

CERTIFICATE OF INCORPORATION  
OF  
CPI CORP.

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FILED

APR 26 1982

*Alan C. Keenan*  
DEPARTMENT OF STATE

ARTICLE ONE

The name of the corporation is CPI Corp.

ARTICLE TWO

The address of the registered office of the Corporation in the State of Delaware is No. 100 West Tenth Street, in the City of Wilmington, County of New Castle, and the name of its registered agent at that address is The Corporation Trust Company.

ARTICLE THREE

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

ARTICLE FOUR

The total number of shares of stock of all classes which the Corporation has authority to issue is 11,000,000 shares, consisting of: (a) 5,000,000 shares of nonvoting common stock, with a \$0.40 par value per share, (b) 5,000,000 shares of voting common stock with a \$0.40 par per share (such voting and nonvoting common stock collectively hereinafter referred to as "Common Stock"), and (c) 1,000,000 shares of Cumulative Preferred Stock without par value (hereinafter referred to as "Preferred Stock").

The designations, powers, preferences, qualifications, limitations, restrictions, and the special and relative rights of such shares are as follows:

A. Preferred Stock.

1. The Board of Directors is hereby expressly authorized to provide for the issuance of shares of Preferred Stock, in one or more series, and, by the adoption of a resolution or resolutions providing for the issuance of such shares, to establish the number of shares to be included in each such series and to fix the designations, powers, preferences, qualifications, limitations, restrictions, and the special and relative rights of such shares. The authority of the Board of Directors with respect to each such series shall include to the full extent now or hereafter permitted by the General Corporation Law of the State of Delaware, but shall not be limited to, the determination of the following:

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

(b) The annual dividend rate for the shares of the series, the conditions and the times upon which such dividends shall be payable, the relative rights and priority, if any, which such dividends shall bear to the dividends payable on any other class or classes of stock or series thereof, or any other series of the same class, whether dividends shall be cumulative, and if so, the date or dates from which dividends shall accumulate thereon, or be non-cumulative, whether the corporation shall be required to pay such dividends on specified dates, if the funds are legally available for the payment thereof, or whether the payment of such dividend shall be entirely at the discretion of the Board of Directors, whether such dividend shall be payable in cash or by the

via G140 max 361

issuance of common stock or preferred stock of the Corporation or in other property;

(c) Whether the shares shall be subject to redemption by the Corporation, and, if so, the times, prices, and other terms and conditions on which such shares may be redeemed, including the date or dates upon or after which they shall be redeemable and the price that the holders thereof shall be entitled to receive upon redemption, which price, terms, and conditions may vary under different conditions and at different redemption dates;

(d) Whether the shares shall be subject to the operation of a retirement or sinking fund for the redemption or repurchase of such shares, and if so, the extent to and the manner in which such funds shall be applied to the purchase or redemption of shares, or to other corporate purposes, and other terms and provisions relative to the operation thereof;

(e) Whether the shares shall be convertible into or exchangeable for shares of any other class or classes, with or without par value, or of any other series of the same class, and, if so, the times, prices, rates, adjustments, and other terms and conditions of such conversion or exchange;

(f) Whether the shares shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms and conditions under which such voting rights may be exercised;

(g) The amount that the holders of the shares shall be entitled to receive, and the rights of the shares in relation to the rights of shares in any other class or classes of stock or series thereof, or any other series of the same class in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Corporation;

(h) Any other designations, powers, preferences, qualifications, limitations, restrictions, and special and

vol 6140 no 362

relative rights of such shares of such series, as the Board of Directors may deem advisable and as shall not be inconsistent with the provisions of this Certificate of Incorporation.

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

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

4. In case the stated dividends and the amounts payable on liquidation or dissolution or distribution of assets are not paid in full, the shares of all series of Preferred Stock shall share ratably in the payment of dividends, including accumulation, if any, in accordance with the sums which would be payable on said shares if all dividends were declared and paid in full, and in any distribution of assets other than by way of dividends in accordance with the sums which would be payable on such distribution if all sums payable were discharged in full.

5. The Preferred Stock purchased, redeemed or converted pursuant to any of the provisions of the resolution of the Board of Directors creating each series, shall, at the discretion of the Board of Directors, be held in the treasury

Vol. G140 PAGE 363

of the Corporation subject to reissuance, or shall, from time to time, in the discretion of the Board of Directors, upon the filing and recording of such certificate as may be in accordance with the General Corporation Law of the State of Delaware, be returned to the status of authorized and unissued shares of Preferred Stock, in which event such shares shall no longer be part of the series created in connection with the original issuance thereof.

B. Common Stock.

1. Except as otherwise provided by a resolution or resolutions of the Board of Directors creating any series of Preferred Stock or by the General Corporation Law of the State of Delaware, the holders of shares of the voting Common Stock issued and outstanding shall have and possess the exclusive right to notice of stockholders' meetings, and the exclusive power to vote, on the basis of one vote for each share of stock, and the holders of shares of nonvoting Common Stock issued and outstanding shall not be entitled to any notice of stockholders' meetings or to any voting rights with respect to such shares.

2. Subject to any prior rights of any series of Preferred Stock from time to time issued and outstanding, the holders of Common Stock shall be entitled to receive such sums as the Board of Directors may from time to time declare as dividends thereon, or authorize as distributions thereon, out of any sums available to be distributed as dividends, and to receive any balance remaining in case of the dissolution, liquidation or winding up of this Corporation.

ARTICLE FIVE

The Corporation shall have perpetual existence.

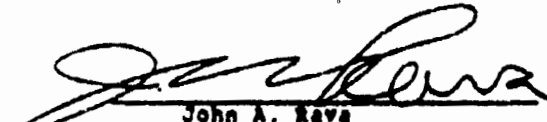
ARTICLE SIX

The number of Directors of the Corporation shall be fixed by, or in the manner provided in the By-Laws of the Corporation. Elections of Directors need not be by written ballot, except and to the extent provided in the By-Laws of the Corporation.

ARTICLE SEVEN

The Board of Directors is expressly authorized to make, alter, amend and repeal the By-laws of the Corporation.

The undersigned, incorporator, for the purpose of forming a corporation under the General Corporation Laws of the State of Delaware, does make, file, and record this Certificate of Incorporation, and does further certify that the facts stated herein are true, this 19th day of April, 1982.

  
John A. Rava

FILED

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
CPI CORP.

JUL 8 1957

*[Handwritten signature]*  
SECRETARY

*Am*

CPI CORP., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

1. The Board of Directors of said corporation, at a meeting duly held, adopted a resolution proposing and declaring advisable the following amendment to the first full paragraph of Article Four of the Certificate of Incorporation of said corporation, so that, as amended, such paragraph reads as follows:

ARTICLE FOUR

The total number of shares of stock of all classes which the Corporation has authority to issue is 51,000,000 shares, consisting of: (a) 50,000,000 shares of common stock, with a \$0.40 par value per share (hereinafter referred to as "Common Stock"), and (b) 1,000,000 shares of Preferred Stock without par value (hereinafter referred to as "Preferred Stock").

The stockholders of said corporation, at a meeting duly held, adopted said amendment in accordance with the applicable provisions of section 242 of the General Corporation Law of the State of Delaware. Of the 16,544,178 shares of common stock outstanding entitled to vote, 12,544,879 shares voted in favor of said amendment, 303,704 voted against said amendment, and 89,882 abstained from voting.

2. The Board of Directors of said corporation, at a meeting duly held, adopted a resolution proposing and declaring advisable an amendment to the Certificate of Incorporation of said corporation adding a new Article Nine reading as set forth in Exhibit A attached hereto and incorporated herein in full by

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this reference. The stockholders of said corporation, at a meeting duly held, adopted said amendment in accordance with the applicable provisions of section 242 of the General Corporation Law of the State of Delaware. Of the 16,544,178 shares of common stock outstanding entitled to vote, 12,590,743 shares voted in favor of said amendment, 250,898 voted against said amendment, and 106,824 abstained from voting.

3. The Board of Directors of said corporation, at a meeting duly held, adopted a resolution proposing and declaring advisable an amendment to the Certificate of Incorporation of said corporation adding a new Article Ten reading as set forth in Exhibit B attached hereto and incorporated herein in full by this reference. The stockholders of said corporation, at a meeting duly held, adopted said amendment in accordance with the applicable provisions of section 242 of the General Corporation Law of the State of Delaware. Of the 16,544,178 shares of common stock outstanding entitled to vote, 9,160,223 shares voted in favor of said amendment, 2,771,931 voted against said amendment, and 1,006,311 abstained from voting.

IN WITNESS WHEREOF, the undersigned, Sander Covert, President of the Corporation, has executed this instrument and Stephen D. Coffin, Secretary of the Corporation, has attested said instrument as the act, deed, and agreement of the Corporation, on this 1st day of July, 1987.

CPI CORP.

By:   
Sander Covert, President

ATTEST:

  
Stephen D. Coffin, Secretary



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EXHIBIT A

ARTICLE NINE

A director of the Corporation shall not be held personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this paragraph by the stockholders of the Corporation shall not adversely affect any right or protection of any director of the Corporation existing at the time of, or for or with respect to any acts or omissions occurring prior to, such repeal or modification.

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EXHIBIT B

ARTICLE TEN

The vote of the stockholders of the Corporation required to approve any Business Combination shall be as set forth in this Article Ten. The term "Business Combination" shall have the meaning ascribed to it in Paragraph 1 (B) of this Article Ten. Each other capitalized term used in this Article Ten shall have the meaning ascribed to it in Paragraph 3 of this Article Ten or elsewhere in the Corporation's Certificate of Incorporation, as amended.

1 (A) In addition to any affirmative vote required by law or the Corporation's Certificate of Incorporation, as amended, and except as otherwise expressly provided in Paragraph 2 of this Article Ten:

(1) any merger or consolidation of the Corporation or any Subsidiary with (i) any Interested Stockholder or (ii) any other Person (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate or Associate of an Interested Stockholder; or

(2) any sale, lease, exchange, mortgage, pledge, transfer, or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder of assets of the Corporation or any Subsidiary having an aggregate Fair Market Value in excess of two percent of the Corporation's consolidated assets shown in the audited financial statements of the Corporation for its most recently ended fiscal year for which such financial statements are available; or

(3) 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 (or any rights to acquire any securities of the Corporation or any Subsidiary) to any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value in excess of two percent of the Corporation's consolidated assets shown in the audited financial statements of the Corporation for its most recently ended fiscal year for which such financial statements are available, other than the issuance of securities upon the conversion of convertible securities of the Corporation or any Subsidiary that were not acquired by such Interested Stockholder (or such Affiliate or Associate) from the Corporation or a Subsidiary; or

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

(5) any transaction involving the Corporation or any Subsidiary (whether or not with or into or otherwise involving an Interested Stockholder), and including, without limitation, any reclassification of securities (including any reverse stock split), or recapitalization, or reorganization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries, or any self tender offer for or repurchase of securities of the Corporation by the Corporation or any Subsidiary, or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder), which in any such case has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of securities or securities convertible into securities of the Corporation or any Subsidiary that is directly or indirectly beneficially owned by any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(6) any agreement, contract, or other arrangement providing for any one or more of the actions specified in the foregoing clauses (1) through (5).

shall require the affirmative vote of the holders of at least eighty percent of the combined voting power of the then outstanding shares of the Voting Stock, in each case voting together as a single class (it being understood that for purposes of this Article Ten, each share of the Voting Stock shall have the number of votes granted to it pursuant to Article Four of the Corporation's Certificate of Incorporation, as amended or any designation of the rights, powers, and preferences of any class or series of Preferred Stock made pursuant to said Article Four (a "Preferred Stock Designation"). Such affirmative vote shall be required notwithstanding any provision of law or any other provision of the Corporation's Certificate of Incorporation, as amended, or any agreement with any national securities exchange or otherwise which might permit a lesser vote or no vote and in addition to any affirmative vote required of the holders of any class or series of Voting Stock pursuant to law, the Corporation's Certificate of Incorporation, as amended, the Corporation's Bylaws, as amended, any Preferred Stock Designation, or otherwise.

(B) The term "Business Combination" as used in this Article Ten shall mean any transaction that is referred to in any one or more clauses (1) through (6) of Paragraph 1 (A) of this Article Ten

2. The provisions of Paragraph 1 (A) of this Article Ten shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law, any other provision of the Corporation's Certificate of Incorporation, as amended, the Corporation's Bylaws, as amended, any Preferred Stock Designation, or any agreement with any national securities exchange, if in the case of a Business Combination that does not involve any cash or other consideration being received by the stockholders of the Corporation, solely in their respective capacities as stockholders of the Corporation, the condition specified in the following paragraph (A) is met, or, in the case of any other Business Combination, the conditions specified in the following paragraph (A) or the conditions specified in the following paragraph (B) are met.

(A) before or after the Determination Date, such Business Combination shall have been approved by a majority of the Continuing Directors, or

(B) each of the five conditions specified in the following clauses (1) through (5) shall have been met.

(1) the aggregate amount of the cash and the Fair Market Value as of the Consummation Date of any consideration other than cash to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the higher of the following (it being intended that the requirements of this clause (B)(1) shall be required to be met with respect to all shares of Common Stock outstanding whether or not the Interested Stockholder has acquired any shares of the Common Stock):

(i) if applicable, the highest per share price (including any brokerage commissions, transfer taxes, and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder to acquire any share of Common Stock in connection with (a) the acquisition by the Interested Stockholder of beneficial ownership of shares of Common Stock in the period beginning two years immediately prior to the Announcement Date and ending on the Consummation Date, or (b) in the transaction in which it became an Interested Stockholder, whichever is higher, or

(ii) the Fair Market Value per share of Common Stock on the Announcement Date or on the Determination Date, whichever is higher, and

in computing prices per share of Common Stock under this paragraph (B)(1), all such per share prices shall be adjusted to reflect fairly any intervening stock split, stock dividend, reverse stock split, recapitalization, reorganization, or similar event affecting the number of shares of Common Stock outstanding and the market price per share of outstanding Common Stock, and

(2) the aggregate amount of the cash and the Fair Market Value as of the Consummation Date of any consideration other than cash to be received per share by holders of shares of any class or series of Voting Stock (other than Common Stock) shall be at least equal to the highest of the following (it being intended that the requirements of this clause (B)(2) shall be required to be met with respect to every class and series of such outstanding Voting Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class or series of such Voting Stock):

(i) if applicable, the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by or on behalf of the Interested Stockholder to acquire any share of such class or series of Voting Stock in connection with (a) the acquisition by the Interested Stockholder of beneficial ownership of shares of such class or series of Voting Stock within the period beginning two years immediately prior to the Announcement Date and ending on the Consummation Date, or (b) in the transaction in which it became an Interested Stockholder, whichever is higher,

(ii) if applicable, the highest preferred amount per share to which the holders of shares of such class or series of Voting Stock are entitled in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the Corporation, regardless of whether the Business Combination to be consummated constitutes such an event, or

(iii) the Fair Market Value per share of such class or series of Voting Stock on the Announcement Date or the Determination Date, whichever is higher, and

in computing prices per share of Voting Stock other than Common Stock under this paragraph (B)(2), all such per share prices shall be adjusted to reflect fairly any intervening stock split, stock dividend, reverse stock split, recapitalization, reorganization, or similar event affecting the number of shares of such Voting Stock outstanding and the market price per share of such outstanding Voting Stock, and

(3) the consideration to be received by holders of a particular class or series of outstanding Voting Stock (including Common Stock) shall be in cash or in the same form and in the same relative proportion as was previously paid to acquire directly or indirectly beneficially shares of such class or

series of Voting Stock that are beneficially owned by or on behalf of the Interested Stockholder and, if the Interested Stockholder beneficially owns shares of any class or series of Voting Stock that were acquired with varying forms of consideration, the form of consideration to be received by each holder of such class or series of Voting Stock shall be either cash or the form and in the same relative proportion used by the Interested Stockholder to acquire beneficially the largest number of shares of such class or series of Voting Stock beneficially owned by or on behalf of it prior to the Announcement Date, and

(4) after such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination:

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

(ii) without the prior approval of a majority of the Continuing Directors, such Interested Stockholder shall not have caused any material change in the Corporation's business or capital structure, including, without limitation, the issuance of shares of capital stock of the Corporation to any third party, and

(iii) there shall have been (a) no failure to declare and pay at the regular date therefor the full amount of dividends (whether or not cumulative) on any outstanding Preferred Stock in accordance with the applicable Preferred Stock Designation, except as approved by a majority of the Continuing Directors, (y) no reduction in the annual rate of dividends paid on Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (z) an increase in such annual rate of dividends (as necessary to prevent any such reduction) in the event of any reclassification (including any reverse stock split), recapitalization, reorganization, self tender offer, or any similar transaction which has the effect of reducing the number of outstanding shares of the Common Stock, unless the failure so to increase such annual rate was approved by a majority of the Continuing Directors, and

(5) a proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules, and regulations), whether or not the Corporation is then subject to such requirements, shall be mailed by and at the expense of the Interested Stockholder at least thirty days prior to the consummation of such Business Combination to all the stockholders of the Corporation (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions), and shall contain at the front thereof in a prominent place (i) any recommendations as to the advisability (or inadvisability) of the Business Combination which Continuing Directors, if any, may choose to state, and (ii) the opinion of a reputable national investment banking firm as to the fairness (or not) of such Business Combination from the point of view of the remaining stockholders of the Corporation other than the Interested Stockholder and its Affiliates and Associates (such investment banking firm to be engaged solely on behalf of the stockholders other than the Interested Stockholder and its Affiliates and Associates, to be paid a reasonable fee for its services by the Corporation upon receipt of such opinion, to be unaffiliated with such Interested Stockholder and its Affiliates and Associates, and, if there are at the time any Continuing Directors, to be selected by a majority of the Continuing Directors).

### 3 For purposes of this Article Ten

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

(B) "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary or any employee benefit plan of the Corporation or any Subsidiary) who or which:

(1) is the beneficial owner, directly or indirectly, in the aggregate of more than ten percent (or, for the purposes of paragraph 5 of this Article Ten, five percent or more) of the combined voting power of the then outstanding shares of Voting Stock; or

(2) is an Affiliate or Associate of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, in the aggregate of ten percent or more (or, for the purposes of Paragraph 5 of this Article Ten, five percent or more) of the combined voting power of the then outstanding shares of Voting Stock; or

(3) is an assignee of or has otherwise succeeded to the beneficial ownership of any shares of Voting Stock that were at any time within the two-year period immediately prior to the date in question beneficially owned by an Interested Stockholder, 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.

## 3.4 AFFILIATE LAW

(C) A person shall be a "beneficial owner" of any Voting Stock that:

- (1) such person or any of its Affiliates or Associates beneficially owns, directly or indirectly; or
- (2) such person or any of its Affiliates or Associates has (a) the right to acquire (whether or not such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (b) the right to vote or direct the vote pursuant to any agreement, arrangement, or understanding; or
- (3) are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement, or understanding for the purpose of acquiring, holding, voting, or disposing of any shares of Voting Stock.

(D) For the purposes of determining whether a person is an Interested Stockholder pursuant to Paragraph 3 (B) of this Article Ten, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned by such Interested Stockholder through application of Paragraph 3.(C) of this Article Ten but shall not include any other shares of Voting Stock that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(E) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-3 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on May 1, 1997.

(F) "Subsidiary" shall mean any corporation of which a majority of any class of its equity securities is owned, directly or indirectly, by the Corporation or by a Subsidiary or by the Corporation and one or more Subsidiaries, provided, however, that for the purposes of the definition of Interested Stockholder set forth in Paragraph 3 (B) of this Article Ten, the term "Subsidiary" shall mean only a corporation of which a majority of each class of Voting Stock is owned, directly or indirectly, by the Corporation.

(G) "Continuing Director" shall mean any member of the Board of Directors of the Corporation who is unaffiliated with, and not a nominee of, the Interested Stockholder or any Affiliate or Associate of the Interested Stockholder and who was a member of the Board of Directors prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director who is unaffiliated with, and not a nominee of, the Interested Stockholder and who is recommended to succeed a Continuing Director by a majority of Continuing Directors then on the Board of Directors.

(H) "Fair Market Value" shall mean: (1) in the case of cash, the amount of such cash; (2) in the case of stock, the highest closing sale price during the thirty day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange—Listed Stocks, or, if such stock is not quoted on the New York Stock Exchange—Composite Tape, on the principal United States securities exchange registered under the Securities Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing sales price or bid quotation with respect to a share of such stock during the thirty day period immediately preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by a majority of the Continuing Directors in good faith; and (3) in the case of stock of any class or series that is not traded on any United States registered securities exchange, nor in the over-the-counter market or in case of property other than cash or stock, the fair market value of such stock or property on the date in question as determined by a majority of the Continuing Directors in good faith.

(I) In the event of any Business Combination in which the Corporation survives, the phrase "any consideration other than cash to be received" as used in Paragraphs 2.(B)(1) and (2) of this Article Ten shall include the shares of Common Stock and/or the shares of any other class of outstanding Voting Stock retained by the holders of such shares.

(J) "Announcement Date" shall mean the date of first public announcement of the proposed Business Combination.

(K) "Determination Date" shall mean the date on which the Interested Stockholder became an Interested Stockholder.

(L) "Consummation Date" shall mean the date of the consummation of the Business Combination.

(M) The term "Voting Stock" shall mean all outstanding shares of capital stock of all classes and series of the Corporation issued from time to time and which by their terms are entitled to vote generally in the election of directors of the Corporation, in each case hereunder voting together as a single class.

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 Ten including, without limitation:

(A) whether a person is an Interested Stockholder

(B) the length of time shares of Voting Stock are owned by any person.

(C) the number of shares of Voting Stock beneficially owned by any person;

(D) whether a person is an Affiliate or Associate of another person;

(E) whether the requirements of Paragraph 2.(B) of this Article Ten have been met with respect to any Business Combination;

(F) whether the assets that are the subject of any Business Combination here, or the consideration to be received for the issuance or transfer of securities by the Corporation or any Subsidiary to any Business Combination has, an aggregate Fair Market Value of more than two percent of the Corporation's consolidated net assets as shown on the Corporation's audited financial statements for its most recently ended fiscal year for which such financial statements are available, and

(G) such other matters with respect to which a determination is required under this Article Ten.

The good faith determination of a majority of the Continuing Directors on such matters shall be conclusive and binding for all purposes of this Article Ten.

5. Any direct or indirect purchase or other acquisition by the Corporation of any Voting Stock of any class from any Interested Stockholder at a price in excess of the Fair Market Value of such Voting Stock (determined as of the date of such purchase or acquisition) shall, except as hereinafter provided, require the affirmative vote of the holders of that amount of the voting power of the outstanding Voting Stock equal to the sum of (i) the voting power of the outstanding shares of Voting Stock of which the Interested Stockholder is the beneficial owner and (ii) a majority of the voting power of the outstanding shares of Voting Stock of which the Interested Stockholder is not the beneficial owner, voting together as a single class. Such affirmative vote shall be required notwithstanding any provision of law or any other provision of the Corporation's Certificate of Incorporation, as amended, the Corporation's Bylaws, as amended, or any agreement with any national securities exchange or otherwise that might permit a lesser vote or no vote and in addition to any affirmative vote required of the holders of any class or series of Voting Stock pursuant to law, the Corporation's Certificate of Incorporation, as amended, the Corporation's Bylaws, as amended, or any Preferred Stock Designation, provided, however, that no such affirmative vote shall be required with respect to the Corporation's purchase or any other acquisition of securities made as part of (a) a tender or exchange offer by the Corporation to purchase securities of the same class made on the same terms to all holders of such securities and complying with the applicable requirements of the United States securities laws and rules and regulations thereunder, (b) the redemption of any shares of preferred stock pursuant to the provisions of the Corporation's Certificate of Incorporation, as amended, or the applicable Preferred Stock Designation, or (c) an open market purchase program conducted in accordance with the requirements of Rule 10b-18 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, or any successor rule or regulation.

6. Nothing contained in this Article Ten shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

7. Any approval or recommendation of a majority of the Continuing Directors under this Article Ten must be obtained at a meeting of the Corporation's Board of Directors at which a quorum is present.

8. Notwithstanding anything contained in the Corporation's Certificate of Incorporation, as amended, to the contrary, the affirmative vote of the holders of at least eighty percent of the combined voting power of all then outstanding Voting Stock, voting together as a single class, shall be required to alter, amend, or repeal this Article Ten or to adopt any provision inconsistent therewith, provided, however, that this Paragraph 8 shall not apply to, and such eighty percent vote shall not be required for, any amendment, repeal, or adoption, recommended by a majority of the Continuing Directors.