The period from and including the first day of the calendar quarter next preceding any Dividend Payment Date to and including the last day of such calendar quarter is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to and including the last day of the calendar quarter during which the Original Issue Date occurs.

(ii) Dividends on Series A Preferred Stock shall be computed on the basis of a 360-day year consisting of twelve 30-day months; *provided*, that the amount of dividends payable on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on an actual days elapsed basis.

(iii) Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to holders of record of Series A Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.



(iv) So long as any share of Series A Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than: (A) dividends payable solely in shares of Common Stock, or (B) dividends of “rights” issued solely in conjunction with any Section 382 shareholder rights plan as may be adopted by the Corporation from time to time) or Parity Stock (subject in the case of Parity Stock to Subsection (e)(v), below), and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for the four (4) next preceding consecutive Dividend Periods, inclusive of the most recent completed Dividend Period, on all outstanding shares of Series A Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series A Preferred Stock on the applicable record date). The foregoing limitation shall not apply, however, to (1) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (2) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; or (3) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Original Issue Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

(v) When dividends upon Series A Preferred Stock and any shares of Parity Stock are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) in full on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date), all dividends declared on Series A Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as (A) the amount of all accrued and unpaid dividends per share on the shares of Series A Preferred Stock for the applicable Dividend Period calculated applying the Applicable Dividend Rate, and (B) the amount of all accrued and unpaid dividends per share on all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend

Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other.

(vi) Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Series A Preferred Stock shall not be entitled to participate in any such dividends.

(f) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary:

(i) Holders of Series A Preferred Stock shall be entitled to receive for each share of Series A Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Series A Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (i) the Liquidation Amount per share; and (ii) the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid (collectively, the “Liquidation Preference”).

(ii) If, in any distribution described in Subsection (f)(i) above, the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution, holders of Series A Preferred Stock and the holders of such other stock shall share *pro rata* in any such distribution in proportion to the full respective distributions to which they are entitled.

(iii) If the Liquidation Preference has been paid in full to all holders of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(iv) For purposes of this Subsection (f), the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series A Preferred Stock receive cash,



securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(g) *Redemption.* The Series A Preferred Stock may be redeemed at the times and in the manner prescribed in this Subsection (g). THE SERIES A PREFERRED STOCK IS PERPETUAL, AND HOLDERS OF SERIES A PREFERRED STOCK SHALL HAVE NO RIGHT OR POWER TO COMPEL THE REDEMPTION OF ALL OR ANY PORTION THEREOF AT ANY TIME. Further, any redemption of Series A Preferred Stock shall be subject to the consent or approval of the Appropriate Federal Banking Agency. The Series A Preferred Stock shall not be subject to any mandatory redemption, sinking fund or other similar provisions.

(i) The Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, all or any portion of the then-outstanding shares of Series A Preferred Stock at the time outstanding, upon notice given as provided in Subsection (g)(iii) below, at a redemption price equal to the sum of (A) the Liquidation Amount per share; and (B) the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid as of the date fixed for redemption.

(ii) The redemption price for any shares of Series A Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to such Dividend Payment Date.

(iii) Notice of every redemption of shares of Series A Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 10 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Notwithstanding the foregoing, if shares of Series A Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series A Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (A) the

redemption date; (B) the number of shares of Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (C) the redemption price; and (D) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(iv) In case of any redemption of part of the shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either pro rata or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Series A Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(v) If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company chartered under the laws of the United States or any state thereof, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(vi) Shares of Series A Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series A Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series A Preferred Stock or Series B Convertible Preferred Stock).

(h) *Voting Rights.* HOLDERS OF SERIES A PREFERRED STOCK SHALL NOT HAVE ANY VOTING RIGHTS EXCEPT AS SET FORTH IN THIS SUBSECTION (h) OR AS OTHERWISE FROM TIME TO TIME REQUIRED BY LAW.



(i) Holders of shares of Series A Preferred Stock will be entitled to one (1) vote for each such share on any matter on which holders of Series A Preferred Stock (voting as a separate voting group or with any other class of Parity Stock, as provided herein) are entitled to vote, including any action by written consent.

(ii) Reserved.

(iii) Reserved.

(iv) So long as any shares of Series A Preferred Stock are outstanding, in addition to any other vote or consent of shareholders required by law or by these Second Amended and Restated Articles of Incorporation, the vote or consent of the holders of at least a majority of the shares of Series A Preferred Stock at the time outstanding, voting as a separate class except as provided in Subsection (k)(ii), below, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(A) Any amendment or alteration of these Second Amended and Restated Articles of Incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to or pari passu with Series A Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(B) Any amendment, alteration or repeal of any provision of these Second Amended and Restated Articles of Incorporation (including, unless no vote on such merger or consolidation is required by Subsection (h)(iv)(C), below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) that would adversely affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock; or

(C) Any consummation of a binding share exchange or reclassification involving the Series A Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (1) the shares of Series A Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the Corporation, and (2) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Series A Preferred Stock immediately prior to

such consummation, taken as a whole; *provided, however*, that for all purposes of this Subsection (h), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Series A Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Original Issue Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking junior to Series A Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Series A Preferred Stock.

(v) No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to Subsection (h)(i) or (h)(iv), above, if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Subsection, all outstanding shares of the Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Subsection (g) of this Section 5.4.

(vi) The rules and procedures for calling and conducting any meeting of the holders of Series A Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of these Second Amended and Restated Articles of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Series A Preferred Stock is listed or traded at the time.

(vii) Except to the extent prohibited by law, a holder of Series A Preferred Stock shall not be required to cast all of the votes (or to give or withhold consent) with respect to all of the shares of Series A Preferred Stock held by such holder in an identical manner.

(i) *No Conversion Rights.* HOLDERS OF SERIES A PREFERRED STOCK SHALL NOT HAVE ANY RIGHT WHATSOEVER TO CONVERT THEIR SHARES OF SERIES A PREFERRED STOCK INTO SHARES OF COMMON STOCK OR INTO ANY OTHER SERIES OF PREFERRED STOCK OR ANY OTHER CLASS OR SERIES OF STOCK OF THE CORPORATION.



(j) *No Other Rights.* The shares of Series A Preferred Stock and the holders thereof shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in these Second Amended and Restated Articles of Incorporation or as provided by applicable law.

(k) *Amendment.* The provisions of this Section 5.4 may be amended in any manner permitted by applicable law, subject to the following:

(i) If a proposal to amend any provision of this Section 5.4 includes a proposal to make a substantively identical amendment to the parallel provision of Section 5.5, such amendment shall be made only upon the approval of such proposed amendments both to this Section 5.4 and to Section 5.5 by the holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Convertible Preferred Stock, voting as a single voting group.

(ii) A proposal to amend any provision of this Section 5.4 that is not described in Subsection (k)(i), or any proposal to amend any provision of Subsection (i) of this Section 5.4, shall be made only upon the approval of such proposed amendment by holders of a majority of the outstanding shares of Series A Preferred Stock and a majority of the outstanding shares of Series B Convertible Preferred Stock, voting as separate voting groups.

(iii) No vote of the Common Shareholders shall be required to amend any provision of this Section 5.4.

(l) *Interpretation.* It is intended that the relative rights, privileges and preferences of the Series A Preferred Stock and the Series B Convertible Preferred Stock provided for under Section 5.5 of these Second Amended and Restated Articles of Incorporation be identical except insofar as the conversion rights of Series B Convertible Preferred Stock provided in Section 5.5(i) and the redemption priority of the Series A Preferred Stock provided in the last sentence Section 5.5(g)(i), and the provisions of this Section 5.4 and the parallel provisions of Section 5.5 shall, consistent with such intent, be construed, interpreted and implemented in an identical manner.

**5.5 Series B Convertible Preferred Stock.** Beginning on the fourth (4<sup>th</sup>) anniversary of the date of the Required Initial Redemption; *provided, however*, that if the Required Initial Redemption shall not have been consummated on or before December 31, 2021, beginning on January 1, 2022, the following rights and preferences shall apply to shares of Series B Convertible Preferred Stock issued and outstanding from time to time.

(a) *Designation.* There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a series of Preferred Stock designated “7 Percent Fixed Rate Noncumulative Convertible Perpetual Preferred Stock, Series B” (“Series B Convertible Preferred Stock”).

(b) *Number of Shares.* The authorized number of shares of Series B Convertible Preferred Stock shall be Four Thousand Three Hundred and Seventy-Six (4,376).

(c) *Ranking.* Each share of Series B Convertible Preferred Stock shall be identical in all respects to every other share of Series B Convertible Preferred Stock. Subject to the provisions of this Section 5.5, and in the manner and to the extent provided herein, the Series B Convertible Preferred Stock shall rank equally with Parity Stock (as defined in Subsection (d)(xiv) below) and shall rank senior to Junior Stock (as defined in Subsection (d)(x) below) with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

(d) *Definitions.* The following terms used in this Section 5.5 shall have the meanings set forth in this Subsection (d):

(i) “Applicable Dividend Rate” has the same definition as set forth in Section 5.4(d)(i) of these Second Amended and Restated Articles of Incorporation.

(ii) “Appropriate Federal Banking Agency” has the same definition as set forth in Section 5.4(d)(ii) of these Second Amended and Restated Articles of Incorporation.

(iii) “Business Day” has the same definition as set forth in Section 5.4(d)(iii) of these Second Amended and Restated Articles of Incorporation.

(iv) “Bylaws” has the same definition as set forth in Section 5.4(d)(iv) of these Second Amended and Restated Articles of Incorporation.

(v) “Common Stock” has the same definition as set forth in Section 5.4(d)(v) of these Second Amended and Restated Articles of Incorporation.

(vi) “Dividend Payment Date” has the same definition as set forth in Section 5.4(d)(vi) of these Second Amended and Restated Articles of Incorporation.

(vii) “Dividend Period” has the meaning set forth in Subsection (e)(i) of this Section 5.5.

(viii) “Dividend Record Date” has the meaning set forth in Subsection (e)(iii) of this Section 5.5.

(ix) “Initial Redemption” has the meaning set forth in Section 5.7(g)(i) of these Second Amended and Restated Articles of Incorporation.



(x) “Junior Stock” has the same definition as set forth in Section 5.4(d)(x) of these Second Amended and Restated Articles of Incorporation.

(xi) “Liquidation Amount” means \$1,000 per share of Series B Convertible Preferred Stock.

(xii) “Liquidation Preference” has the meaning set forth in Subsection (f)(i) of this Section 5.5.

(xiii) “Original Issue Date” means the date on which shares of Series B Convertible Preferred Stock are first issued.

(xiv) “Parity Stock” means Series A Preferred Stock and any other class or series of stock of the Corporation (other than Series B Convertible Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Series B Convertible Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

(xv) “Preferred Stock” has the same definition as set forth in Section 5.4(d)(xv) of these Second Amended and Restated Articles of Incorporation.

(xvi) “Required Initial Redemption” means an Initial Redemption in which the Corporation redeems (i) 1,591.27367 shares of Series B Convertible Preferred Stock and (ii) no less than 12.71114 shares of Series A Preferred Stock for every share of Series B Convertible Preferred Stock redeemed in such Initial Redemption.

(xvii) “Series A Preferred Stock” means the Corporation’s 7 Percent Fixed Rate Noncumulative Nonconvertible Perpetual Preferred Stock, Series A authorized by Section 5.4 of these Second Amended and Restated Articles of Incorporation.

(e) *Dividends and Priority of Dividends.* Holders of Series B Convertible Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) if, as and when declared and payable on Series B Convertible Preferred Stock as specified in this Subsection (e), but subject to the other provisions of this Section 5.5. DIVIDENDS ON SERIES B CONVERTIBLE PREFERRED STOCK ARE NON-CUMULATIVE AND, IF A DIVIDEND THEREON WITH RESPECT TO ANY DIVIDEND PERIOD IS NOT DECLARED BY THE BOARD OF DIRECTORS, NO HOLDER SHALL HAVE ANY FURTHER RIGHT WHATSOEVER TO DEMAND OR COMPEL PAYMENT THEREOF.

(i) Holders of Series B Convertible Preferred Stock shall be entitled to receive, with respect to each share of Series B Convertible Preferred Stock if, as

and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate multiplied by the Liquidation Amount per share of Series B Convertible Preferred Stock. Such dividends shall begin to accrue on the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 45 calendar days after the Original Issue Date. The period from and including the first day of the calendar quarter next preceding any Dividend Payment Date to and including the last day of such calendar quarter is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to and including the last day of the calendar quarter during which the Original Issue Date occurs.

(ii) Dividends on Series B Convertible Preferred Stock shall be computed on the basis of a 360-day year consisting of twelve 30-day months; *provided*, that the amount of dividends payable on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on an actual days elapsed basis.

(iii) Dividends that are payable on Series B Convertible Preferred Stock on any Dividend Payment Date will be payable to holders of record of Series B Convertible Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(iv) So long as any share of Series B Convertible Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than: (A) dividends payable solely in shares of Common Stock, or (B) dividends of “rights” issued solely in conjunction with any Section 382 shareholder rights plan as may be adopted by the Corporation from time to time) or Parity Stock (subject in the case of Parity Stock to Subsection (e)(v), below), and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for the four (4) next preceding consecutive Dividend Periods, inclusive of the most recent completed Dividend Period, on all outstanding shares of Series B Convertible Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series B Convertible Preferred Stock on the applicable record date). The foregoing limitation shall not apply, however, to (1) redemptions, purchases



or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (2) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; or (3) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Original Issue Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

(v) When dividends upon Series B Convertible Preferred Stock and any shares of Parity Stock are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) in full on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date), all dividends declared on Series B Convertible Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as (i) the amount of all accrued and unpaid dividends per share on the shares of Series B Convertible Preferred Stock for the applicable Dividend Period calculated applying the Applicable Dividend Rate, and (ii) the amount of all accrued and unpaid dividends per share on all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other.

(vi) Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Series B Convertible Preferred Stock shall not be entitled to participate in any such dividends.

(f) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary:

(i) Holders of Series B Convertible Preferred Stock shall be entitled to receive for each share of Series B Convertible Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Series B Convertible Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (A) the Liquidation Amount per share; and (B) the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid (collectively, the “Liquidation Preference”).

(ii) If, in any distribution described in Subsection (f)(i) above, the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series B Convertible Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series B Convertible Preferred Stock as to such distribution, holders of Series B Convertible Preferred Stock and the holders of such other stock shall share *pro rata* in any such distribution in proportion to the full respective distributions to which they are entitled.

(iii) If the Liquidation Preference has been paid in full to all holders of Series B Convertible Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series B Convertible Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(iv) For purposes of this Subsection (f), the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series B Convertible Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(g) *Redemption.* The Series B Convertible Preferred Stock may be redeemed at the times and in the manner prescribed in this Subsection (g). THE SERIES B CONVERTIBLE PREFERRED STOCK IS PERPETUAL, AND HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL HAVE NO RIGHT OR POWER TO COMPEL THE REDEMPTION OF ALL OR ANY PORTION THEREOF AT ANY TIME. Further, any redemption of Series B Convertible Preferred Stock shall be subject to the consent or approval of the Appropriate Federal Banking Agency. The Series B Convertible Preferred Stock shall not be subject to any mandatory redemption, sinking fund or other similar provisions.



(i) Subject to the last sentence of this Subsection (g)(i), the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, all or any portion of the then-outstanding shares of Series B Convertible Preferred Stock at the time outstanding, upon notice given as provided in Subsection (g)(iii) below, at a redemption price equal to the sum of (A) the Liquidation Amount per share; and (B) the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid as of the date fixed for redemption. Notwithstanding the foregoing, the Corporation shall not be entitled to redeem any shares of Series B Convertible Preferred Stock unless, simultaneously with or prior to such redemption, all of the issued and outstanding shares of Series A Preferred Stock will be or have been redeemed.

(ii) The redemption price for any shares of Series B Convertible Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the redemption price on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to such Dividend Payment Date.

(iii) Notice of every redemption of shares of Series B Convertible Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 10 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B Convertible Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B Convertible Preferred Stock. Notwithstanding the foregoing, if shares of Series B Convertible Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series B Convertible Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (A) the redemption date; (B) the number of shares of Series B Convertible Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (C) the redemption price; and (D) the place or places where certificates for such shares are to be surrendered for payment of the redemption price.

(iv) In case of any redemption of part of the shares of Series B Convertible Preferred Stock at the time outstanding, the shares to be redeemed shall be selected either *pro rata* or in such other manner as the Board of Directors or a duly authorized committee thereof may determine to be fair and equitable. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Series B Convertible Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(v) If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the *pro rata* benefit of the holders of the shares called for redemption, with a bank or trust company chartered under the laws of the United States or any state thereof, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the redemption price of such shares.

(vi) Shares of Series B Convertible Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series B Convertible Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series A Preferred Stock or Series B Convertible Preferred Stock).

(h) *Voting Rights.* HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL NOT HAVE ANY VOTING RIGHTS EXCEPT AS SET FORTH IN THIS SUBSECTION (h) OR AS OTHERWISE FROM TIME TO TIME REQUIRED BY LAW.

(i) Holders of shares of Series B Convertible Preferred Stock will be entitled to one (1) vote for each such share on any matter on which holders of Series B Convertible Preferred Stock (voting as a separate voting group or with any other class of Parity Stock, as provided herein) are entitled to vote, including any action by written consent.



(ii) Reserved.

(iii) Reserved.

(iv) So long as any shares of Series B Convertible Preferred Stock are outstanding, in addition to any other vote or consent of shareholders required by law or by these Second Amended and Restated Articles of Incorporation, the vote or consent of the holders of at least a majority of the shares of Series B Convertible Preferred Stock at the time outstanding, voting as a separate class except as provided in Subsection (k)(ii), below, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(A) Any amendment or alteration of these Second Amended and Restated Articles of Incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to or *pari passu* with Series B Convertible Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(B) Any amendment, alteration or repeal of any provision of these Second Amended and Restated Articles of Incorporation (including, unless no vote on such merger or consolidation is required by Subsection (h)(iv)(C), below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) that would adversely affect the rights, preferences, privileges or voting powers of the Series B Convertible Preferred Stock; or

(C) Any consummation of a binding share exchange or reclassification involving the Series B Convertible Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (1) the shares of Series B Convertible Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the Corporation, and (2) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Series B Convertible Preferred Stock immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Subsection (h), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Series B Convertible Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Original Issue Date, or the

creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking junior to Series B Convertible Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Series B Convertible Preferred Stock.

(v) No vote or consent of the holders of Series B Convertible Preferred Stock shall be required pursuant to Subsection (h)(i) or (h)(iv), above, if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Subsection, all outstanding shares of the Series B Convertible Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Subsection (g) of this Section 5.5.

(vi) The rules and procedures for calling and conducting any meeting of the holders of Series B Convertible Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of these Second Amended and Restated Articles of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Series B Convertible Preferred Stock is listed or traded at the time.

(vii) Except to the extent prohibited by law, a holder of Series B Convertible Preferred Stock shall not be required to cast all of the votes (or to give or withhold consent) with respect to all of the shares of Series B Convertible Preferred Stock held by such holder in an identical manner.

(i) *Conversion Rights.* HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL NOT HAVE ANY RIGHT WHATSOEVER TO CONVERT THEIR SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK INTO SHARES OF COMMON STOCK OR INTO ANY OTHER SERIES OF PREFERRED STOCK OR ANY OTHER CLASS OR SERIES OF STOCK OF THE CORPORATION EXCEPT AS SET FORTH IN THIS SUBSECTION (i).

(i) Each holder of Series B Convertible Preferred Stock shall have the right, upon the occurrence of a “Conversion Event” (as defined below) to require



the Corporation to issue at the “Conversion Effective Time” (as defined below) Two Hundred Sixty-Six and Two Thirds (266.6667) shares of Common Stock in exchange for every one (1) whole share (and ratably in respect of any fractional share, rounded to the nearest 1/1000th of a share) of Series B Convertible Preferred Stock surrendered by such holder, subject to adjustment in the event of any stock dividend, stock split or reverse split or similar corporate transaction having the effect of changing the number of shares of Common Stock or Series B Convertible Preferred Stock into a greater or lesser number of shares (including, but not limited to shares of Common Stock issued in conjunction with any Section 382 shareholder rights plan implemented by the Corporation).

(ii) “Conversion Event” means the consummation of a merger, share exchange or other business combination transaction (however structured, a “Business Combination”) in connection with which all of the following are true:

(A) the Corporation is not the surviving entity in such Business Combination; and

(B) in the Business Combination a person, other than an affiliate of the Company (an “Acquiror”), acquires a majority in number or voting power of the then-issued and outstanding Common Stock (for purposes of computing such majority, excluding any shares of Common Stock issuable upon conversion of shares of Series B Convertible Preferred Stock in connection with such Business Combination); and

(C) in the Business Combination holders of common stock of the Corporation (“Common Shareholders”) who surrender, exchange or transfer their shares of Common Stock to the Acquiror are entitled to receive, in exchange therefor, cash, property or securities issued by the Acquiror or an affiliate of the Acquiror; and

(D) pursuant to the provisions of these Second Amended and Restated Articles of Incorporation or applicable corporation law, consummation of the Business Combination is subject to the approval of the Common Shareholders.

(iii) In connection with any proposed Business Combination that, if consummated, would result in a Conversion Event, the Corporation shall solicit from each holder of Series B Convertible Preferred Stock an election by such holder whether to convert at the Conversion Effective Time all, a portion, or none of the shares of Series B Convertible Preferred Stock held by such holder into Common Stock (a “Conversion Election”).

(A) Such solicitation shall be conducted in substantially the same manner and at substantially the same time as the Corporation solicits votes, consents or proxies from the Common Shareholders in connection with the Business Combination, and shall be accompanied by substantially

the same information (including, without limitation, a proxy statement, prospectus or combined proxy-statement/prospectus, as the case may be) issued or provided to Common Shareholders in connection with the solicitation of votes, consents or proxies.

(B) A Conversion Election shall be returnable to the Corporation or its proxy solicitor or agent at the same time and on the same conditions as votes, consents or proxies are returnable by the Common Shareholders and shall be irrevocable except to the extent that a Common Shareholder may revoke a vote, consent or proxy after submitting same.

(C) A holder of Series B Convertible Preferred Stock who does not make a timely and proper Conversion Election shall be deemed to have elected not to convert any shares of Series B Convertible Preferred Stock into Common Stock.

(D) The Board of Directors may prescribe such other and further rules, regulations, forms and procedures not inconsistent herewith in respect of the solicitation, receipt, revocation, tabulation and processing of Conversion Elections as it shall deem necessary and appropriate which rules, regulations and procedures shall be final, conclusive and binding upon the Corporation and the holders of Series B Convertible Preferred Stock.

(iv) A conversion of Series B Convertible Preferred Stock into Common Stock shall occur at the “Conversion Effective Time” (as defined below) if and only if the Business Combination giving rise to conversion rights hereunder is actually consummated and the holder of Series B Convertible Preferred Stock has made a proper and timely Conversion Election in respect thereof. In the event a proposed Business Combination that would, if consummated, give rise to conversion rights hereunder is not consummated for any reason, all Conversion Elections shall be void and of no effect, no shares of Common Stock shall be issued in connection therewith and the shares of Series B Convertible Preferred Stock theretofore outstanding shall remain outstanding and entitled to the rights and privileges of Series B Convertible Preferred Stock hereunder, including, without limitation, the right to elect to convert such shares into shares of Common Stock in connection with any Business Combination that is consummated thereafter. “*Conversion Effective Time*” means a time that is one (1) minute prior to the “effective time” of a Business Combination as specified in the merger, share exchange or other agreement pursuant to which such Business Combination is effected or, if such agreement does not specify an “effective time,” then at 11:59 p.m. Central Time on the day immediately preceding the “effective date” of the Business Combination as so specified or as provided under applicable law.



(v) Notwithstanding that holders of Series B Convertible Preferred Stock who make proper and timely Conversion Elections will not become Common Shareholders until the Conversion Election Time, such holders shall nevertheless be provided the opportunity, to the extent practicable, to make any election in respect of the Business Combination (such as, by way of example and not limitation, an election whether to accept cash or securities of an Acquiror as consideration for their Common Stock) as they would be entitled to make if they were Common Shareholders at the time such election is made; *provided, however*, that the foregoing shall not be deemed or construed as giving to any right of holders of Series B Convertible Preferred Stock who make proper and timely Conversion Elections to vote in respect of such Business Combination as members of the voting group comprising Common Shareholders.

(j) *No Other Rights.* The shares of Series B Convertible Preferred Stock and the holders thereof shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in these Second Amended and Restated Articles of Incorporation or as provided by applicable law.

(k) *Amendment.* The provisions of this Section 5.5 may be amended in any manner permitted by applicable law, subject to the following:

(i) If a proposal to amend any provision of this Section 5.5 includes a proposal to make a substantively identical amendment to the parallel provision of Section 5.4, such amendment shall be made only upon the approval of such proposed amendments both to this Section 5.5 and to Section 5.4 by the holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Convertible Preferred Stock, voting as a single voting group.

(ii) A proposal to amend any provision of this Section 5.5 that is not described in Subsection (k)(i), or any proposal to amend any provision of Subsection (i) of this Section 5.5, shall be made only upon the approval of such proposed amendment by holders of a majority of the outstanding shares of Series A Preferred Stock and a majority of the outstanding shares of Series B Convertible Preferred Stock, voting as separate voting groups.

(iii) No vote of the Common Shareholders shall be required to amend any provision of this Section 5.5.

(l) *Interpretation.* It is intended that the relative rights, privileges and preferences of the Series B Convertible Preferred Stock and the Series A Preferred Stock provided for under Section 5.4 of these Second Amended and Restated Articles of Incorporation be identical except insofar as the conversion rights of Series B Convertible Preferred Stock provided in Section 5.5(i) and the redemption priority of the Series A Preferred Stock provided in the last sentence of Section 5.5(g)(i), and the provisions of this Section 5.5 and the parallel provisions of Section 5.4 shall, consistent with such intent, be construed, interpreted and implemented in an identical manner.

**5.6 Series A Preferred Stock.** Until the fourth (4<sup>th</sup>) anniversary of the date of the Required Initial Redemption; *provided, however*, that if the Required Initial Redemption shall not have been consummated on or before December 31, 2021, until January 1, 2022, the following rights and preferences shall apply to shares of Series A Preferred Stock issued and outstanding from time to time.

(a) *Designation.* There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated “7 Percent Fixed Rate Noncumulative Nonconvertible Perpetual Preferred Stock, Series A” (“Series A Preferred Stock”).

(b) *Number of Shares.* The authorized number of shares of Series A Preferred Stock shall be Fifty-Five Thousand Six Hundred and Twenty-Four (55,624).

(c) *Ranking.* Each share of Series A Preferred Stock shall be identical in all respects to every other share of Series A Preferred Stock. Subject to the provisions of this Section 5.6, and in the manner and to the extent provided herein, the Series A Preferred Stock shall rank equally with Parity Stock (as defined in Subsection (d)(xiv) below) and shall rank senior to Junior Stock (as defined in Subsection (d)(x) below) with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

(d) *Definitions.* The following terms used in this Section 5.6 shall have the meanings set forth in this Subsection (d):

(i) “Applicable Dividend Rate” means Seven and 00/100ths Percent (7.00%) per annum.

(ii) “Appropriate Federal Banking Agency” means the “appropriate Federal banking agency” with respect to the Corporation as defined in Section 3(q) of the Federal Deposit Insurance Act (12 USC §1813(q)), or any successor provision.

(iii) “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in the State of Wisconsin generally are authorized or required by law or other governmental actions to close.

(iv) “Bylaws” means the bylaws of the Corporation, as they may be amended from time to time.

(v) “Common Stock” means the common stock, \$1.00 par value per share, of the Corporation.

(vi) “Dividend Payment Date” means January 15, April 15, July 15 and October 15 of each year or, if any such date is not a Business Day, then the next subsequent Business Day.



(vii) “Dividend Period” has the meaning set forth in Subsection (e)(i) of this Section 5.6.

(viii) “Dividend Record Date” has the meaning set forth in Subsection (e)(iii) of this Section 5.6.

(ix) “Initial Redemption” has the meaning set forth in Section 5.7(g)(i) of these Second Amended and Restated Articles of Incorporation.

(x) “Junior Stock” means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Series A Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation.

(xi) “Liquidation Amount” means \$1,000 per share of Series A Preferred Stock.

(xii) “Liquidation Preference” has the meaning set forth in Subsection (f)(i) of this Section 5.6.

(xiii) “Original Issue Date” means the date on which shares of Series A Preferred Stock are first issued.

(xiv) “Parity Stock” means Series B Convertible Preferred Stock and any other class or series of stock of the Corporation (other than Series A Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Series A Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

(xv) “Preferred Stock” means any and all series of preferred stock of the Corporation, including the Series A Preferred Stock and the Series B Convertible Preferred Stock.

(xvi) “Redemption Amount” has the meaning set forth in Section 5.7(g)(i) of these Second Amended and Restated Articles of Incorporation.

(xvii) “Redemption Price” means \$825 per share of Series A Preferred Stock.

(xviii) “Required Initial Redemption” means an Initial Redemption in which the Corporation redeems (i) 1,591.27367 shares of Series B Convertible Preferred Stock and (ii) no less than 12.71114 shares of Series A Preferred Stock for every share of Series B Convertible Preferred Stock redeemed in such Initial Redemption.

(xix) “Series B Convertible Preferred Stock” means the Corporation’s 7 Percent Fixed Rate Noncumulative Convertible Perpetual Preferred Stock,

Series B authorized by Section 5.7 of these Second Amended and Restated Articles of Incorporation.

(e) *Dividends and Priority of Dividends.* Holders of Series A Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) if, as and when declared and payable on Series A Preferred Stock as specified in this Subsection (e), but subject to the other provisions of this Section 5.6. DIVIDENDS ON SERIES A PREFERRED STOCK ARE NON-CUMULATIVE AND, IF A DIVIDEND THEREON WITH RESPECT TO ANY DIVIDEND PERIOD IS NOT DECLARED BY THE BOARD OF DIRECTORS, NO HOLDER SHALL HAVE ANY FURTHER RIGHT WHATSOEVER TO DEMAND OR COMPEL PAYMENT THEREOF.

(i) Holders of Series A Preferred Stock shall be entitled to receive, with respect to each share of Series A Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate multiplied by the Liquidation Amount per share of Series A Preferred Stock. Such dividends shall begin to accrue on the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 45 calendar days after the Original Issue Date. The period from and including the first day of the calendar quarter next preceding any Dividend Payment Date to and including the last day of such calendar quarter is a “*Dividend Period*”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to and including the last day of the calendar quarter during which the Original Issue Date occurs.

(ii) Dividends on Series A Preferred Stock shall be computed on the basis of a 360-day year consisting of twelve 30-day months; *provided*, that the amount of dividends payable on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on an actual days elapsed basis.

(iii) Dividends that are payable on Series A Preferred Stock on any Dividend Payment Date will be payable to holders of record of Series A Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “*Dividend Record Date*”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(iv) So long as any share of Series A Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common



Stock or any other shares of Junior Stock (other than (A) dividends payable solely in shares of Common Stock, or (B) dividends of “rights” issued solely in conjunction with any Section 382 shareholder rights plan as may be adopted by the Corporation from time to time), and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed (other than as provided in Section 5.7(g)) or otherwise acquired for consideration by the Corporation or any of its subsidiaries. The foregoing limitation shall not apply, however, to (1) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (2) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; or (3) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into prior to the Original Issue Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

(v) When dividends upon Series A Preferred Stock and any shares of Parity Stock are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) in full on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date), all dividends declared on Series A Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as (A) the amount of all accrued and unpaid dividends per share on the shares of Series A Preferred Stock for the applicable Dividend Period calculated applying the Applicable Dividend Rate, and (B) the amount of all accrued and unpaid dividends per share on all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other.

(vi) Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be

declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Series A Preferred Stock shall not be entitled to participate in any such dividends.

(f) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary:

(i) Holders of Series A Preferred Stock shall be entitled to receive for each share of Series A Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Series A Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (A) the Liquidation Amount per share; and (B) the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid (collectively, the “*Liquidation Preference*”).

(ii) If, in any distribution described in Subsection (f)(i) above, the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution, holders of Series A Preferred Stock and the holders of such other stock shall share *pro rata* in any such distribution in proportion to the full respective distributions to which they are entitled.

(iii) If the Liquidation Preference has been paid in full to all holders of Series A Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series A Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(iv) For purposes of this Subsection (f), the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series A Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(g) *Redemption.* The Series A Preferred Stock may be redeemed at the times and in the manner prescribed in this Subsection (g). THE SERIES A PREFERRED STOCK IS PERPETUAL, AND HOLDERS OF SERIES A PREFERRED STOCK SHALL HAVE NO RIGHT OR POWER TO COMPEL THE REDEMPTION OF ALL



OR ANY PORTION THEREOF AT ANY TIME. Further, any redemption of Series A Preferred Stock shall be subject to the consent or approval of the Appropriate Federal Banking Agency. The Series A Preferred Stock shall not be subject to any mandatory redemption, sinking fund or other similar provisions.

(i) The Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, all or any portion of the then-outstanding shares of Series A Preferred Stock at the time outstanding, upon notice given as provided in Subsection (g)(iii) below, at the Redemption Price plus the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid as of the date fixed for redemption (collectively, the "Redemption Amount").

(ii) The Redemption Amount for any shares of Series A Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the Redemption Amount on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to such Dividend Payment Date.

(iii) Notice of every redemption of shares of Series A Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 10 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series A Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series A Preferred Stock. Notwithstanding the foregoing, if shares of Series A Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series A Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (A) the redemption date; (B) the number of shares of Series A Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (C) the Redemption Price and the Redemption Amount; and (D) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Amount.

(iv) In the case of any redemption of part of the shares of Series A Preferred Stock at the time outstanding, the shares to be redeemed shall be redeemed on a *pro rata* basis. Subject to the provisions hereof, the Board of

Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Series A Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(v) If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the benefit of the holders of the shares called for redemption, with a bank or trust company chartered under the laws of the United States or any state thereof, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the Redemption Amount of such shares.

(vi) Shares of Series A Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series A Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series A Preferred Stock or Series B Convertible Preferred Stock).

(h) *Voting Rights.* HOLDERS OF SERIES A PREFERRED STOCK SHALL NOT HAVE ANY VOTING RIGHTS EXCEPT AS SET FORTH IN THIS SUBSECTION (h) OR AS OTHERWISE FROM TIME TO TIME REQUIRED BY LAW.

(i) Holders of shares of Series A Preferred Stock will be entitled to one (1) vote for each such share on any matter on which holders of Series A Preferred Stock (voting as a separate voting group or with any other class of Parity Stock, as provided herein) are entitled to vote, including any action by written consent.

(ii) Reserved.

(iii) Reserved.



(iv) So long as any shares of Series A Preferred Stock are outstanding, in addition to any other vote or consent of shareholders required by law or by these Second Amended and Restated Articles of Incorporation, the vote or consent of the holders of at least a majority of the shares of Series A Preferred Stock at the time outstanding, voting as a separate class except as provided in Subsection (k)(ii), below, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(A) Any amendment or alteration of these Second Amended and Restated Articles of Incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to or *pari passu* with Series A Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(B) Any amendment, alteration or repeal of any provision of these Second Amended and Restated Articles of Incorporation (including, unless no vote on such merger or consolidation is required by Subsection (h)(iv)(C), below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) that would adversely affect the rights, preferences, privileges or voting powers of the Series A Preferred Stock; or

(C) Any consummation of a binding share exchange or reclassification involving the Series A Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (1) the shares of Series A Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the Corporation, and (2) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Series A Preferred Stock immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Subsection (h), any increase in the amount of the authorized Preferred Stock, including any increase in the authorized amount of Series A Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Original Issue Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking junior to Series A Preferred Stock with respect to

the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Series A Preferred Stock.

(v) No vote or consent of the holders of Series A Preferred Stock shall be required pursuant to Subsection (h)(i) or (h)(iv), above, if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Subsection, all outstanding shares of the Series A Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Subsection (g) of this Section 5.6.

(vi) The rules and procedures for calling and conducting any meeting of the holders of Series A Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of these Second Amended and Restated Articles of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Series A Preferred Stock is listed or traded at the time.

(vii) Except to the extent prohibited by law, a holder of Series A Preferred Stock shall not be required to cast all of the votes (or to give or withhold consent) with respect to all of the shares of Series A Preferred Stock held by such holder in an identical manner.

(i) *No Conversion Rights.* HOLDERS OF SERIES A PREFERRED STOCK SHALL NOT HAVE ANY RIGHT WHATSOEVER TO CONVERT THEIR SHARES OF SERIES A PREFERRED STOCK INTO SHARES OF COMMON STOCK OR INTO ANY OTHER SERIES OF PREFERRED STOCK OR ANY OTHER CLASS OR SERIES OF STOCK OF THE CORPORATION.

(j) *No Other Rights.* The shares of Series A Preferred Stock and the holders thereof shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in these Second Amended and Restated Articles of Incorporation or as provided by applicable law.

(k) *Amendment.* The provisions of this Section 5.6 may be amended in any manner permitted by applicable law, subject to the following:



(i) If a proposal to amend any provision of this Section 5.6 includes a proposal to make a substantively identical amendment to the parallel provision of Section 5.7, such amendment shall be made only upon the approval of such proposed amendments both to this Section 5.6 and to Section 5.7 by the holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Convertible Preferred Stock, voting as a single voting group.

(ii) A proposal to amend any provision of this Section 5.6 that is not described in Subsection (k)(i), or any proposal to amend any provision of Subsection (i) of this Section 5.6, shall be made only upon the approval of such proposed amendment by holders of a majority of the outstanding shares of Series A Preferred Stock and a majority of the outstanding shares of Series B Convertible Preferred Stock, voting as separate voting groups.

(iii) No vote of the Common Shareholders shall be required to amend any provision of this Section 5.6.

(l) *Interpretation.* It is intended that the relative rights, privileges and preferences of the Series A Preferred Stock and the Series B Convertible Preferred Stock provided for under Section 5.7 of these Second Amended and Restated Articles of Incorporation be identical except insofar as the conversion rights of Series B Convertible Preferred Stock provided in Section 5.7(i) and the redemption priority of the Series A Preferred Stock provided in the last sentence of Section 5.7(g)(i), and the provisions of this Section 5.6 and the parallel provisions of Section 5.7 shall, consistent with such intent, be construed, interpreted and implemented in an identical manner.

**5.7 Series B Convertible Preferred Stock.** Until the fourth (4<sup>th</sup>) anniversary of the date of the Required Initial Redemption; *provided, however*, that if the Required Initial Redemption shall not have been consummated on or before December 31, 2021, until January 1, 2022, the following rights and preferences shall apply to shares of Series B Convertible Preferred Stock issued and outstanding from time to time.

(a) *Designation.* There is hereby created out of the authorized and unissued shares of preferred stock of the Corporation a series of preferred stock designated “7 Percent Fixed Rate Noncumulative Convertible Perpetual Preferred Stock, Series B” (“Series B Convertible Preferred Stock”).

(b) *Number of Shares.* The authorized number of shares of Series B Convertible Preferred Stock shall be Four Thousand Three Hundred and Seventy-Six (4,376).

(c) *Ranking.* Each share of Series B Convertible Preferred Stock shall be identical in all respects to every other share of Series B Convertible Preferred Stock. Subject to the provisions of this Section 5.7, and in the manner and to the extent provided herein, the Series B Convertible Preferred Stock shall rank equally with Parity Stock (as defined in Subsection (d)(xiv) below) and shall rank senior to Junior Stock (as defined in

Subsection (d)(x) below) with respect to the payment of dividends and the distribution of assets in the event of any dissolution, liquidation or winding up of the Corporation.

(d) *Definitions.* The following terms used in this Section 5.7 shall have the meanings set forth in this Subsection (d):

(i) “Applicable Dividend Rate” has the same definition as set forth in Section 5.6(d)(i) of these Second Amended and Restated Articles of Incorporation.

(ii) “Appropriate Federal Banking Agency” has the same definition as set forth in Section 5.6(d)(ii) of these Second Amended and Restated Articles of Incorporation.

(iii) “Business Day” has the same definition as set forth in Section 5.6(d)(iii) of these Second Amended and Restated Articles of Incorporation.

(iv) “Bylaws” has the same definition as set forth in Section 5.6(d)(iv) of these Second Amended and Restated Articles of Incorporation.

(v) “Common Stock” has the same definition as set forth in Section 5.6(d)(v) of these Second Amended and Restated Articles of Incorporation.

(vi) “Dividend Payment Date” has the same definition as set forth in Section 5.6(d)(vi) of these Second Amended and Restated Articles of Incorporation.

(vii) “Dividend Period” has the meaning set forth in Subsection (e)(i) of this Section 5.7.

(viii) “Dividend Record Date” has the meaning set forth in Subsection (e)(iii) of this Section 5.7.

(ix) “Initial Redemption” has the meaning set forth in Section 5.7(g)(i) of these Second Amended and Restated Articles of Incorporation.

(x) “Junior Stock” has the same definition as set forth in Section 5.6(d)(x) of these Second Amended and Restated Articles of Incorporation.

(xi) “Liquidation Amount” means \$1,000 per share of Series B Convertible Preferred Stock.

(xii) “Liquidation Preference” has the meaning set forth in Subsection (f)(i) of this Section 5.7.



(xiii) “Original Issue Date” means the date on which shares of Series B Convertible Preferred Stock are first issued.

(xiv) “Parity Stock” means Series A Preferred Stock and any other class or series of stock of the Corporation (other than Series B Convertible Preferred Stock) the terms of which do not expressly provide that such class or series will rank senior or junior to Series B Convertible Preferred Stock as to dividend rights and/or as to rights on liquidation, dissolution or winding up of the Corporation (in each case without regard to whether dividends accrue cumulatively or non-cumulatively).

(xv) “Preferred Stock” has the same definition as set forth in Section 5.6(d)(xv) of these Second Amended and Restated Articles of Incorporation.

(xvi) “Redemption Amount” has the meaning set forth in Section 5.8(g)(i) of these Second Amended and Restated Articles of Incorporation.

(xvii) “Redemption Price” means \$825 per share of Series B Convertible Preferred Stock.

(xviii) “Required Initial Redemption” means an Initial Redemption in which the Corporation redeems (i) 1,591.27367 shares of Series B Convertible Preferred Stock and (ii) no less than 12.71114 shares of Series A Preferred Stock for every share of Series B Convertible Preferred Stock redeemed in such Initial Redemption.

(xix) “Series A Preferred Stock” means the Corporation’s 7 Percent Fixed Rate Noncumulative Nonconvertible Perpetual Preferred Stock, Series A authorized by Section 5.6 of these Second Amended and Restated Articles of Incorporation.

(e) *Dividends and Priority of Dividends.* Holders of Series B Convertible Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) if, as and when declared and payable on Series B Convertible Preferred Stock as specified in this Subsection (e), but subject to the other provisions of this Section 5.7. DIVIDENDS ON SERIES B CONVERTIBLE PREFERRED STOCK ARE NON-CUMULATIVE AND, IF A DIVIDEND THEREON WITH RESPECT TO ANY DIVIDEND PERIOD IS NOT DECLARED BY THE BOARD OF DIRECTORS, NO HOLDER SHALL HAVE ANY FURTHER RIGHT WHATSOEVER TO DEMAND OR COMPEL PAYMENT THEREOF.

(i) Holders of Series B Convertible Preferred Stock shall be entitled to receive, with respect to each share of Series B Convertible Preferred Stock if, as and when declared by the Board of Directors or any duly authorized committee of the Board of Directors, but only out of assets legally available therefor, cash dividends with respect to each Dividend Period (as defined below) at a rate per annum equal to the Applicable Dividend Rate multiplied by the Liquidation

Amount per share of Series B Convertible Preferred Stock. Such dividends shall begin to accrue on the Original Issue Date and shall be payable quarterly in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur at least 45 calendar days after the Original Issue Date. The period from and including the first day of the calendar quarter next preceding any Dividend Payment Date to and including the last day of such calendar quarter is a “Dividend Period”, provided that the initial Dividend Period shall be the period from and including the Original Issue Date to and including the last day of the calendar quarter during which the Original Issue Date occurs.

(ii) Dividends on Series B Convertible Preferred Stock shall be computed on the basis of a 360-day year consisting of twelve 30-day months; *provided*, that the amount of dividends payable on any date prior to the end of a Dividend Period, and for the initial Dividend Period, shall be computed on an actual days elapsed basis.

(iii) Dividends that are payable on Series B Convertible Preferred Stock on any Dividend Payment Date will be payable to holders of record of Series B Convertible Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a “Dividend Record Date”). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

(iv) So long as any share of Series B Convertible Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than: (A) dividends payable solely in shares of Common Stock, or (B) dividends of “rights” issued solely in conjunction with any Section 382 shareholder rights plan as may be adopted by the Corporation from time to time), and no Common Stock, Junior Stock or Parity Stock shall be, directly or indirectly, purchased, redeemed (other than as provided in Section 5.6(g)) or otherwise acquired for consideration by the Corporation or any of its subsidiaries. The foregoing limitation shall not apply, however, to (1) redemptions, purchases or other acquisitions of shares of Common Stock or other Junior Stock in connection with the administration of any employee benefit plan in the ordinary course of business and consistent with past practice; (2) the acquisition by the Corporation or any of its subsidiaries of record ownership in Junior Stock or Parity Stock for the beneficial ownership of any other persons (other than the Corporation or any of its subsidiaries), including as trustees or custodians; or (3) the exchange or conversion of Junior Stock for or into other Junior Stock or of Parity Stock for or into other Parity Stock (with the same or lesser aggregate liquidation amount) or Junior Stock, in each case, solely to the extent required pursuant to binding contractual agreements entered into



prior to the Original Issue Date or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for Common Stock.

(v) When dividends upon Series B Convertible Preferred Stock and any shares of Parity Stock are not paid (or declared and a sum sufficient for payment thereof set aside for the benefit of the holders thereof on the applicable record date) in full on any Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within a Dividend Period related to such Dividend Payment Date), all dividends declared on Series B Convertible Preferred Stock and all such Parity Stock and payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) shall be declared *pro rata* so that the respective amounts of such dividends declared shall bear the same ratio to each other as (A) the amount of all accrued and unpaid dividends per share on the shares of Series B Convertible Preferred Stock for the applicable Dividend Period calculated applying the Applicable Dividend Rate, and (B) the amount of all accrued and unpaid dividends per share on all Parity Stock payable on such Dividend Payment Date (or, in the case of Parity Stock having dividend payment dates different from the Dividend Payment Dates, on a dividend payment date falling within the Dividend Period related to such Dividend Payment Date) (subject to their having been declared by the Board of Directors or a duly authorized committee of the Board of Directors out of legally available funds and including, in the case of Parity Stock that bears cumulative dividends, all accrued but unpaid dividends) bear to each other.

(vi) Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Series B Convertible Preferred Stock shall not be entitled to participate in any such dividends.

(f) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary:

(i) Holders of Series B Convertible Preferred Stock shall be entitled to receive for each share of Series B Convertible Preferred Stock, out of the assets of the Corporation or proceeds thereof (whether capital or surplus) available for distribution to shareholders of the Corporation, subject to the rights of any creditors of the Corporation, before any distribution of such assets or proceeds is made to or set aside for the holders of Common Stock and any other stock of the Corporation ranking junior to Series B Convertible Preferred Stock as to such distribution, payment in full in an amount equal to the sum of (A) the Liquidation Amount per share; and (B) the amount of any dividend in respect thereof that has

theretofore been declared but remains unpaid (collectively, the “Liquidation Preference”).

(ii) If, in any distribution described in Subsection (f)(i) above, the assets of the Corporation or proceeds thereof are not sufficient to pay in full the amounts payable with respect to all outstanding shares of Series B Convertible Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series B Convertible Preferred Stock as to such distribution, holders of Series B Convertible Preferred Stock and the holders of such other stock shall share *pro rata* in any such distribution in proportion to the full respective distributions to which they are entitled.

(iii) If the Liquidation Preference has been paid in full to all holders of Series B Convertible Preferred Stock and the corresponding amounts payable with respect of any other stock of the Corporation ranking equally with Series B Convertible Preferred Stock as to such distribution has been paid in full, the holders of other stock of the Corporation shall be entitled to receive all remaining assets of the Corporation (or proceeds thereof) according to their respective rights and preferences.

(iv) For purposes of this Subsection (f), the merger or consolidation of the Corporation with any other corporation or other entity, including a merger or consolidation in which the holders of Series B Convertible Preferred Stock receive cash, securities or other property for their shares, or the sale, lease or exchange (for cash, securities or other property) of all or substantially all of the assets of the Corporation, shall not constitute a liquidation, dissolution or winding up of the Corporation.

(g) *Redemption.* The Series B Convertible Preferred Stock may be redeemed at the times and in the manner prescribed in this Subsection (g). THE SERIES B CONVERTIBLE PREFERRED STOCK IS PERPETUAL, AND HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL HAVE NO RIGHT OR POWER TO COMPEL THE REDEMPTION OF ALL OR ANY PORTION THEREOF AT ANY TIME. Further, any redemption of Series B Convertible Preferred Stock shall be subject to the consent or approval of the Appropriate Federal Banking Agency. The Series B Convertible Preferred Stock shall not be subject to any mandatory redemption, sinking fund or other similar provisions.

(i) Subject to the immediately following sentence of this Subsection (g)(i), the Corporation, at its option, subject to the approval of the Appropriate Federal Banking Agency, may redeem, in whole or in part, at any time and from time to time, out of funds legally available therefor, all or any portion of the then-outstanding shares of Series B Convertible Preferred Stock at the time outstanding, upon notice given as provided in Subsection (g)(iii) below, at the Redemption Price plus the amount of any dividend in respect thereof that has theretofore been declared but remains unpaid as of the date fixed for redemption (collectively, the “Redemption Amount”). Notwithstanding the



foregoing, the Corporation shall not be entitled to redeem any shares of Series B Convertible Preferred Stock unless, simultaneously with or prior to such redemption, all of the issued and outstanding shares of Series A Preferred Stock will be or have been redeemed; *provided, however*, that the Corporation may redeem in a single transaction after the effective date of these Second Amended and Restated Articles of Incorporation, but on or prior to December 31, 2021 (such redemption in a single transaction, the “*Initial Redemption*”), up to 1,591.27367 shares of Series B Convertible Preferred Stock on a *pro rata* basis with shares of Series A Preferred Stock (i.e. 12.71114 shares of Series A Preferred Stock for every share of Series B Convertible Preferred Stock redeemed). Except as set forth in the immediately preceding sentence, the Corporation shall not be entitled to redeem any shares of Series B Convertible Preferred Stock unless, simultaneously with or prior to such redemption, all of the issued and outstanding shares of Series A Preferred Stock will be or have been redeemed.

(ii) The Redemption Amount for any shares of Series B Convertible Preferred Stock shall be payable on the redemption date to the holder of such shares against surrender of the certificate(s) evidencing such shares to the Corporation or its agent. Any declared but unpaid dividends payable on a redemption date that occurs subsequent to the Dividend Record Date for a Dividend Period shall not be paid to the holder entitled to receive the Redemption Amount on the redemption date, but rather shall be paid to the holder of record of the redeemed shares on such Dividend Record Date relating to such Dividend Payment Date.

(iii) Notice of every redemption of shares of Series B Convertible Preferred Stock shall be given by first class mail, postage prepaid, addressed to the holders of record of the shares to be redeemed at their respective last addresses appearing on the books of the Corporation. Such mailing shall be at least 10 days and not more than 60 days before the date fixed for redemption. Any notice mailed as provided in this Subsection shall be conclusively presumed to have been duly given, whether or not the holder receives such notice, but failure duly to give such notice by mail, or any defect in such notice or in the mailing thereof, to any holder of shares of Series B Convertible Preferred Stock designated for redemption shall not affect the validity of the proceedings for the redemption of any other shares of Series B Convertible Preferred Stock. Notwithstanding the foregoing, if shares of Series B Convertible Preferred Stock are issued in book-entry form through The Depository Trust Company or any other similar facility, notice of redemption may be given to the holders of Series B Convertible Preferred Stock at such time and in any manner permitted by such facility. Each notice of redemption given to a holder shall state: (A) the redemption date; (B) the number of shares of Series B Convertible Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (C) the Redemption Price and the Redemption Amount; and (D) the place or places where

certificates for such shares are to be surrendered for payment of the Redemption Amount.

(iv) In the case of any redemption of part of the shares of Series B Convertible Preferred Stock at the time outstanding, the shares to be redeemed shall be redeemed on a *pro rata* basis. Subject to the provisions hereof, the Board of Directors or a duly authorized committee thereof shall have full power and authority to prescribe the terms and conditions upon which shares of Series B Convertible Preferred Stock shall be redeemed from time to time. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without charge to the holder thereof.

(v) If notice of redemption has been duly given and if on or before the redemption date specified in the notice all funds necessary for the redemption have been deposited by the Corporation, in trust for the benefit of the holders of the shares called for redemption, with a bank or trust company chartered under the laws of the United States or any state thereof, and having a capital and surplus of at least \$500 million and selected by the Board of Directors, so as to be and continue to be available solely therefor, then, notwithstanding that any certificate for any share so called for redemption has not been surrendered for cancellation, on and after the redemption date dividends shall cease to accrue on all shares so called for redemption, all shares so called for redemption shall no longer be deemed outstanding and all rights with respect to such shares shall forthwith on such redemption date cease and terminate, except only the right of the holders thereof to receive the amount payable on such redemption from such bank or trust company, without interest. Any funds unclaimed at the end of three years from the redemption date shall, to the extent permitted by law, be released to the Corporation, after which time the holders of the shares so called for redemption shall look only to the Corporation for payment of the Redemption Amount of such shares.

(vi) Shares of Series B Convertible Preferred Stock that are redeemed, repurchased or otherwise acquired by the Corporation shall revert to authorized but unissued shares of Preferred Stock (*provided* that any such cancelled shares of Series B Convertible Preferred Stock may be reissued only as shares of any series of Preferred Stock other than Series A Preferred Stock or Series B Convertible Preferred Stock).

(h) *Voting Rights.* HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL NOT HAVE ANY VOTING RIGHTS EXCEPT AS SET FORTH IN THIS SUBSECTION (h) OR AS OTHERWISE FROM TIME TO TIME REQUIRED BY LAW.

(i) Holders of shares of Series B Convertible Preferred Stock will be entitled to one (1) vote for each such share on any matter on which holders of Series B Convertible Preferred Stock (voting as a separate voting group or with



any other class of Parity Stock, as provided herein) are entitled to vote, including any action by written consent.

(ii) Reserved.

(iii) Reserved.

(iv) So long as any shares of Series B Convertible Preferred Stock are outstanding, in addition to any other vote or consent of shareholders required by law or by these Second Amended and Restated Articles of Incorporation, the vote or consent of the holders of at least a majority of the shares of Series B Convertible Preferred Stock at the time outstanding, voting as a separate class except as provided in Subsection (k)(ii), below, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

(A) Any amendment or alteration of these Second Amended and Restated Articles of Incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock of the Corporation ranking senior to or pari passu with Series B Convertible Preferred Stock with respect to either or both the payment of dividends and/or the distribution of assets on any liquidation, dissolution or winding up of the Corporation;

(B) Any amendment, alteration or repeal of any provision of these Second Amended and Restated Articles of Incorporation (including, unless no vote on such merger or consolidation is required by Subsection (h)(iv)(C), below, any amendment, alteration or repeal by means of a merger, consolidation or otherwise) that would adversely affect the rights, preferences, privileges or voting powers of the Series B Convertible Preferred Stock; or

(C) Any consummation of a binding share exchange or reclassification involving the Series B Convertible Preferred Stock, or of a merger or consolidation of the Corporation with another corporation or other entity, unless in each case (i) the shares of Series B Convertible Preferred Stock remain outstanding or are converted into or exchanged for preference securities of the Corporation, and (ii) such shares remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, and limitations and restrictions thereof, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers, and limitations and restrictions thereof, of Series B Convertible Preferred Stock immediately prior to such consummation, taken as a whole; *provided, however*, that for all purposes of this Subsection (h), any increase in the amount of the authorized Preferred Stock, including any

increase in the authorized amount of Series B Convertible Preferred Stock necessary to satisfy preemptive or similar rights granted by the Corporation to other persons prior to the Original Issue Date, or the creation and issuance, or an increase in the authorized or issued amount, whether pursuant to preemptive or similar rights or otherwise, of any other series of Preferred Stock, or any securities convertible into or exchangeable or exercisable for any other series of Preferred Stock, ranking junior to Series B Convertible Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and the distribution of assets upon liquidation, dissolution or winding up of the Corporation will not be deemed to adversely affect the rights, preferences, privileges or voting powers, and shall not require the affirmative vote or consent of, the holders of outstanding shares of the Series B Convertible Preferred Stock.

(v) No vote or consent of the holders of Series B Convertible Preferred Stock shall be required pursuant to Subsection (h)(i) or (h)(iv), above, if, at or prior to the time when any such vote or consent would otherwise be required pursuant to such Subsection, all outstanding shares of the Series B Convertible Preferred Stock shall have been redeemed, or shall have been called for redemption upon proper notice and sufficient funds shall have been deposited in trust for such redemption, in each case pursuant to Subsection (g) of this Section 5.7.

(vi) The rules and procedures for calling and conducting any meeting of the holders of Series B Convertible Preferred Stock (including, without limitation, the fixing of a record date in connection therewith), the solicitation and use of proxies at such a meeting, the obtaining of written consents and any other aspect or matter with regard to such a meeting or such consents shall be governed by any rules of the Board of Directors or any duly authorized committee of the Board of Directors, in its discretion, may adopt from time to time, which rules and procedures shall conform to the requirements of these Second Amended and Restated Articles of Incorporation, the Bylaws, and applicable law and the rules of any national securities exchange or other trading facility on which Series B Convertible Preferred Stock is listed or traded at the time.

(vii) Except to the extent prohibited by law, a holder of Series B Convertible Preferred Stock shall not be required to cast all of the votes (or to give or withhold consent) with respect to all of the shares of Series B Convertible Preferred Stock held by such holder in an identical manner.

(i) *Conversion Rights.* HOLDERS OF SERIES B CONVERTIBLE PREFERRED STOCK SHALL HAVE NO RIGHT WHATSOEVER TO CONVERT THEIR SHARES OF SERIES B CONVERTIBLE PREFERRED STOCK INTO SHARES OF COMMON STOCK OR INTO ANY OTHER SERIES OF PREFERRED STOCK OR ANY OTHER CLASS OR SERIES OF STOCK OF THE CORPORATION EXCEPT AS SET FORTH IN THIS SUBSECTION (i).



(i) Each Holder of Series B Convertible Preferred Stock shall have the right, upon the occurrence of a “Conversion Event” (as defined below) to require the Corporation to issue at the “Conversion Effective Time” (as defined below) Two Hundred Sixty-Six and Two Thirds (266.6667) shares of Common Stock in exchange for every one (1) whole share (and ratably in respect of any fractional share, rounded to the nearest 1/1000th of a share) of Series B Convertible Preferred Stock surrendered by such Holder, subject to adjustment in the event of any stock dividend, stock split or reverse split or similar corporate transaction having the effect of changing the number of shares of Common Stock or Series B Convertible Preferred Stock into a greater or lesser number of shares (including, but not limited to shares of Common Stock issued in conjunction with any Section 382 shareholder rights plan implemented by the Corporation).

(ii) “Conversion Event” means the consummation of a merger, share exchange or other business combination transaction (however structured, a “Business Combination”) in connection with which all of the following are true:

(A) the Corporation is not the surviving entity in such Business Combination; and

(B) in the Business Combination a person, other than an affiliate of the Company (an “Acquiror”), acquires a majority in number or voting power of the then-issued and outstanding Common Stock (for purposes of computing such majority, excluding any shares of Common Stock issuable upon conversion of shares of Series B Convertible Preferred Stock in connection with such Business Combination); and

(C) in the Business Combination holders of common stock of the Corporation (“Common Shareholders”) who surrender, exchange or transfer their shares of Common Stock to the Acquiror are entitled to receive, in exchange therefor, cash, property or securities issued by the Acquiror or an affiliate of the Acquiror; and

(D) pursuant to the provisions of these Second Amended and Restated Articles of Incorporation or applicable corporation law, consummation of the Business Combination is subject to the approval of the Common Shareholders.

(iii) In connection with any proposed Business Combination that, if consummated, would result in a Conversion Event, the Corporation shall solicit from each holder of Series B Convertible Preferred Stock an election by such holder whether to convert at the Conversion Effective Time all, a portion, or none of the shares of Series B Convertible Preferred Stock held by such holder into Common Stock (a “Conversion Election”).

(A) Such solicitation shall be conducted in substantially the same manner and at substantially the same time as the Corporation solicits

votes, consents or proxies from the Common Shareholders in connection with the Business Combination, and shall be accompanied by substantially the same information (including, without limitation, a proxy statement, prospectus or combined proxy-statement/prospectus, as the case may be) issued or provided to Common Shareholders in connection with the solicitation of votes, consents or proxies.

(B) A Conversion Election shall be returnable to the Corporation or its proxy solicitor or agent at the same time and on the same conditions as votes, consents or proxies are returnable by the Common Shareholders and shall be irrevocable except to the extent that a Common Shareholder may revoke a vote, consent or proxy after submitting same.

(C) A holder of Series B Convertible Preferred Stock who does not make a timely and proper Conversion Election shall be deemed to have elected not to convert any shares of Series B Convertible Preferred Stock into Common Stock.

(D) The Board of Directors may prescribe such other and further rules, regulations, forms and procedures not inconsistent herewith in respect of the solicitation, receipt, revocation, tabulation and processing of Conversion Elections as it shall deem necessary and appropriate which rules, regulations and procedures shall be final, conclusive and binding upon the Corporation and the holders of Series B Convertible Preferred Stock.

(iv) A conversion of Series B Convertible Preferred Stock into Common Stock shall occur at the “Conversion Effective Time” (as defined below) if and only if the Business Combination giving rise to conversion rights hereunder is actually consummated and the holder of Series B Convertible Preferred Stock has made a proper and timely Conversion Election in respect thereof. In the event a proposed Business Combination that would, if consummated, give rise to conversion rights hereunder is not consummated for any reason, all Conversion Elections shall be void and of no effect, no shares of Common Stock shall be issued in connection therewith and the shares of Series B Convertible Preferred Stock theretofore outstanding shall remain outstanding and entitled to the rights and privileges of Series B Convertible Preferred Stock hereunder, including, without limitation, the right to elect to convert such shares into shares of Common Stock in connection with any Business Combination that is consummated thereafter. “*Conversion Effective Time*” means a time that is one (1) minute prior to the “effective time” of a Business Combination as specified in the merger, share exchange or other agreement pursuant to which such Business Combination is effected or, if such agreement does not specify an “effective time,” then at 11:59 p.m. Central Time on the day immediately preceding the “effective date” of the Business Combination as so specified or as provided under applicable law.



(v) Notwithstanding that holders of Series B Convertible Preferred Stock who make proper and timely Conversion Elections will not become Common Shareholders until the Conversion Election Time, such holders shall nevertheless be provided the opportunity, to the extent practicable, to make any election in respect of the Business Combination (such as, by way of example and not limitation, an election whether to accept cash or securities of an Acquiror as consideration for their Common Stock) as they would be entitled to make if they were Common Shareholders at the time such election is made; *provided, however*, that the foregoing shall not be deemed or construed as giving to any right of holders of Series B Convertible Preferred Stock who make proper and timely Conversion Elections to vote in respect of such Business Combination as members of the voting group comprising Common Shareholders.

(j) *No Other Rights.* The shares of Series B Convertible Preferred Stock and the holders thereof shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth in these Second Amended and Restated Articles of Incorporation or as provided by applicable law.

(k) *Amendment.* The provisions of this Section 5.7 may be amended in any manner permitted by applicable law, subject to the following:

(i) If a proposal to amend any provision of this Section 5.7 includes a proposal to make a substantively identical amendment to the parallel provision of Section 5.6, such amendment shall be made only upon the approval of such proposed amendments both to this Section 5.7 and to Section 5.6 by the holders of a majority of the outstanding shares of Series A Preferred Stock and Series B Convertible Preferred Stock, voting as a single voting group.

(ii) A proposal to amend any provision of this Section 5.7 that is not described in Subsection (k)(i), or any proposal to amend any provision of Subsection (i) of this Section 5.7, shall be made only upon the approval of such proposed amendment by holders of a majority of the outstanding shares of Series A Preferred Stock and a majority of the outstanding shares of Series B Convertible Preferred Stock, voting as separate voting groups.

(iii) No vote of the Common Shareholders shall be required to amend any provision of this Section 5.7.

(l) Interpretation. It is intended that the relative rights, privileges and preferences of the Series B Convertible Preferred Stock and the Series A Preferred Stock provided for under Section 5.6 of these Second Amended and Restated Articles of Incorporation be identical except insofar as the conversion rights of Series B Convertible Preferred Stock provided in Section 5.7(i) and the redemption priority of the Series A Preferred Stock provided in the last sentence of Section 5.7(g)(i), and the provisions of this Section 5.7 and the parallel provisions of Section 5.6 shall, consistent with such intent, be construed, interpreted and implemented in an identical manner.

## **ARTICLE 6**

### **No Preemptive Rights**

No shareholder shall have any preemptive right to subscribe to an additional issue of stock, whether now or hereafter authorized, of any class or series or to any securities of the Corporation convertible into such stock.

## **ARTICLE 7**

### **Directors**

#### **7.1     Number, Election and Terms of Directors.**

(a)     The business and affairs of the Corporation shall be managed by or under the direction of a Board of Directors. Subject to the rights of the holders of any class or series of Preferred Stock to elect additional directors under specified circumstances, the number of directors constituting the Board of Directors shall be initially fixed at ten and shall thereafter be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by the affirmative vote of a majority of the number of directors that the Corporation would have at the time if there were no vacancies existing in the Board of Directors (the "Whole Board").

(b)     The Board of Directors, other than the directors who may be elected by the holders of any class or series of Preferred Stock under specified circumstances, shall be divided into three classes, as nearly equal in number as possible. The initial term of office of Class I Directors shall expire at the annual meeting of shareholders to be held in 2000; the initial term of office of Class II directors shall expire at the annual meeting of shareholders to be held in 2001; and the initial term of office of Class III directors shall expire at the annual meeting of shareholders to be held in 2002, and in each case until their respective successors are elected and qualified. At each annual meeting of shareholders, directors shall be chosen to succeed those whose terms then expire and shall be elected for a term of office expiring at the third succeeding annual meeting of shareholders after their election, and in each case until their respective successors are elected and qualified.

**7.2     Newly Created Directorships and Vacancies.** Subject to the rights of any class or series of Preferred Stock then outstanding and unless the Board of Directors otherwise determines, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled by a majority vote of the directors then in office, although less than a quorum, or by a sole remaining director.

Directors chosen to fill vacancies pursuant to this Section 7.2 shall hold office for a term expiring at the annual meeting of shareholders at which the term of the class to which they have been elected expires. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Newly created directorships shall be allocated among the classes of directors so that each class of directors shall consist, as nearly as possible, of one-third of the total number of directors.



**7.3     Removal.** Subject to the rights of the holders of any class or series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of at least eighty percent (80%) of the outstanding shares of all classes of stock of the Corporation generally entitled to vote in the election of directors, considered for purposes of this Section 7.3 as one class.

## **ARTICLE 8**

### **By-Laws**

No provision of the by-laws of the Corporation may be amended, altered or repealed and no provision inconsistent with the by-laws of the Corporation may be adopted, except by (a) the affirmative vote of a majority of the members of the Whole Board, or (b) the affirmative vote of the holders of at least eighty percent (80%) of the outstanding shares of all classes of stock of the Corporation generally entitled to vote in the election of directors, considered for purposes of this Article 8 as one class.

## **ARTICLE 9**

### **Fair Price Provision**

**9.1     Definitions.** For purposes of this Article 9, the following terms shall have the following meanings:

(a)     “Business Combination” shall mean:

(i)     any merger, consolidation or share exchange of the Corporation or any Subsidiary with or into (A) an Interested Shareholders or (B) any other person (whether or not itself an Interested Shareholder) which is, of after such merger, consolidation, or share exchange would be, an Affiliate or Associate of an Interested Shareholder; or

(ii)    any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with, or proposed by or on behalf of, an Interested Shareholder or an Affiliate or Associate of an Interested Shareholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value equal to or greater than one percent (1%) of the total assets of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; or

(iii)   the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the Corporation or any Subsidiary to, or proposed by or on behalf of, an Interested Shareholder or an Affiliate or Associate of an Interested Shareholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value equal to or greater than one percent (1%) of the total assets of the Corporation as reported in the consolidated balance sheet of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; or

(iv) any reclassification of securities (including any reverse stock split), recapitalization or reorganization of the Corporation or any Subsidiary, or any merger, consolidation or share exchange of the Corporation with any Subsidiary or any other transaction (whether or not with or into or otherwise involving an Interested Shareholder) which as the effect, directly or indirectly, of increasing the percentage of outstanding shares of (A) any class of equity securities of the Corporation or any Subsidiary or (B) any class of securities of the Corporation or any Subsidiary convertible into equity securities of the Corporation or any Subsidiary, represented by securities of such class which are directly or indirectly owned by an Interested Shareholder and all of its Affiliates and Associates;

(v) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation or any Subsidiary or any spin-off or split-up of any kind of the Corporation or any Subsidiary proposed by or on behalf of the Interested Shareholder or any Affiliate or Associate of an Interested Shareholder; or

(vi) any agreement, contract, or other arrangement providing for any one or more of the actions specified in clauses (i) through (v) of this Section 9.1(a).

(b) “Affiliate” and “Associate” shall have the respective meanings given such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as in effect on the initial date of filing of these Second Amended and Restated Articles of Incorporation.

(c) “Beneficial Owner” shall have the meaning given such term in Rule 13d-3 of the General Rules and Regulations under the Exchange Act, as in effect on the initial date of filing of these Second Amended and Restated Articles of Incorporation, and a person shall “Beneficially Own” and have “Beneficial Ownership” of any securities of which such person is the Beneficial Owner.

(d) “Continuing Director” shall mean (i) any member of the Board of Directors of the Corporation who (A) is neither the Interested Shareholder involved in the Business Combination as to which a vote of Continuing Directors is provided for hereunder, nor an Affiliate, Associate, employee, agent or nominee of such Interested Shareholder, or the relative of any of the foregoing and (B) was a member of the Board of Directors prior to the time that such Interested Shareholder became an Interested Shareholder; and (ii) any successor of a Continuing Director by the affirmative vote of a majority of Continuing Directors then on the Board of Directors of the Corporation.

(e) “Fair Market Value” shall mean (i) in the case of stock, the highest closing sales price during the 30-day period immediately preceding the date in question of a share of such stock on the principal national securities exchange on which such stock is listed or admitted to trading or on the Nasdaq Stock Market’s National Market, or, if such stock is not listed or admitted to trading on any such exchange or the Nasdaq Stock Market’s National Market, the highest last quoted price or, if not so quoted, the highest average



high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System (“Nasdaq”) or such system then in use during the 30-day period preceding the date in question, or, if no such quotation is available, the fair market value on the date in question of a share of stock as determined by a majority of the Continuing Directors in good faith; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined by a majority of the Continuing Directors in good faith.

(f) “Interested Shareholder” shall mean any person (other than the Corporation or a Subsidiary, any employee benefit plan maintained by the Corporation or any Subsidiary, or any trustee or fiduciary with respect to any such plan when acting in such capacity) who or which:

(i) is the Beneficial Owner of ten percent (10%) or more of the Voting Shares;

(ii) is an Associate of the Corporation and at any time within the two-year period immediately prior to the date in question, was the Beneficial Owner of 10% or more of the voting power of the then-outstanding Voting Shares; or

(iii) is an assignee of, or has otherwise succeeded to, any shares of Voting Stock of the Corporation of which an Interested Shareholder was the Beneficial Owner at any time within the two-year period immediately prior to the date in question, if such assignment or succession shall have occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act of 1933, as amended.

For purposes of determining whether a person is an Interested Shareholder, the outstanding Voting Shares shall include unissued Voting Shares of which the Interested Shareholder is the Beneficial Owner but shall not include any other Voting Shares which may be issuable pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, warrants or options, or otherwise, to any person who is not an Interested Shareholder.

(g) a “person” shall include any individual, firm, corporation, partnership, trust or other entity, organization or association, as well as any syndicate or group deemed to be a person under Section 14(d)(2) of the Exchange Act.

(h) “Subsidiary” shall mean any corporation, limited partnership, general partnership or other firm or entity of which a majority of any class of equity security or other equity interests owned, directly or indirectly, by the Corporation; *provided, however,* that for purposes of the definition of Interested Shareholder set forth in paragraph (f) of this Section 9.1, the term “Subsidiary” shall mean only a corporation, limited partnership, general partnership or other firm or entity of which a majority of each class of equity security or other equity interest is owned, directly or indirectly, by the Corporation.

(i) “Voting Shares” shall mean the outstanding shares of all classes of stock of the Corporation generally entitled to vote in the election of directors, considered for purposes of this Article 9 as one class.

**9.2 Vote Required for Certain Business Transactions.** In addition to any affirmative vote required by law or by these Second Amended and Restated Articles of Incorporation, and except as otherwise expressly provided in Section 9.3 of this Article, any Business Combination shall require the affirmative vote of the holders of record of outstanding shares representing at least (a) eighty percent (80%) of the voting power of the then outstanding shares of the Voting Stock of the Corporation, voting together as a single class, and (b) sixty-six and two thirds percent (66-2/3%) of the voting power of the Voting Stock owned by Persons other than any Interested Shareholder and its Associates and Affiliates, notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with an national securities exchange or otherwise.

**9.3 When Higher Vote is Not Required.** The provisions of Section 9.2 of this Article shall not apply to a particular Business Combination, and such Business Combination shall require only such affirmative vote, if any, of the shareholders as is required by law and any other provisions of these Second Amended and Restated Articles of Incorporation, if all of the conditions specified in either of the following paragraphs (a) and (b) are met.

(a) *Approval by Continuing Directors.* The Business Combination has been approved by the affirmative vote of a majority of the Continuing Directors, even if the Continuing Directors do not constitute a quorum of the entire Board of Directors.

(b) *Form of Consideration, Price and Procedure Requirements.* All of the following condition shall have been met:

(i) With respect to each share of each class of Voting Stock of the Corporation (including Common Stock), the holder thereof shall be entitled to receive on or before the date of the consummation of the Business Combination (the “Consummation Date”) consideration, in the form specified in (b)(ii) hereof, with an aggregate Fair Market Value as of the Consummation Date at least equal to the highest of the following:

(A) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers’ fees) paid by the Interested Shareholder to which the Business Combination relates, or by any Affiliate or Associate of such Interested Shareholder, for any shares of such class of Voting Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the “Announcement Date”), (2) within the two-year period prior to the Consummation Date or (3) within the two-year period prior to, or in the transaction in which it became, an Interested Shareholder, whichever is highest; plus, in such case, interest compounded annually from the earliest date on which that highest per share acquisition price was paid through the Consummation Date at the rate for one-year



United States Treasury obligations from time to time in effect, less the aggregate amount of any cash dividends paid other than in cash per share of such class of Voting Stock since that earliest date, up to the amount of that interest;

(B) the Fair Market Value per share of such class of Voting Stock of the Corporation on the Announcement Date or on the date on which the Interested Shareholder became an Interested Shareholder, whichever is higher; plus interest compounded annually from that date through the Commencement Date at the rate for one-year United States Treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the Fair Market Value of any dividends paid other than in cash, per share of such class of Voting Stock since that date, up to the amount of that interest; and

(C) the highest preferential amount per share, if any, to which the holders of shares of such class of Voting Stock of the Corporation are entitled in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; plus the aggregate amount of any dividends declared or due as to which those holders are entitled prior to payment of dividends on some other class or series of stock (unless the aggregate amount of those dividends is included in that preferential amount).

(ii) The consideration to be received by holders of a particular class of outstanding Voting Stock of the Corporation (including Common Stock) as described in Section 9.3(b)(i) hereof shall be in cash or, if the consideration previously paid by or on behalf of the Interested Shareholder in connection with its acquisition of beneficial ownership of shares of such class of Voting Stock consisted in whole or in part of consideration other than cash, then in the same form as such consideration. If such payment for shares of any class of Voting Stock of the Corporation has been made in varying forms of consideration, then the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the beneficial ownership of the largest number of shares of such class of Voting Stock previously acquired by the Interested Shareholder.

(iii) After such Interested Shareholder has become an Interested Shareholder and prior to the Consummation Date:

(A) except as approved by the affirmative vote of a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock of the Corporation, if any;

(B) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock of the Corporation (except as

necessary to reflect any subdivision of the Common Stock), except as approved by the affirmative vote of a majority of the Continuing Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of Common Stock, unless the failure so to increase such annual rate is approved by the affirmative vote of a majority of the Continuing Directors; and (3) such Interested Shareholder shall not have become the Beneficial Owner of any additional shares of Voting Stock of the Corporation except (x) as part of the transaction which results in such Interested Shareholder becoming an Interested Shareholder, (y) by virtue of proportionate stock splits, stock dividends or other distributions of stock in respect of stock not constituting a Business Combination, or (z) through a Business Combination meeting all of the considerations of this Section 9.3.

(iv) After such Interested Shareholder has become an Interested Shareholder, neither such Interested Shareholder nor any Affiliate or Associate thereof shall have received the benefit, directly or indirectly (except proportionately as a shareholder of the Corporation), of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by the Corporation.

(v) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Exchange Act and the General Rules and Regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to the shareholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions thereof). Such proxy or information statement shall contain (A) any recommendations as to the advisability (or inadvisability) of the Business Transaction that a majority of the Continuing Directors may choose to state, and (B) if a majority of the total number of Continuing Directors so requests, an opinion of a reputable investment banking firm (which firm shall be selected by a majority of the total number of Continuing Directors, furnished with all information it reasonably requests, and paid a reasonable fee for its services by the Corporation upon the Corporation's receipt of such opinion) as to the fairness (or lack of fairness) of the terms of the proposed Business Combination from the point of view of the holders of shares of Voting Stock (other than the Interested Shareholder).

**9.4 Powers of Continuing Directors.** A majority of the Continuing Directors shall have the power and duty to determine, on the basis of information known to them after reasonable inquiry, all facts necessary to determine compliance with this Article, including, without limitation, (A) whether a Person is an Interested Shareholder, (B) the number of shares of Voting Stock of the Corporation beneficially owned by any Person, (C) whether a person is an Affiliate or Associate of another, (D) whether the requirements of paragraph (b) of Section 9.3



have been met with respect to any Business Combination, and (E) whether the assets which are the subject of any Business Combination have, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary in any Business Combination has, an aggregate Fair Market Value equal to or greater than one percent (1%) of the total assets of the Corporation as reported in the consolidated balance sheet of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; and the good faith determination of a majority of the Continuing Directors on such matters shall be conclusive and binding for all the purposes of this Article 9.

#### **9.5     No Effect on Fiduciary Obligations.**

(a)     Nothing contained in this Article shall be construed to relieve an Interested Shareholder or any Associate or Affiliate of an Interested Shareholder from any fiduciary obligation imposed by law.

(b)     The fact that any Business Combination complies with the provisions of Section 9.3(b) of this Article shall not be construed to impose any fiduciary duty, obligation or responsibility on the Board of Directors, or any member thereof, to approve such Business Combination or recommend its adoption or approval to the shareholders of the Corporation, nor shall such compliance limit, prohibit or otherwise restrict in any manner the Board of Directors, or any member thereof, with respect to evaluations of or actions and responses taken with respect to such Business Combination.

### **ARTICLE 10**

#### **Shareholder Action by Written Consent**

Action required or permitted by the Wisconsin Business Corporation Law to be taken at a shareholders' meeting may be taken without a meeting without action by the board of directors only by all shareholders entitled to vote on the action.

### **ARTICLE 11**

#### **Election to be Subject to Certain Provisions of the Wisconsin Business Corporation Law**

The Corporation elects to be subject to Sections 180.1130 to 180.1134 and Section 180.1150 of the Wisconsin Business Corporation Law as if it were an issuing public corporation within the meaning of Section 180.1130(8) of the Wisconsin Business Corporation Law.

### **ARTICLE 12**

#### **Amendments to the Articles**

The Corporation reserves the right to amend, alter or repeal any provision contained in these Second Amended and Restated Articles of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon shareholders and directors herein are granted subject to this reservation. Notwithstanding that a lesser or different percentage may be specified by the Wisconsin Business Corporation Law and in addition to any affirmative vote of any particular class or series of the capital stock that may be required by the Wisconsin Business Corporation Law and these Second Amended and Restated Articles of Incorporation,

(a) the affirmative vote of the holders of at least eighty percent (80%) of the outstanding shares of all classes of stock of the Corporation generally entitled to vote in the election of directors, considered for purposes of this Article 12 as one class, shall be required to amend, alter or repeal in any respect, or adopt any provisions inconsistent with,

- (i) Section 5.1 of Article 5,
- (ii) Article 7,
- (iii) Article 8,
- (iv) Article 10,
- (v) Article 11, and
- (vi) this Article 12(a);

provided, however, that if such amendment, alteration, repeal or adoption of an inconsistent provision is declared advisable by the Board of Directors by the affirmative vote of at least seventy-five percent (75%) of the Whole Board, such amendment, alteration, repeal or adoption of an inconsistent provision need only be approved by the vote then required under the Wisconsin Business Corporation Law; and

(b) the affirmative vote of the holders of at least eighty percent (80%) of the outstanding shares of all classes of stock of the Corporation generally entitled to vote in the election of directors, considered for purposes of this Article 12 as one class, shall be required to amend, alter or repeal in any respect, or adopt any provision inconsistent with Article 9 or this Article 12(b); provided, however, that if such amendment, alteration, repeal or adoption of an inconsistent provision is declared advisable by the Board of Directors by the affirmative vote of at least seventy-five percent (75%) of the Whole Board and a majority of the Continuing Directors, such amendment, alteration, repeal or adoption of an inconsistent provision need only be approved by the vote then required under the Wisconsin Business Corporation Law.