

MD 6-8-98

FORM PTO-161SA
Expires 06/30/99
OMB 0651-0027

06-19-1998



100742796

TRADEMARKS ONLY

HEET

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID # _____
- Correction of PTO Error
Reel # _____ Frame # _____
- Corrective Document
Reel # _____ Frame # _____

Conveyance Type

- Assignment License
- Security Agreement Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name CORPORATE PROPERTY INVESTORS

03 12 1998

Formerly _____

- Individual General Partnership Limited Partnership Corporation Association
- Other BUSINESS TRUST
- Citizenship/State of Incorporation/Organization MASSACHUSETTS

Receiving Party

Mark if additional names of receiving parties attached

Name CORPORATE PROPERTY INVESTORS, INC.

DBA/AKA/TA _____

Composed of _____

Address (line 1) 305 EAST 47TH STREET

Address (line 2) _____

Address (line 3) NEW YORK

NY

State/Country

10017

Zip Code

- Individual General Partnership Limited Partnership
- Corporation Association
- Other _____

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Citizenship/State of Incorporation/Organization

DELAWARE

06/18/1998

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 DP
400.00 DP

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Mail documents to be recorded with required cover sheet(s) information to:
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Expires 06/30/99
CMR 0651-0227

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U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

#

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

| Trademark Application Number(s) | | | Registration Number(s) | | |
|---------------------------------|----------------------|----------------------|--------------------------------------|--------------------------------------|--------------------------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="1367032"/> | <input type="text" value="1642992"/> | <input type="text" value="1844703"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="1792904"/> | <input type="text" value="1642993"/> | <input type="text" value="1816251"/> |
| <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="1215216"/> | <input type="text" value="1200651"/> | <input type="text" value="2007863"/> |

Number of Properties

Enter the total number of properties involved.

#

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment: Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

SCOTT A. SCHLEIFSTEIN

Name of Person Signing

Signature

6/5/98

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

FORM PTO-1618C
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
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Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)
 Corporation Association
 Other

Citizenship/State of Incorporation/Organization

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

1233008 1761678
1199848
1821650
1213441
1323693
1566358
1792905

AGREEMENT AND PLAN OF REORGANIZATION, dated as of March 12, 1998, among Corporate Property Investors, a Massachusetts business trust ("CPI"), CPI Intermediate Corp., a Massachusetts corporation and a wholly owned subsidiary of CPI ("CPI II"), and Corporate Property Investors, Inc., a Delaware corporation and a wholly owned subsidiary of CPI II ("CPI Delaware").

WHEREAS CPI desires to consummate an internal reorganization through which it intends to become a corporation organized under the laws of the State of Delaware;

WHEREAS the parties hereto intend (i) that CPI merge with and into CPI II and that CPI II continue as the surviving corporation in such merger ("Merger I"), and thereafter (ii) that CPI II merge with and into CPI Delaware and that CPI Delaware continue as the surviving corporation in such merger ("Merger II" and, together with Merger I, the "Mergers"), in each case upon the terms and subject to the conditions herein set forth and in accordance with the laws of the Commonwealth of Massachusetts and the laws of the State of Delaware, and

WHEREAS at a meeting held on February 5, 1998, the Board of Trustees of CPI, and the Boards of Directors of CPI II and CPI Delaware, by unanimous written consent, dated as of February 17, 1998, have approved the Mergers upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I

Mergers

SECTION 1.01. Mergers.

(a) Upon the terms and subject to the conditions set forth in this Agreement and in accordance with Section 83 of the Massachusetts Business Corporation Law (the "MBCL"), CPI shall be merged with and into CPI II at the Effective Time of Merger I (as defined below). Following Merger I, the separate existence of CPI shall

cease, and CPI II shall be the surviving corporation and shall succeed to and assume all the rights, assets, liabilities and obligations of CPI in accordance with the MBCL (including, without limitation, as contemplated by Article IV).

(b) Following the Effective Time of Merger I, upon the terms and subject to the conditions set forth in this Agreement and in accordance with Section 79 of the MBCL and Section 252 of the Delaware General Corporation Law (the "DGCL"), CPI II shall be merged with and into CPI Delaware at the Effective Time of Merger II (as defined below). Following Merger II, the separate corporate existence of CPI II shall cease and CPI Delaware shall be the surviving corporation and continue its corporate existence under the laws of the State of Delaware and shall succeed to and assume all the rights, assets, liabilities and obligations of CPI II, the successor in interest of CPI, in accordance with the DGCL (including, without limitation, as contemplated by Article IV).

SECTION 1.02. Effective Time of the Mergers.

(a) Merger I shall become effective as of the date and time (the "Effective Time of Merger I") the appropriate articles of merger are filed with the Secretary of State of the Commonwealth of Massachusetts in accordance with the MBCL.

(b) Merger II shall become effective as of the date and time (the "Effective Time of Merger II" and together with the Effective Time of Merger I, the "Effective Time of the Mergers") the following actions are completed, such actions to be taken as promptly as possible after the Effective Time of Merger I: (i) this Agreement or an appropriate certificate of merger is filed with the Secretary of State of the State of Delaware in accordance with the DGCL and (ii) appropriate articles of merger are filed with the Secretary of State of the Commonwealth of Massachusetts in accordance with the MBCL.

SECTION 1.03. Further Assurances. From time to time, as and when required by CPI Delaware or by its successors or assigns, there shall be executed and delivered on behalf of CPI and CPI II, as applicable, such deeds and other instruments, and there shall be taken or caused to be taken by them, all such further and other action, as shall be appropriate, advisable or necessary in order to vest, perfect or confirm, of record or otherwise, in CPI Delaware, the title to and possession of all property, interests, assets, rights, privileges, immunities, powers, franchises

and authority of CPI and CPI II, and otherwise to carry out the purpose of this Agreement, and the officers and directors of CPI Delaware are fully authorized in the name and on behalf of CPI and CPI II or otherwise, to take any and all such action and to execute and deliver any and all such deeds and other instruments.

ARTICLE II

Names, Organizational Documents and Officers and Directors

SECTION 2.01. Names of Surviving Corporations.

(a) The name of the surviving corporation in Merger I shall be: "CPI Intermediate Corp."

(b) The name of the surviving corporation in Merger II shall be: "Corporate Property Investors, Inc."

SECTION 2.02. Articles of Organization and Certificate of Incorporation.

(a) The Articles of Organization of CPI II in effect immediately prior to the Effective Time of Merger I shall be the Articles of Organization of the surviving corporation in Merger I after the Effective Time of Merger I until amended thereafter as provided therein or by law.

(b) The Certificate of Incorporation of CPI Delaware in effect immediately prior to the Effective Time of Merger II shall be the Certificate of Incorporation of the surviving corporation in Merger II after the Effective Time of Merger II until amended thereafter as provided therein or by law.

SECTION 2.03. By-laws. (a) The By-laws of CPI II in effect at the Effective Time of Merger I shall be the By-laws of the surviving corporation of Merger I after the Effective Time of Merger I until amended thereafter as provided therein or by law.

(b) The By-laws of CPI Delaware in effect at the Effective Time of Merger II shall be the By-laws of the surviving corporation of Merger II after the Effective Time of Merger II until amended thereafter as provided therein or by law.

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SECTION 2.04. Directors. (a) At the Effective Time of Merger I, the Directors of CPI II shall be the directors of the surviving corporation in Merger I.

(b) At the Effective Time of Merger II, the individuals listed on Schedule A attached hereto shall be the directors of CPI Delaware and shall serve in the class of directors as indicated next to such director's name on Schedule A, such directors to hold office until the first, second and third annual meeting of stockholders as indicated on Schedule A and thereafter to serve staggered three-year terms until the expiration of such term, or their prior resignation, removal or death, subject to the Certificate of Incorporation and By-laws of CPI Delaware.

SECTION 2.05. Officers. (a) The individuals who are the officers of CPI immediately prior to the Effective Time of Merger I shall be the officers of CPI II until thereafter they cease to be officers in accordance with the MBCL and the Articles of Organization and By-laws of CPI II.

(b) The individuals who are the officers of CPI II immediately prior to the Effective Time of Merger II shall be the officers of CPI Delaware until thereafter they cease to be officers in accordance with the DGCL and the Certificate of Incorporation and By-Laws of CPI Delaware.

ARTICLE III

Conversion and Exchange of Stock

SECTION 3.01. Conversion. (a) At the Effective Time of the Merger I, each of the following transactions shall be deemed to occur simultaneously:

(x) each (i) common share of beneficial interest, par value \$1 per share, of CPI (the "CPI Common Shares"), issued and outstanding or held in the treasury of CPI immediately prior to the Effective Time of Merger I shall, by virtue of Merger I and without any action on the part of the holder thereof, be converted into the right to receive one one-hundredth (1/100th) of one validly issued, fully paid and nonassessable share of CPI II common stock, par value \$.01 per share (the "CPI II Common Stock") and (ii) CPI 6.5% First Series Preference Share, par value \$1000 per share (the "CPI Preference Shares"), issued and outstanding immediately prior to the Effective Time of Merger I shall, by virtue of Merger I and without any action on the part of the holder thereof, be converted into the right to receive one validly issued, fully paid and nonassessable share of

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CPI II preferred stock, par value \$1.00 per share (the "CPI II Preferred Stock"), having rights, restrictions, privileges and preferences substantially the same as those provided for with respect to the CPI Preference Shares; and

(y) Each share of CPI II Common Stock and CPI II Preferred Stock, issued and outstanding immediately prior to the Effective Time of Merger I and held by CPI or any subsidiary of CPI shall be canceled without any consideration being issued or paid therefor.

(b) At the Effective Time of Merger II, each of the following transactions shall be deemed to occur simultaneously:

(x) Each share of (i) CPI II Common Stock or fraction thereof issued and outstanding or held in the treasury of CPI II immediately prior to the Effective Time of Merger II shall, by virtue of Merger II and without any action on the part of the holder thereof, be converted into the right to receive 100 shares, in the case of whole shares of CPI II Common Stock, and 100 times such fraction of a share of CPI II Common Stock, in the case of fractional shares of CPI II Common Stock, of validly issued, fully paid and nonassessable shares of the common stock, par value \$.01 per share (the "CPI Delaware Common Stock"), of CPI Delaware (the "Merger II Common Consideration") and (ii) CPI II Preferred Stock issued and outstanding immediately prior to the Effective Time of Merger II shall, by virtue of Merger II and without any action on the part of the holder thereof, be converted into the right to receive one validly issued, fully paid and nonassessable share of CPI Delaware preferred stock, par value \$1000 per share (the "CPI Delaware Preferred Stock"), having rights, restrictions, privileges and preferences substantially the same as those provided for with respect to the CPI Preference Shares; and

(y) Each share of CPI Delaware Common Stock and CPI Delaware Preferred Stock, issued and outstanding immediately prior to the Effective Time of Merger II and held by CPI II or any subsidiary of CPI II shall be canceled without any consideration being issued or paid therefor.

SECTION 3.02. Exchange. (a) After the Effective Time of Merger I, (i) each certificate theretofore representing CPI Common Shares either held in treasury by CPI or issued and outstanding shall represent one one-hundredth (1/100th) of the same number of shares of CPI II Common Stock and (ii) each certificate theretofore representing CPI Preference Shares issued and outstanding

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shall represent the same number of shares of CPI II Preferred Stock.

(b) After the Effective Time of Merger II,
(i) each certificate theretofore representing whole or fractional shares of CPI II Common Stock either held in treasury by CPI II or issued and outstanding shall represent the right to receive the Merger II Common Consideration payable with respect thereto and (ii) each certificate theretofore representing CPI II Preferred Stock issued and outstanding shall represent the same number of shares of CPI Delaware Preferred Stock.

ARTICLE IV

Certain Plans

SECTION 4.01 (a) At the Effective Time of Merger I, each employee stock plan, employee benefit plan, incentive compensation plan and dividend reinvestment plan of CPI shall be assumed by, and continue to be the plan of, CPI II. To the extent any employee stock plan, employee benefit plan, incentive compensation plan or dividend reinvestment plan of CPI or any of its subsidiaries provides for the issuance or purchase of, or otherwise relates to, CPI Common Shares, after the Effective Time of Merger I, such plan shall be deemed to provide for the issuance or purchase of, or otherwise relate to, CPI II Common Stock.

(b) At the Effective Time of Merger II, each employee stock plan, employee benefit plan, incentive compensation plan and dividend reinvestment plan of CPI or CPI II shall be assumed by, and continue to be the plan of, CPI Delaware. To the extent any employee stock plan, employee benefit plan, incentive compensation plan or dividend reinvestment plan of CPI or CPI II or any of its subsidiaries provides for the issuance or purchase of, or otherwise relates to, CPI Common Shares or CPI II Common Stock, after the Effective Time of Merger II, such plan shall be deemed to provide for the issuance or purchase of, or otherwise relate to, CPI Delaware Common Stock.

ARTICLE V

Condition

SECTION 5.01 (a) Consummation of Merger I is subject to the satisfaction at or prior to the Effective Time of Merger I of the condition that this Agreement and

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Merger I shall have been adopted and approved by the shareholders of CPI and the sole stockholder of CPI II.

(b) Consummation of Merger II is subject to the satisfaction at or prior to the Effective Time of Merger II of the condition that this Agreement and Merger II shall have been adopted and approved by the sole stockholder of each of CPI II and CPI Delaware.

ARTICLE VI

Appointment of Agent; Availability of Agreement

SECTION 6.01. Appointment of Agent for Service of Process. Pursuant to Section 79 of the MBCL, CPI Delaware agrees that it may be sued in the Commonwealth of Massachusetts for any prior obligation of CPI or CPI II, or any constituent thereof, any prior obligation of CPI Delaware, or any constituent thereof, or any obligation thereafter incurred by CPI Delaware and irrevocably appoints the Secretary of State of the Commonwealth of Massachusetts as agent to accept service of process in any proceeding for enforcement of any obligation of CPI or CPI II, as well as for enforcement of any obligation of CPI Delaware arising from the Mergers. The Massachusetts Secretary of State shall mail a copy of such process to:

Corporate Property Investors, Inc.
Three Dag Hammarskjold Plaza
305 East 47th Street
New York, NY 10017
Attn: General Counsel

SECTION 6.02. Availability of the Agreement. CPI Delaware shall maintain a copy of this Agreement at its executive offices located at:

Three Dag Hammarskjold Plaza
305 East 47th Street
New York, NY 10017
Attn: General Counsel

Upon the request of a shareholder or stockholder of CPI, CPI II or CPI Delaware, as applicable, CPI Delaware shall provide a copy of this Agreement to such stockholder without cost thereto.

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ARTICLE VII

General

SECTION 7.01. Termination and Abandonment. At any time prior to the consummation of the Mergers, this Agreement may be terminated and the Mergers abandoned by CPI, CPI II or CPI Delaware.

SECTION 7.02. Amendment. This Agreement may be amended at any time prior to the Effective Time of the Mergers with the mutual consent of CPI, CPI II and CPI Delaware; provided, however, that this Agreement may not be amended after it has been adopted by the shareholders of CPI in any manner not permitted under applicable law.

SECTION 7.03. Headings. The headings set forth herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

SECTION 7.04. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

SECTION 7.05. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, except to the extent the laws

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of the Commonwealth of Massachusetts or the State of Delaware shall mandatorily apply to either of the Mergers.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed on its behalf by its officers hereunto duly authorized, all as of the day and year first above written.

CORPORATE PROPERTY INVESTORS*,

by Harold Rolfe
 Name: Harold Rolfe
 Title: Vice President & General Counsel

CPI INTERMEDIATE CORP.,

by Harold Rolfe
 Name: Harold Rolfe
 Title: Vice President

by Robert Lowenbach
 Name: Robert Lowenbach
 Title: TREAS

CORPORATE PROPERTY
 INVESTORS, INC.,

by Harold Rolfe
 Name: Harold Rolfe
 Title: Vice President & General Counsel

* Corporate Property Investors is the designation of the Trustees under a Declaration of Trust, as amended and restated, on file with the Secretary of the Commonwealth of Massachusetts, and neither the shareholders nor the Trustees, officers, employees or agents of the Trust created thereby, nor any of their personal assets, shall be liable hereunder, and all persons dealing with the Trust shall look solely to the Trust estate for the payment of any claims hereunder or for the performance of any obligations hereunder.

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Schedule A

| <u>Name of Director</u> | <u>Director Class</u> | <u>Annual Meeting at Which Term Expires</u> |
|-------------------------------|-----------------------|---|
| David P. Feldman | Class I | 1999 |
| Damon Mezzacappa | Class I | 1999 |
| Daniel Rose | Class I | 1999 |
| Jan H. W. R. van der Vlist | Class I | 1999 |
| Abdlatif Y. Al-Hamad | Class II | 2000 |
| Robert E. Angelica | Class II | 2000 |
| Gilbert Butler | Class II | 2000 |
| Hans C. Mautner | Class II | 2000 |
| Saleh F. Alzouman | Class III | 2001 |
| Andrea Geisser | Class III | 2001 |
| S. Lawrence Prendergast | Class III | 2001 |
| Dirk van den Bos | Class III | 2001 |

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Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "CORPORATE PROPERTY INVESTORS, INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF MARCH, A.D. 1998, AT 12:30 O'CLOCK P.M.



Edward J. Freel

Edward J. Freel, Secretary of State

AUTHENTICATION

8964276

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REEL: 1743 FRAME: 0016498

2868824 8100

981091524

CERTIFICATE OF INCORPORATION
OF
CORPORATE PROPERTY INVESTORS, INC.

ARTICLE I

Name

The name of the corporation (which is hereinafter referred to as the "Corporation") is:
Corporate Property Investors, Inc.

ARTICLE II

Address

The address of the Corporation's registered office in the State of Delaware is The Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

ARTICLE III

Purpose

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

ARTICLE IV

Capitalization

The total number of shares of stock which the Corporation shall have authority to issue is 36,209,249, consisting of 209,249 shares of 6.50% First Series Preferred Stock, par value \$1,000 per share (hereinafter referred to as the "6.50% First Series Preferred Stock") and 36,000,000 shares of Common Stock, par value \$.01 per share (hereinafter referred to as the "Common Stock"). The number of authorized shares of the Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware (or any successor provision thereto), and no vote of the holders of the Common Stock voting separately as a class shall be required therefor.

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The 6.50% First Series Preferred Stock shall have the designation, powers, preferences and rights and the qualifications, limitations and restrictions as set forth in Exhibit A hereto.

The Common Stock shall be subject to the express terms of the 6.50% First Series Preferred Stock. Except as may be provided in this Certificate of Incorporation or by applicable law, the holders of shares of Common Stock shall be entitled to one vote for each such share upon all questions presented to the stockholders, the holders of shares of Common Stock shall have the exclusive right to vote for the election of directors and for all other purposes subject to the rights of the holders of shares of 6.50% First Series Preferred Stock or any other series or class of stock as set forth in this Certificate of Incorporation, and the holders of shares of 6.50% First Series Preferred Stock shall not be entitled to receive notice of any meeting of stockholders at which they are not entitled to vote; *provided, however,* that, except as otherwise required by law, the holders of shares of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation that relates solely to the terms of the 6.50% First Series Preferred Stock if the holders thereof are entitled, either separately or together with the holders of one or more other such series or class, to vote thereon pursuant to this Certificate of Incorporation or pursuant to the General Corporation Law of the State of Delaware. The holders of shares of Common Stock shall at all times, except as otherwise provided in this Certificate of Incorporation or as required by law, vote as one class, together with the holders of any other class or series of stock of the Corporation accorded such general voting rights.

Subject to applicable law and the rights, if any, of the holders of shares of 6.50% First Series Preferred Stock or any class or series of stock having a preference over or the right to participate with the shares of Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Common Stock at such times and in such amounts as the Board of Directors in its discretion shall determine.

Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of shares of 6.50% First Series Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the distribution of assets of the Corporation upon such dissolution, liquidation or winding up of the Corporation, the holders of shares of Common Stock, as such, shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them.

The Corporation shall be entitled to treat the person in whose name any share of its stock is registered as the owner thereof for all purposes and shall not be bound to recognize any equitable or other claim to, or interest in, such share on the part of any other person, whether or not the Corporation shall have notice thereof, except as expressly provided by applicable law.

ARTICLE V

By-Laws

In furtherance of, and not in limitation of, the powers conferred by law, the Board of Directors is expressly authorized and empowered:

(1) to adopt, amend or repeal the By-laws of the Corporation; *provided, however*, that the By-laws adopted by the Board of Directors under the powers hereby conferred may be amended or repealed by the Board of Directors or by the stockholders having voting power with respect thereto, *provided further* that, in the case of amendments by stockholders, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class, shall be required in order for the stockholders to alter, amend or repeal any provision of the By-laws or to adopt any additional By-law; and

(2) from time to time to determine whether and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Corporation, or any of them, shall be open to inspection of stockholders; and, except as so determined or as expressly provided in this Certificate of Incorporation, no stockholder shall have any right to inspect any account, book or document of the Corporation other than such rights as may be conferred by applicable law.

The Corporation may in its By-laws confer powers upon the Board of Directors in addition to the foregoing and in addition to the powers and authorities expressly conferred upon the Board of Directors by applicable law.

ARTICLE VI

Board of Directors

The number of directors of the Corporation shall be fixed in such manner as prescribed by the By-laws of the Corporation and may be increased or decreased from time to time in such manner as prescribed by the By-laws but, in any event, shall not exceed 24.

Unless and except to the extent that the By-laws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

The directors, other than those who may be elected by the holders of any series or class of stock as set forth in this Certificate of Incorporation, shall be divided into three classes, designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of directors constituting the entire Board of Directors. Class I directors shall be initially elected for a term expiring at the annual meeting of stockholders to be held in 1999, Class II directors shall be initially elected for a term expiring at the annual meeting of stockholders to be held in 2000, and Class III directors shall be initially elected for a term expiring at the annual meeting of stockholders to be held in 2001. Members of each class shall hold office until their successors are elected and qualified. At each annual meeting of the stockholders of the Corporation commencing with the 1999 annual meeting, directors elected to succeed those directors whose terms then expire shall be elected by a plurality vote of all votes cast at such meeting to hold office for a term expiring at the third succeeding annual meeting of stockholders after their election, with

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each director to hold office until his or her successor shall have been duly elected and qualified. No stockholder shall be permitted to cumulate votes at any election of directors.

Subject to the rights of the holders of shares 6.50% First Series Preferred Stock or any other series or class of stock as set forth in this Certificate of Incorporation, to elect additional directors under specified circumstances, vacancies resulting from death, resignation, retirement, disqualification, removal from office or other cause, and newly created directorships resulting from any increase in the authorized number of directors, may be filled only by the affirmative vote of a majority of the remaining directors, though less than a quorum of the Board of Directors, and directors so chosen shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which they have been elected expires and until such director's successor shall have been duly elected and qualified. No decrease in the number of authorized directors constituting the Board of Directors shall shorten the term of any incumbent director.

Subject to the rights of the holders of shares 6.50% First Series Preferred Stock or any other series or class of stock as set forth in this Certificate of Incorporation, to elect additional directors under specified circumstances, any director may be removed from office at any time, but only for cause and by the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class. For purposes of this Article VI, "cause" shall mean the wilful and continuous failure of a director to substantially perform such director's duties to the Corporation (other than any such failure resulting from incapacity due to physical or mental illness) or the wilful engaging by a director in gross misconduct materially and demonstrably injurious to the Corporation. All directors shall retire upon reaching the age of 70 years.

ARTICLE VII

Indemnification

Each person who is or was a director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted from time to time by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended (but, if permitted by applicable law, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) or any other applicable laws as presently or hereafter in effect. The Corporation may, by action of the Board of Directors, provide indemnification to employees and agents (other than a director or officer) of the Corporation, to directors, officers, employees or agents of a subsidiary, and to each person serving as a director, officer, partner, trustee, member, employee or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, at the request of the Corporation, with the same scope and effect as the foregoing indemnification of directors and officers of the Corporation. The Corporation shall be required to indemnify any person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors or is a proceeding to enforce such person's claim to indemnification pursuant to the rights granted by this Certificate of Incorporation or otherwise by the Corporation. Without limiting the generality or the effect of the foregoing, the Corporation may enter into one or more agreements with any person which provide for indemnification greater or different than that provided in this Article VII. Any amendment or repeal of this Article VII shall not adversely affect any right or protection existing hereunder in respect of any act or omission occurring prior to such amendment or repeal.

ARTICLE VIII

Directors' Liability

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director to the fullest extent permitted the General Corporation Law of the State of Delaware or by any other applicable law. Any amendment or repeal of this Article VIII shall not adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act or omission occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware shall be amended, to authorize corporate action further eliminating or limiting the liability of directors, then a director of the Corporation, in addition to the circumstances in which he is not liable immediately prior to such amendment, shall be free of liability to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

ARTICLE IX

Amendments

Except as may be expressly provided in this Certificate of Incorporation, the Corporation reserves the right at any time and from time to time to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and any other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed herein or by applicable law, and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whatsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the right reserved in this Article IX; *provided, however*, that any amendment or repeal of Article VII or Article VIII of this Certificate of Incorporation shall not adversely affect any right or protection existing thereunder in respect of any act or omission occurring prior to such amendment or repeal.

Notwithstanding anything contained in this Certificate of Incorporation to the contrary, and in addition to approval by the Board of Directors, the affirmative vote of the holders of at least 80 percent of the voting power of the then outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph (1) of Article V, Article VI or this second paragraph of this Article IX.

ARTICLE X

The name and mailing address of the sole incorporator is:

NAME

Thomas P. Auth

MAILING ADDRESS

Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

IN WITNESS WHEREOF, I, Thomas P. Auth, the sole incorporator of the Corporation, have executed this Certificate of Incorporation as of the 9th day of March, 1998, and DO HEREBY CERTIFY under the penalties of perjury that the facts stated in this Certificate of Incorporation are true.

Thomas P. Auth

Thomas P. Auth
Sole Incorporator