

August 17, 1983

To Our Clients

Takeovers: Convertible Preferred
Stock Dividend Plan

The Plan has now been used by three NYSE companies, Bell & Howell, ENSTAR and Lenox. In each case special circumstances dictated special provisions for the preferred that deviate from our suggested model form. Attached is our suggested model form and related memorandum describing the Plan. We again suggest that consideration be given to implementing the Plan before a takeover situation arises. On August 16, 1983 litigation attacking the Bell & Howell Plan was started in Delaware. The case is scheduled to be argued next week. The decision will be a major factor in determining whether to implement the Plan.

Those companies that do not have sufficient authorized blank check preferred or common stock to implement the Plan should consider obtaining stockholder authorization at the next annual or a special meeting. Since the Plan does not provide for supermajority votes or other shark repellents, and does provide for an increase in dividends, it should be much less difficult to obtain stockholder approval of the Plan than fair-price charter amendments, even for those companies with a large percentage of their stock held by institutions.

M. Lipton

The Convertible Preferred Stock Dividend Plan

The Convertible Preferred Stock Dividend Plan has been designed to:

- (1) protect stockholders against being frozen out in an unfair second-step merger following a front-end loaded tender offer,
- (2) enable those stockholders who wish to reject a tender offer and retain their equity interest to do so without loss of liquidity,
- (3) remove the ability of a raider to stampede stockholders into tendering their shares in order to protect themselves against loss of the tender offer premium or being locked into a minority position, and
- (4) protect against partial tender offers by bootstrap raiders who do not intend a second step until they can accomplish it by using the assets and credit of the target.

The Plan has been used by Bell & Howell, ENSTAR Corporation and Lenox. In each of those cases, however, the Plan was modified to meet a particular objective or problem. This memo describes the model for the Plan. The Bell & Howell Plan is the subject of litigation, the outcome of which could have a major impact on the Plan.

The Plan does not prevent tender offers and does not prevent a second-step merger after a raider has seized control. All it does is assure fair treatment of all stockholders and protect the rights of those who so desire to

continue their equity interest following a takeover. While there is to date only limited experience with the Plan, it does not appear to have any potential adverse impact on the market value or marketability of the corporation's stock. The NYSE will list the underlying common stock into which the preferred stock is convertible, and will list the convertible preferred stock if certain voting and other requirements are met.

The Plan does not interfere with negotiated deals or white knight deals and would have no impact on the typical white knight cash tender offer for 40% to 55% of the target's stock, followed by a second-step merger.

The Plan assumes that the corporation has authorized "blank check" preferred stock and authorized but unissued common stock in an amount approximately equal to or greater than the amount of common stock presently outstanding. Those companies that have sufficient authorized stock can implement the Plan through action by their board of directors alone. For those companies that do not have authorized blank check preferred stock and sufficient authorized common stock, it would be necessary to have a stockholder vote to authorize the requisite stock. Even if a stockholder vote were required, the vote should be more easily secured than a vote for fair

price charter amendments. In light of the stock split and increase in annual dividend involved in the Plan, institutions and other stockholders would be more likely to vote in favor of the Plan than for fair price charter amendments.

While the Plan can be put into effect after a tender offer has been made, it is most effective if it is done before there is a tender offer. It is something that every corporation should consider now, before it becomes a target. If the recent decision in the Datatab case, which casts doubt on the business judgment rule being applicable to responses to a tender offer by a target and which implies that a target is limited to only those responses necessary to facilitate an auction, were to be widely accepted (which we doubt), it might not be possible to implement the Plan after a tender offer is commenced.

The Plan is simple. The corporation distributes to its common stockholders a dividend in the form of a convertible preferred stock. The preferred is convertible into the same (or a larger) number of shares of common as are outstanding so that the distribution is the equivalent of a 2 for 1 (or greater) stock split, with the result that half (or more) of the outstanding equity is represented by the convertible preferred. In other words, a corporation with 10,000,000 shares of common distributes, as a dividend to the holders of

its common, a new issue of preferred that is convertible into an additional 10,000,000 shares of common. This is accomplished by creating a class of 2,000,000 shares of preferred with each share of preferred being convertible into 5 shares of common. One share of the preferred is distributed for each 5 shares of common. The corporation now has outstanding 10,000,000 shares of common and 2,000,000 shares of preferred, with the preferred being convertible into 10,000,000 shares of common. A holder of 100 shares of common has those 100 shares, plus 20 shares of preferred which are convertible into 100 shares of common. After the distribution the common and preferred would trade separately.

The distribution of preferred stock to the holders of common stock will be tax-free. Upon the distribution of the preferred stock, the stockholder's tax basis in his common stock will be allocated between the common stock and the distributed preferred stock based upon the relative fair market values of the common and the preferred stock. The holding period of the preferred stock will include the holding period of the common stock. The preferred stock (but not the common stock with respect to which the preferred is distributed) will constitute "section 306 stock". Thus, the amount received from a subsequent redemption or sale of the preferred stock by a common stockholder who retains a stock interest (preferred or common) in the corporation may be treated as ordi-

nary income, in the case of a sale, or dividend income, in the case of redemption, rather than capital gain. Sales of the preferred stock by minority stockholders who exercise no control over corporate affairs should, however, give rise to capital gain (measured by the difference between the amount received from the sale and the tax basis in the preferred), rather than ordinary income. If the preferred stock is converted into common stock of the corporation, there would be no recognition of gain on such conversion. The common stock received upon conversion would not be "section 306 stock" and would be eligible for capital gains treatment upon a subsequent sale.

For accounting purposes, we understand that the preferred stock will be reflected on the balance sheet as stockholders' equity, with an amount (in most cases equal to the par value of the common stock into which the preferred is convertible) being transferred from retained earnings and reflected as the stated value of the preferred stock. Hence, using the illustration set forth above, upon the issuance of 2,000,000 shares of preferred each of which is convertible into 5 shares of common stock, \$1 par value, \$10,000,000 would be transferred from retained earnings to the preferred stock account. The call price of the preferred (for redemption by the corporation after 15 years) and the liquidation preference should be determined in relation to the market value of the

common into which the preferred is convertible. Using the preceding example and assuming that the common trades at \$40 per share prior to the preferred stock dividend, the call price and the liquidation preference would be set at approximately \$100 per share (one-half of the market price multiplied by the number of shares of common into which the preferred is convertible). For financial reporting purposes, the preferred should be accounted for as a common stock equivalent. There should be no change in the method of calculating earnings per share, which would be adjusted in exactly the same manner as in the case of a stock split. If the preferred stock becomes redeemable at the holder's option upon the acquisition of 30% of the corporation's voting power by a third party, as described below, it should then be reflected on the balance sheet as a redeemable preferred. Issuance of the preferred stock should not prevent accounting for a subsequent acquisition by the corporation as a pooling. In considering adoption of the Plan, each corporation should review the accounting treatment of the preferred with its own accountants.

Since the distribution of the preferred is the equivalent of a 2 for 1 stock split, the cash dividend on the common should be reduced by 50% and the cash dividend on each share of the preferred set at slightly more (110% to 125%) than 5 times the halved common stock dividend. Thus the common stockholders, who receive one share of preferred stock for

every 5 shares of common, will receive a slightly higher aggregate annual cash dividend than they received prior to the distribution of the preferred. Since the dividend on the preferred will always be somewhat more than that on the common, there will be a disincentive for the holders of preferred to convert into common. Although the dividend on the preferred is designed to fluctuate along with that on the common, the terms of the preferred protect against a raider's attempting to discontinue the dividend on the preferred by reducing or eliminating dividends on the target's common. Upon the acquisition of 30% (this percentage could be set anywhere between 20% and 45%) of the target's voting power by a raider, the preferred dividend would become fixed at the level in existence prior to the 30% acquisition by the raider.

The preferred is noncallable for 15 or more years -- whatever period is set by the corporation, keeping in mind that too short a period might raise tax questions and that when the preferred becomes callable, the protection of the Plan disappears. Therefore, at least 15 years is recommended as the noncallable period. There is no sinking fund.

The preferred does not contain any blocking votes, shark repellents or other provisions inhibiting a tender offer or merger. The preferred generally votes with the common as one class, with each share of preferred having a number of

votes equal to one-half of the number of shares of common into which it is convertible. The preferred does, however, have a class vote with respect to the creation of an equity security ranking senior to (66-2/3% class vote), or on a parity with (50% class vote), the preferred stock. In addition, any amendment to the corporation's charter adversely affecting the terms of the preferred stock (other than an amendment pursuant to a merger agreement when there is no 30% stockholder) requires the vote of the holders of 80% or more of the preferred stock, voting as a class. In the event the corporation fails to pay a required dividend or make a required distribution on the preferred stock, or fails to redeem the preferred stock for cash at the request of the holder (as described below), the holders of the preferred have the right, voting separately as a class, to elect two directors at a special meeting called for that purpose.

If a raider acquires 30% (this percentage could be set anywhere between 20% and 45%) of the target's voting power, whether by means of a tender offer or other accumulation, and does not within 120 days consummate a second-step merger, the preferred is thereafter redeemable at the election of the holders, at any time, at a redemption price equal to the highest price paid by the raider during the last 12 months in acquiring such shares. The redemption price must be paid in cash unless there is a legal or contractual

restriction which prevents the target from effecting the redemption for cash, in which case the holder has the right to elect to redeem the preferred in exchange for common stock of the target, at the same redemption price, with the common stock valued at 85% of the current market price.

To protect the holders from being frozen out in a second-step merger following the acquisition by a raider of 30% of the corporation's voting power, the preferred contains a "flip-over" provision. In the event of a tender offer followed by a freezeout merger, the preferred becomes exchangeable for substitute preferred stock of the raider. The conversion rights thereby flip over, with the substitute preferred being convertible into the common stock of the raider. The conversion exchange ratio used to determine the amount of common stock of the raider into which the substitute preferred is convertible results in the substitute preferred being convertible into shares of common stock of the raider having a market value at the time of the conversion equal to not less than the highest price paid by the raider during the last 12 months in a tender offer for, or other acquisition of, shares of the target.

By means of the combined redemption and flip-over features, the holder of the preferred is assured of the ten-

der offer or other first-step price as a floor and has upside potential if there is a second-step merger and the market price of the raider's common goes up. The holder of the preferred has no market risk if the raider's common goes down after the second step merger. Under the flip-over conversion formula the holder of preferred always gets a sufficient number of shares of the raider to equal at least the tender offer or other first-step price.

Since a tender offer sets a floor value for the preferred and if there is a second-step merger after the tender offer, the preferred will have valuable conversion features after a tender offer is announced and should sell in the market at a premium over the tender offer price for the common. Therefore, there is little incentive for a holder of the preferred to tender unless there is a separate tender for the preferred at a price that reflects the premium. If the preferred distribution is the equivalent of a 2 for 1, 3 for 1 or 4 for 1 split, then 50%, 66-2/3% or 75% of the target's common equity is protected against being frozen out and is assured of the tender offer premium. This gives the stockholders of the target a real alternative to tendering in that with respect to the bulk of their holdings it protects them against being locked into a minority position and subjected to a future freezeout at a price less than the tender price.

The Plan presents a difficult problem to a raider contemplating a hostile tender offer. A raider must think twice about the economics of being faced with the issuance of a significant number of shares of its own common stock under the flip-over conversion exchange formula that is calculated on the basis of the greater of the tender offer price or the highest market price of the target's common prior to the date of conversion divided by the lower of the raider's market price on the date of the second-step merger or on the date of conversion. The raider is faced with a conversion exchange ratio that results in increased dilution as the market price of its common goes down, which dilution may further depress the market price of the raider's common stock.

One way for a raider to deal with the Plan is to tender for the target's preferred and common and to set a high (80% or greater) minimum condition in the tender offer with respect to both the preferred and the common so as to be faced with a relatively small number of shares of preferred in the second-step merger. Alternatively, a raider could tender only for common, but at a sufficient premium and with such a high minimum condition (e.g., for 80% of the common on a fully diluted basis) that the holders of the preferred would be likely to convert and tender -- again leaving a relatively

small number of shares of preferred in the second-step merger. Of course, in each of these cases the objectives of the Plan are achieved -- elimination of partial and front-end loaded tender offers, assurance that all stockholders will have a reasonable opportunity to receive the full cash bid for their shares, and reduction of bootstrap bids by raiders who must use their own securities and the target's assets to finance the takeover.

Since the redemption and flip-over provisions become effective only when a raider acquires 30% of the voting power, and since the preferred expressly provides that the flip-over provisions do not apply if a second-step merger occurs pursuant to a merger agreement entered into when there is no such 30% holder, the Plan does not inhibit negotiated mergers of either the unitary or two-step type -- even if the second step follows a first-step tender offer for more than 30% of the voting power (assuming that no raider has, prior to such time, achieved a 30% stake).

Wachtell, Lipton, Rosen & Katz

[FORM OF CHARTER AMENDMENT -- CONVERTIBLE
PREFERRED STOCK DIVIDEND PLAN]

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF
[SERIES __ CONVERTIBLE PREFERRED STOCK]

OF

[Name of Company]

Pursuant to Section 151 of the General Corporation Law
of the State of Delaware

_____, a Delaware corporation (the
"Corporation"), certifies that pursuant to the authority
contained in Article __ of its Certificate of Incorporation,
and in accordance with the provisions of Section 151 of the
General Corporation Law of the State of Delaware, its Board
of Directors has adopted the following resolution creating a
series of its [Preferred Stock] designated as [Series __ Con-
vertible Preferred Stock]:

RESOLVED, that a series of the class of authorized
Preferred Stock of the Corporation be hereby created, and
that the designation and amount thereof and the voting powers,
preferences and relative, participating, optional and other
special rights of the shares of such series, and the qualifi-
cations, limitations or restrictions thereof are as follows:

Section 1. Designation and Amount. The shares of
such series shall be designated as "[Series __ Convertible
Preferred Stock]" (the "Preferred Stock") and the number of
shares constituting such series shall be _____.

Section 2. Dividends and Distributions.

(A) The holders of shares of Preferred Stock shall
be entitled to receive, when, as and if declared by the
Board of Directors out of funds legally available for
the purpose, quarterly dividends payable in cash on the
_____ day of _____, _____ and _____
in each year (each such date being referred to herein
as a "Quarterly Dividend Payment Date"), commencing
_____, 198_, in an amount per share (rounded
to the nearest cent) equal to [110-125%] of

(i) the aggregate per share amount of all
cash dividends declared on the Common Stock (as
hereinafter defined) since the immediately preceding
Quarterly Dividend Payment Date or, with respect
to the _____ Quarterly Dividend Pay-
ment Date, since _____, multiplied by

(ii) the number of shares of Common Stock into which a share of Preferred Stock is convertible on the Quarterly Dividend Payment Date on which the dividend is to be paid,

and the Corporation shall declare a cash dividend on the Preferred Stock as provided in this paragraph (A) immediately after it declares a cash dividend on the Common Stock. Notwithstanding the foregoing, the dividends that shall accrue and be payable with respect to each share of Preferred Stock on each Quarterly Dividend Payment Date occurring after the Stock Acquisition Date (as hereinafter defined) shall not be less than the dividends to which each share of Preferred Stock was entitled on the Quarterly Dividend Payment Date immediately preceding the Stock Acquisition Date.

Dividends shall begin to accrue and be cumulative on outstanding shares of Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from _____, 198_, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Preferred Stock entitled to receive payment of a dividend declared thereon, which record date shall be no more than 60 days prior to the date fixed for the payment thereof.

(B) The holders of shares of Preferred Stock shall be entitled to receive any non-cash dividend or other distribution (including, without limitation, any distribution of other or additional stock or other securities or property or rights or warrants to subscribe for or purchase Common Stock or other securities of the Corporation or any of its subsidiaries by way of dividend or spin-off, issuance of rights, or reclassification, recapitalization or similar corporate rearrangement) which the Corporation shall at any time or from time to time declare, order, pay or make on the Common Stock, other

than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), and the Corporation at the same time it declares, orders, pays or makes such dividend or distribution on the Common Stock shall declare, order, make and pay such dividend or distribution on the Preferred Stock, in an amount per share of Preferred Stock equal to

(i) the aggregate per share amount of such dividend or distribution declared, ordered, paid or made on the Common Stock multiplied by

(ii) the number of shares of Common Stock into which a share of Preferred Stock is convertible on the date on which such dividend or distribution is to be paid or made.

The granting of the right to purchase shares of Common Stock (whether treasury shares or newly issued shares) pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Corporation, and the investment of additional optional amounts, in shares of Common Stock, in any such case at a price per share of not less than 95% of the current market price (determined as provided in such plans) per share of Common Stock, shall not be deemed to constitute a distribution of rights or warrants by the Corporation within the meaning of this paragraph (B).

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

(A) Each share of Preferred Stock shall entitle the holder thereof to [one-half] vote multiplied by the number of shares of Common Stock into which a share of Preferred Stock is convertible on the record date for such vote on all matters submitted to a vote of the stockholders of the Corporation.

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

(C) Whenever any dividend or distribution payable on the Preferred Stock as provided in Section 2 has not been paid or made or whenever the Corporation has failed to effect redemption in cash of any shares of Preferred Stock as provided in Section 6, even if such failure is the result of a legal or contractual restriction on such

redemption (and notwithstanding any postponement of payment of Redemption Amounts (as hereinafter defined) in cash as provided in Section 6), the holders of shares of Preferred Stock shall have, in addition to the rights set forth in paragraphs (A), (B), (D) and (E) of this Section 3, the special right, voting separately as a single class, to elect at a special meeting of the holders of shares of Preferred Stock as hereinafter provided or at the next annual meeting of stockholders, and at each annual meeting thereafter, two Directors to the Board of Directors of the Corporation.

At any time when the holders of shares of Preferred Stock shall become entitled to elect directors pursuant to this paragraph (C), the Secretary of the Corporation shall call a special meeting of such holders as promptly as possible but in any event within twenty days after receipt of a written request signed by the holders of record of at least 1% of the outstanding shares of Preferred Stock for the purpose of electing the two directors which the holders of shares of Preferred Stock are then entitled to elect, and the Corporation shall take such action, either by removal of incumbent directors or increase in the number of directors, to permit such election. Notice of all meetings at which the holders of shares of Preferred Stock shall be entitled to elect directors shall be given to such holders at the same time and in the same manner as notice of a meeting of stockholders is required to be given to the holders of shares of Common Stock, but failure to give notice of such meeting shall not affect the validity of such meeting and, notwithstanding such failure, the holders of shares of Preferred Stock shall be entitled to elect such additional directors as if notice of such meeting had been so given. No director elected by the holders of shares of Preferred Stock shall during his term of office be removed from office except upon the vote of the holders of shares of Preferred Stock, voting as provided herein, and any vacancy caused by the death, resignation, inability to serve or removal of any such director shall be filled by vote of the remaining director elected by the holders of shares of Preferred Stock or, if there is no such director, by the vote of the holders of shares of Preferred Stock voting as provided herein, at a special meeting called for the purpose.

At each meeting of stockholders at which the holders of shares of Preferred Stock shall have the right to vote as a class, as provided in this paragraph (C), the presence in person or by proxy of the holders of record of at least a majority of the total number of shares of Preferred Stock then outstanding shall be necessary and sufficient to constitute a quorum of such class for such election by such stockholders as a class. At any such meeting or adjournment thereof,

(i) the absence of a quorum of the holders of shares of Preferred Stock shall not prevent the election of directors other than those to be elected by the holders of shares of Preferred Stock and the absence of a quorum of the holders of shares of any other class of stock for the election of such other directors shall not prevent the election of the directors to be elected by the holders of shares of Preferred Stock, and

(ii) in the absence of either or both such quorums, a majority of the holders present in person or by proxy of shares of the class or classes which lack a quorum shall have the power to adjourn for the period of up to 30 days the meeting for the election of directors which they are entitled to elect from time to time without notice other than announcement at the meeting until a quorum shall be present.

Whenever all dividends and distributions accrued and unpaid on shares of Preferred Stock shall have been paid and whenever the Corporation has redeemed all shares of Preferred Stock presented for redemption by the holders thereof (other than shares with respect to which the Redemption Amount was paid in shares of Common Stock pursuant to Section 6), the special right of the holders of shares of Preferred Stock to elect directors as provided in this paragraph (C) shall terminate, but subject always to the same provisions for the vesting of such special right of the holders of shares of Preferred Stock to elect directors as provided in this Section 3 in the case of future unpaid dividends or distributions or future failure to effect redemption.

(D) The consent of the holders of at least 66-2/3% of the outstanding shares of Preferred Stock, voting separately as a single class, in person or by proxy, either in writing without a meeting or at an annual or a special meeting of stockholders called for the purpose,

shall be necessary to create any equity security ranking senior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock.

(E) The consent of the holders of a majority of the outstanding shares of Preferred Stock, voting separately as a single class, in person or by proxy, either in writing or at an annual or a special meeting of stockholders called for the purpose, shall be necessary to increase the authorized amount of Preferred Stock or to create any equity security ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Preferred Stock.

Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Preferred Stock outstanding shall have been paid in full, or whenever the Corporation has failed to effect redemption of any shares of Preferred Stock as provided in Section 6, even if such failure is the result of a legal or contractual restriction on such redemption (and notwithstanding any postponement of payment of Redemption Amounts in cash as provided in Section 6), thereafter and until the Corporation has redeemed all shares of Preferred Stock presented for redemption by the holders thereof (other than shares with respect to which the Redemption Amount was paid in shares of Common Stock pursuant to Section 6), the Corporation shall not

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock;

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

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

(iv) redeem at its option pursuant to Section 5 any shares of Preferred Stock unless it shall simultaneously redeem all the shares of Preferred Stock then outstanding; or

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

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

Section 5. Redemption at Option of the Corporation.
The Corporation shall have the right to redeem shares of Preferred Stock pursuant to the following provisions:

(A) The Corporation shall not have any right to redeem shares of Preferred Stock prior to [fifteen year call protection]. Thereafter, subject to the restrictions in Section 4, the Corporation shall have the right, at its sole option and election, to redeem some or all of the shares of Preferred Stock, at any time and from time to time, at a redemption price of \$___ [an amount approximating the market value of a share of Preferred Stock on the date of distribution] per share plus an amount equal to all accrued and unpaid dividends and distributions thereon, whether or not declared, to the redemption date.

(B) If less than all of the shares of Preferred Stock at the time outstanding are to be redeemed, the shares so to be redeemed shall be selected by lot or in such other manner as the Board of Directors may determine to be fair and proper.

(C) Notice of any redemption of shares of Preferred Stock pursuant to this Section 5 shall be mailed at least 30, but not more than 60, days prior to the date fixed for redemption to each holder of shares of Preferred Stock to be redeemed, at such holder's address as it appears on the books of the Corporation. In order to facilitate the redemption of shares of Preferred Stock, the Board of Directors may fix a record date for the determination of holders of shares of Preferred Stock to be redeemed not more than 60 days prior to the date fixed for such redemption.

(D) On the redemption date specified in the notice given pursuant to paragraph (C) of this Section 5, the Corporation shall, and at any time after such notice shall have been mailed and before such redemption date the Corporation may, deposit for the pro-rata benefit of the holders of the shares of Preferred Stock so called for redemption the funds necessary for such redemption with a bank or trust company in the Borough of Manhattan, City and State of New York, having a capital and surplus of at least \$50,000,000. Any monies so deposited by the Corporation and unclaimed at the end of five years from the date designated for such redemption shall revert to the general funds of the Corporation. After such reversion, any such bank or trust company shall, upon demand, pay over to the Corporation such unclaimed amounts and thereupon such bank or trust company shall be relieved of all responsibility in respect thereof to the holders of such shares and such holders shall look only to the Corporation for the payment of the redemption price. In the event that monies are deposited pursuant to this paragraph (D) in respect of shares of Preferred Stock called for redemption that are converted in accordance with the provisions of Section 9, such monies shall, upon such conversion, revert to the general funds of the Corporation and, upon demand, such bank or trust company shall pay over to the Corporation such monies and shall thereupon be relieved of all responsibility to the holders of such shares in respect thereof. Any interest accrued on funds so deposited pursuant to this paragraph (D) shall be paid from time to time to the Corporation for its own account.

(E) Upon the deposit of funds pursuant to paragraph (D) of this Section 5 in respect of shares of Preferred Stock called for redemption, notwithstanding that any certificates for such shares shall not have been surrendered for cancellation, the shares represented thereby shall no longer be deemed outstanding, the rights to receive dividends and distributions thereon shall cease to accrue from and after the date of redemption designated in the notice of redemption and all rights of the holders of the shares of Preferred Stock called for redemption shall cease and terminate, excepting only the right to receive the redemption price therefor and the right to convert such shares into shares of Common Stock until the close of business on the third business day preceding the redemption date as provided in Section 9.

Section 6. Redemption at Option of Holder of Preferred Stock.

(A) Except as provided in paragraph (B) of this Section 6, from and after the expiration of 30 days after the Stock Acquisition Date, each holder of shares of Preferred Stock (except any holder who is an Acquiring Person (as hereinafter defined)), shall have the right, at the sole option and election of such holder, to require the Corporation at once or from time to time to redeem some or all of the shares of Preferred Stock owned by such holder for the Redemption Amount (as hereinafter defined).

(B) Notwithstanding the provisions of paragraph (A) of this Section 6:

(i) if, prior to or within 30 days after the Stock Acquisition Date, an Acquiring Person shall have publicly announced its intention to consummate a transaction with the Corporation of the type described in clauses (i) through (iv) of paragraph (A) of Section 10, the redemption right provided for in paragraph (A) of this Section 6 shall not be exercisable for a period of 120 days following the later of (a) the date of such announcement or (b) the Stock Acquisition Date; and

(ii) if, during the 120-day period referred to in subparagraph (i) of this paragraph (B), a transaction of the type described in clauses (i) through (iv) of paragraph (A) of Section 10 shall be consummated, the redemption right provided for in paragraph (A) of this Section 6 shall cease.

(C) Subject to paragraph (B) of this Section 6:

(i) The holder of any shares of Preferred Stock may exercise such holder's right to require the Corporation to redeem such shares as provided in paragraph (A) of this Section 6 by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Preferred Stock to be redeemed accompanied by a written notice stating that such holder elects to require the Corporation to redeem all or a specified whole number of such shares in accordance with the provisions of this Section 6. As promptly as practicable, and in any event within five business days after the surrender of such certificates and the receipt of such notice relating thereto, the Corporation shall deliver or cause to be delivered to the holder of the shares being redeemed the Redemption Amount therefor in cash and, if less than the full number of shares of Preferred Stock evidenced by the surrendered certificate or certificates are being redeemed in cash, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares redeemed. Such redemptions shall be deemed to have been made at the close of business on the date (the "Redemption Date") of receipt by the Corporation of such notice and of such surrender of the certificate or certificates representing the shares of Preferred Stock to be redeemed and the rights of the holder thereof, except for the right to receive the Redemption Amount or to withdraw such shares from redemption as provided in subparagraphs (ii) and (iii) of this paragraph (C), shall cease and terminate on the Redemption Date.

(ii) Whenever a holder of Preferred Stock has a right to redemption pursuant to this Section 6 and a legal or contractual restriction prevents the Corporation from effecting the redemption in cash of any shares of Preferred Stock then outstanding,

(a) to the extent not restricted, payment of Redemption Amounts in cash shall be made daily on a pro rata basis or in such other

manner as the Board of Directors may determine to be fair and proper, and payment of Redemption Amounts in cash in contravention of such legal or contractual restriction shall be postponed so long as such legal or contractual restriction is in effect;

(b) the Corporation shall use its best efforts to remove such restriction as soon as possible;

(c) any holder of shares of Preferred Stock who has presented such shares for redemption shall have the right to withdraw such shares from redemption or to elect to receive payment of the Redemption Amount in shares of Common Stock as provided in this Section 6; and

(d) the Corporation shall give notice in the manner provided in Section 12 to each holder of shares of Preferred Stock of such restriction, the efforts by the Corporation to remove it and the rights to withdraw such shares from redemption and to elect to receive payment of the Redemption Amount in shares of Common Stock as provided in this Section 6.

Postponement of payment of Redemption Amounts in cash shall not in any way diminish or restrict the right of the holders of shares of Preferred Stock to redeem such shares as provided in this Section 6, which right shall remain absolute notwithstanding any such legal or contractual restriction or any such postponement, and the special voting rights provided in Section 3 shall not be delayed or adversely affected in any way.

(iii) Upon the removal of a legal or contractual restriction which has caused a postponement of payment of Redemption Amounts in cash, the Corporation shall give notice in the manner provided in Section 12 to each holder of shares of Preferred Stock. At any time within 30 days of the giving of such notice, any holder of shares of Preferred Stock who had presented such shares for redemption in cash as provided in this Section 6 shall have the

right to withdraw shares, not theretofore redeemed because of a legal or contractual restriction, from redemption by giving notice to the Corporation at its principal office or at such office or agency of the Corporation maintained for the purpose of receiving shares of Preferred Stock for redemption.

(iv) At any time payment of Redemption Amounts in cash is postponed otherwise than as provided in paragraph (B) of this Section 6, any holder of shares of Preferred Stock shall have the additional right to elect, by giving notice to the office or agency to which such holder presents shares of Preferred Stock for redemption, to receive payment of the Redemption Amount in shares of Common Stock with a Redemption Exchange Value (as hereinafter defined) on the date such holder gives such notice equal to the Redemption Amount; provided that, upon the request of any such holder, in lieu of issuing a fractional share of Common Stock to such holder, the Corporation shall make a cash payment to such holder equal to such fraction multiplied by the Current Market Price (as hereinafter defined) of the Common Stock, unless the Corporation is prevented from making such cash payment by a legal or contractual restriction, in which case such fractional share shall be issued.

(D) The following terms have the meanings indicated:

(i) "Acquiring Person" shall mean any Person (as hereinafter defined) who or which, together with all Affiliates (as hereinafter defined) and Associates (as hereinafter defined) of such Person, shall be the Beneficial Owner (as hereinafter defined) of securities of the Corporation constituting a Substantial Block (as hereinafter defined).

(ii) "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on _____, 198_.

(iii) A Person (as hereinafter defined) shall be a "Beneficial Owner" of any securities:

(a) which such Person or any of its Affiliates or Associates beneficially owns, directly or indirectly;

(b) which such Person or any of its Affiliates or Associates has (1) the right to acquire (whether 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 (2) the right to vote pursuant to any agreement, arrangement or understanding; or

(c) which 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 securities of the Corporation.

(iv) "Closing Price" on any day shall mean the last sales price, regular way, per share of such stock on such day, or, if no such sale takes place on such day, the average of the closing bid and asked prices, regular way, as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if shares of such stock are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of such stock are listed or admitted to trading or, if the shares of such stock are not listed or admitted to trading on any national securities exchange, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers Inc. Automated Quotation System.

(v) "Common Stock" with respect to the Corporation shall mean the Common Stock, par value \$ _____ per share, of the Corporation and with respect to any other corporation shall mean the common stock of such corporation ordinarily entitled to elect a majority of the directors constituting the full board of directors of such corporation.

(vi) "Current Market Price" shall mean, as applied to any class of stock on any date, the average of the daily Closing Prices for the 30

consecutive Trading Days (as hereinafter defined) immediately prior to the date in question; provided, however, that in the event that the Current Market Price per share of Common Stock is determined during a period following the announcement by the Corporation of a dividend or distribution on its Common Stock payable in shares of its Common Stock or securities convertible into shares of its Common Stock, and prior to the expiration of 30 Trading Days after the ex-dividend date for such dividend or distribution, then, and in each such case, the Current Market Price shall be appropriately adjusted to reflect the Current Market Price per Common Stock equivalent.

(vii) "Fair Market Value" shall mean:

(a) in the case of stock, the Current Market Price thereof on the date in question, or if no Current Market Price is determinable, the fair market value on the date in question of such stock as determined in good faith by the Board of Directors of the Corporation; and

(b) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by the Board of Directors of the Corporation.

(viii) "Fair Price" shall mean the greater of:

(a) the highest price (in cash or Fair Market Value of securities or other property) per share (including any brokerage commissions, transfer taxes and soliciting dealer fees) paid for any share of Preferred Stock of which an Acquiring Person is the Beneficial Owner and which shares were acquired by the holder thereof (1) during the one year immediately preceding the Stock Acquisition Date or (2) in the transaction in which such Acquiring Person became an Acquiring Person; and

(b) the price obtained by multiplying (1) the highest price (in cash or Fair Market Value of securities or other property) per share (including any brokerage commissions, transfer taxes and soliciting dealer fees) paid for any share of Common Stock of which an Acquiring Person

is the Beneficial Owner and which shares were acquired by the holder thereof (A) during the one year immediately preceding the Stock Acquisition Date or (B) in the transaction in which such Acquiring Person became an Acquiring Person, by (2) the number of shares of Common Stock into which a share of Preferred Stock was convertible on the date of the purchase of such shares of Common Stock;

subject, in any case, to equitable adjustment from time to time as necessary to reflect any changes in the outstanding Common Stock or Preferred Stock.

(ix) A "Person" shall mean any individual, firm, corporation or other entity.

(x) "Redemption Amount" shall mean a redemption price per share in cash equal to

(a) the Fair Price for such share, plus

(b) an amount equal to the amount of all accrued and unpaid dividends and distributions thereon, whether or not declared, through the Redemption Date.

(xi) "Redemption Exchange Value" of a share of Common Stock shall mean 85% of the Current Market Price of a share of Common Stock.

(xii) "Stock Acquisition Date" shall mean the first date as of which any Acquiring Person became such.

(xiii) "Substantial Block" shall mean a number of shares of Common Stock or Preferred Stock or both such that

(a) (1) the sum of (x) such number of shares of Common Stock plus (y) the number of shares of Common Stock into which such number of shares of Preferred Stock would then be (without regard to any postponement of the right to convert provided in Section 9) convertible equals or exceeds 30% of (2) the sum of (x) the number of shares of Common Stock then outstanding plus (y) the number of shares of Common Stock into which the number of shares of Preferred Stock then outstanding would then be (without regard to any postponement

of the right to convert provided in Section 9) convertible; or

(b) (1) the number of votes to which the aggregate of such shares of Common Stock and Preferred Stock shall entitle the holders thereof in the election of directors equals or exceeds 30% of (2) the number of votes to which the aggregate of the outstanding shares of Common Stock and Preferred Stock shall entitle the holders thereof in the election of directors.

(xiv) "Trading Day" shall mean a day on which the principal national securities exchange on which shares of any class of stock are listed or admitted to trading is open for the transaction of business or, if the shares of such stock are not listed or admitted to trading on any national securities exchange, a Monday, Tuesday, Wednesday, Thursday or Friday on which banking institutions in the Borough of Manhattan, City and State of New York, are not authorized or obligated by law or executive order to close.

Section 7. Reacquired Shares. Any shares of Preferred Stock redeemed or purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of [Preferred Stock] and may be reissued as part of a new series of [Preferred Stock] to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

Section 8. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (A) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Preferred Stock unless, prior thereto, the holders of shares of Preferred Stock shall have received \$___ [same as Section 5 redemption price] per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment or (B) to the holders of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Preferred Stock, except distributions made ratably on the Preferred Stock and all other such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up.

Section 9. Conversion. Each share of Preferred Stock which has not been surrendered for redemption pursuant to Section 5 may be converted at any time, at the option of the holder thereof, into shares of Common Stock of the Corporation, on the terms and conditions set forth in this Section 9, except that shares of Preferred Stock of which an Acquiring Person is the Beneficial Owner may not be so converted until the expiration of 12 months after the Stock Acquisition Date:

(A) Subject to the provisions for adjustment hereinafter set forth, each share of Preferred Stock shall be convertible at the option of the holder thereof, in the manner hereinafter set forth, into _____ fully-paid and nonassessable shares of Common Stock of the Corporation.

(B) The number of shares of Common Stock into which each share of Preferred Stock is convertible shall be adjusted from time to time as follows:

(i) In case the Corporation shall at any time or from time to time declare or pay any dividend on Common Stock payable in shares of Common Stock or effect a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock), then, and in each such case, the number of shares of Common Stock into which each share of Preferred Stock is convertible shall be adjusted so that the holder of each share thereof shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying

(a) the number of shares of Common Stock into which such share was convertible immediately prior to the occurrence of such event by

(b) a fraction, the numerator of which is the sum of (1) the number of shares of Common Stock into which such share was convertible immediately prior to the occurrence of such event plus (2) the number of shares of Common Stock which such holder would have been entitled to receive in connection with the occurrence of such event had such share been converted immediately prior thereto, and the denominator of which is the number of shares of Common Stock determined in accordance with clause (1) above.

An adjustment made pursuant to this subparagraph (B)(i) shall become effective (a) in the case of any such dividend, immediately after the close of business on the

record date for the determination of holders of Common Stock entitled to receive such dividend, or (b) in the case of any such subdivision, at the close of business on the day immediately prior to the day upon which such corporate action becomes effective.

(ii) In case the Corporation at any time or from time to time shall combine or consolidate the outstanding shares of Common Stock into a lesser number of shares of Common Stock, by reclassification or otherwise, then, and in each such case, the number of shares of Common Stock into which each share of Preferred Stock is convertible shall be adjusted so that the holder of each share thereof shall be entitled to receive, upon the conversion thereof, the number of shares of Common Stock determined by multiplying

(a) the number of shares of Common Stock into which such share was convertible immediately prior to the occurrence of such event by

(b) a fraction, the numerator of which is the number of shares which the holder would have owned after giving effect to such event had such share been converted immediately prior to the occurrence of such event and the denominator of which is the number of shares of Common Stock into which such share was convertible immediately prior to the occurrence of such event.

An adjustment made pursuant to this subparagraph (B)(ii) shall become effective at the close of business on the day immediately prior to the day upon which such corporate action becomes effective.

(C) If any adjustment in the number of shares of Common Stock into which each share of Preferred Stock may be converted required pursuant to this Section 9 would result in an increase or decrease of less than 1% in the number of shares of Common Stock into which each share of Preferred Stock is then convertible, the amount of any such adjustment shall be carried forward and adjustment with respect thereto shall be made at the time of and together with any subsequent adjustment which, together with such amount and any other amount or amounts so carried forward, shall aggregate at least 1% of the number of shares of Common Stock into which each share of Preferred Stock is then convertible. All calculations under this paragraph (C) shall be made to the nearest one-hundredth of a share.

(D) The Board of Directors may, but shall not be required to, increase the number of shares of Common Stock into which each share of Preferred Stock may be converted, in addition to the adjustments required by this Section 9, at such times and in such manner as shall be determined by it (as evidenced by a resolution of the Board of Directors) to be advisable with respect to any dividend or distribution of stock or issuance of rights or warrants to purchase or subscribe for stock or from any event treated as such for federal income tax purposes in order to avoid or limit taxable income to any holder of Common Stock or Preferred Stock.

(E) The holder of any shares of Preferred Stock may exercise his option to convert such shares into shares of Common Stock by surrendering for such purpose to the Corporation, at its principal office or at such other office or agency maintained by the Corporation for that purpose, a certificate or certificates representing the shares of Preferred Stock to be converted accompanied by a written notice stating that such holder elects to convert all or a specified whole number of such shares in accordance with the provisions of this Section 9 and specifying the name or names in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. In case such notice shall specify a name or names other than that of such holder, such notice shall be accompanied by payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. As promptly as practicable, and in any event within five business days after the surrender of such certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes, the Corporation shall deliver or cause to be delivered to the holder of the shares of Preferred Stock being converted (i) certificates representing the number of validly issued, fully-paid and nonassessable shares of Common Stock of the Corporation to which the holder of shares of Preferred Stock so converted shall be entitled and (ii) if less than the full number of shares of Preferred Stock evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares converted. Such conversions shall be deemed to have been made at the close of business on the date (the "Conversion Date") of receipt by the Corporation of such notice and of such surrender of the certificate or certificates representing the shares of Preferred Stock to be converted and the rights of the holder thereof, except for the right to receive Common Stock of the Cor-

poration in accordance herewith, shall cease on the Conversion Date, and the converting holder shall be treated for all purposes as having become the record holder of such Common Stock of the Corporation on the Conversion Date.

(F) Upon the request of any holder of Preferred Stock, the Corporation shall not, in connection with the conversion of shares of Preferred Stock of such holder, issue a fractional share of Common Stock, but in lieu thereof shall make a cash payment to the converting holder equal to such fraction multiplied by the Current Market Price of the Common Stock.

(G) Shares of Preferred Stock may not be converted after the close of business on the third business day preceding the date fixed for redemption of such shares pursuant to Section 5.

Section 10. Adjustments For Consolidation, Merger,
etc.

(A) In case the Corporation

(i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation of such consolidation or merger;

(ii) shall permit any other Person to consolidate with or merge into the Corporation and the Corporation shall be the continuing or surviving Person, but, in connection with such consolidation or merger, the Common Stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property;

(iii) shall, in one or more transactions, transfer (or permit its subsidiaries to transfer, in one or more transactions, assets or earning power aggregating) more than 50% of the assets or earning power of the Corporation and its subsidiaries (taken as a whole) to any other Person; or

(iv) shall effect a capital reorganization or reclassification of the Common Stock (other than a capital reorganization or reclassification result-

ing in the issue of additional shares of Common Stock to the holders of shares of Preferred Stock as provided in paragraph (B) of Section 2 or for which adjustment is provided in Section 9),

then, and in each such case, proper provision shall be made so that each share of Preferred Stock then outstanding shall be converted into, or exchanged for, one share of Substitute Preferred Stock (as hereinafter defined); provided, however, the Corporation shall not effect any of the transactions described in clauses (i) through (iv) of this paragraph (A) unless,

(a) the Acquiring Corporation (as hereinafter defined) in such transaction is a corporation organized under the laws of one of the United States;

(b) immediately after the date of the consummation of such transaction, the Acquiring Corporation is required to file, and in each of its three fiscal years immediately preceding the date of the consummation of such transaction has filed, reports with the Securities and Exchange Commission pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 and at the end of its fiscal year immediately preceding the date of the consummation of such transaction there were not less than 5,000 holders of shares of Common Stock of the Acquiring Corporation; and

(c) notwithstanding anything contained herein to the contrary, prior to the consummation thereof, each corporation, including the Corporation, which may be required to deliver any shares of Substitute Preferred Stock or any shares of stock, securities, cash or other property upon conversion of any shares of Substitute Preferred Stock to the holders of shares of Preferred Stock shall assume, by written instrument delivered to each transfer agent of the Preferred Stock, the obligation to deliver to such holder such shares of Substitute Preferred Stock and such shares of stock, securities, cash or other property to which, in accordance with the foregoing provisions, such holder may be entitled upon conversion thereof and each such corporation shall have furnished to each such transfer agent an opinion of counsel for such corporation, stating that such assumption agreement is legal, valid and binding upon such corporation.

Notwithstanding the foregoing, the provisions of this paragraph (A) shall not apply to a transaction or transactions effected pursuant to a merger agreement entered into by the Corporation at a time when there is no Acquiring Person.

(B) The following terms have the meanings indicated:

(i) "Acquiring Corporation" shall mean:

(a) the continuing or surviving corporation of a consolidation or merger with the Corporation (if other than the Corporation);

(b) the corporation consolidating with or merging into the Corporation in a consolidation or merger in which the Corporation is the continuing or surviving Person, and in connection with which the Common Stock of the Corporation is changed into or exchanged for the stock or other securities of any other Person or cash or any other property;

(c) the transferee of more than 50% of the assets or earning power of the Corporation and its subsidiaries (taken as a whole); or

(d) in case of a capital reorganization or reclassification, the Corporation;

provided, however, that in the event such continuing or surviving corporation does not meet the requirements of clause (b) of the proviso to paragraph (A) of this Section 10, the Acquiring Corporation shall mean any corporation which

(x) controls such continuing or surviving corporation directly or indirectly through one or more intermediaries;

(y) is required to include such continuing or surviving corporation in the consolidated financial statements contained in such corporation's Annual Reports on Form 10-K; and

(z) is not itself included in the consolidated financial statements of any other Person (other than its consolidated subsidiaries).

(ii) "Acquisition Price" shall mean, as applied to shares of Common Stock, the greater of (a) the Fair Price and (b) the highest Closing Price on any date subsequent to the Stock Acquisition Date.

(iii) "Substitute Preferred Stock" shall mean preferred stock of the Acquiring Corporation entitling the holder thereof to all of the dividend, distribution, voting, redemption, conversion and other rights, powers, privileges and preferences with respect to the Acquiring Corporation to which the holder of a share of Preferred Stock is entitled with respect to the Corporation, and being subject with respect to the Acquiring Corporation to the qualifications, limitations and restrictions to which a share of Preferred Stock is subject with respect to the Corporation, except that

(a) in lieu of the provisions for conversion of shares of Preferred Stock set forth in Section 9, each share of Substitute Preferred Stock shall be convertible at any time, at the option of the holder thereof, into the number of shares of Common Stock of the Acquiring Corporation (subject to future adjustments as nearly equivalent as possible to the adjustments provided for in Section 9 and this Section 10), determined by multiplying the number of shares of Common Stock of the Corporation into which each share of Preferred Stock was convertible immediately prior to its having been converted into a share of Substitute Preferred Stock by a fraction, the numerator of which is the Acquisition Price and the denominator of which is the lesser of (1) the Current Market Price per share of the Common Stock of the Acquiring Corporation on the date of the consummation of a transaction with the Corporation of the type described in clauses (i) through (iv) of paragraph (A) of Section 10, and (2) the Current Market Price per share of the Common Stock of the Acquiring Corporation on the Conversion Date; and

(b) if the Acquiring Corporation has outstanding on the Stock Acquisition Date any shares of preferred stock entitled to a class vote on the creation of any preferred stock

ranking on a parity therewith or senior thereto (the "Acquiror Senior Preferred Stock"), then the Substitute Preferred Stock shall have all of the rights, powers, privileges and preferences described above but not any such preferences that would cause it to rank on a parity with or senior to, as the case may be, the Acquiror Senior Preferred Stock and thereby require a class vote of the Acquiror Senior Preferred Stock to authorize the Substitute Preferred Stock;

provided, however, notwithstanding any provisions of the Acquiror Senior Preferred Stock and even if a class vote thereof would therefore be necessary, the Substitute Preferred Stock shall contain, without diminution, all of the dividend and distribution rights provided in Section 2, all of the conversion rights provided in Section 9, the rights contained in this Section 10, all of the voting and special voting rights provided in Section 3 and the protection against redemption at the option of the Corporation or the Acquiring Corporation provided in paragraph (A) of Section 5.

Section 11. Reports as to Adjustments. Whenever the number of shares of Common Stock into which the shares of Preferred Stock are convertible is adjusted as provided in Section 9 or Section 10, the Corporation shall (A) promptly compute such adjustment and furnish to each transfer agent for the Preferred Stock a certificate, signed by a principal financial officer of the Corporation, setting forth the number of shares of Common Stock into which each share of Preferred Stock is convertible as a result of such adjustment, a brief statement of the facts requiring such adjustment and the computation thereof and when such adjustment will become effective and (B) promptly mail to each transfer agent for the shares of Preferred Stock and to the holders of record of the outstanding shares of Preferred Stock a notice stating that the number of shares into which the shares of Preferred Stock are convertible has been adjusted and setting forth the new number of shares into which each share of the Preferred Stock is convertible as a result of such adjustment and when such adjustment will become effective.

Section 12. Notices of Corporate Action.

(A) In the event of:

(i) any capital reorganization, reclassification or recapitalization of the Corporation (other

than a subdivision or combination of the outstanding shares of its Common Stock), any consolidation or merger involving the Corporation and any other Person (other than a consolidation or merger with a wholly-owned subsidiary of the Corporation, provided that the Corporation is the surviving or the continuing corporation and no change occurs in the Common Stock), or any transfer of more than 50% of the assets or earning power of the Corporation and its subsidiaries (taken as a whole) to any other Person; or

(ii) any voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, and in each such case, the Corporation shall cause to be mailed to each transfer agent for the shares of Preferred Stock and to the holders of record of the outstanding shares of Preferred Stock, at least 20 days prior to the applicable effective date hereinafter specified, a notice stating the date or expected date on which any such reorganization, reclassification, recapitalization, consolidation, merger, transfer, dissolution, liquidation or winding up is to take place and the time, if any such time is to be fixed, as of which the holders of record of Common Stock shall be entitled to exchange their shares of Common Stock for the securities or other property deliverable upon such reorganization, reclassification, recapitalization, consolidation, merger, transfer, dissolution, liquidation or winding up.

(B) The notice required by paragraph (A) of this Section 12 shall also state whether such transaction will result in any adjustment in the number of shares of Common Stock into which shares of Preferred Stock are convertible and, if so, shall state the new number, or the basis on which in accordance with Section 10 the new number, of shares of Common Stock into which each share of Preferred Stock shall be convertible upon such adjustment and when such adjustment will become effective.

Section 13. Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized Common Stock the number of shares of Common Stock issuable upon the conversion of all outstanding shares of the Preferred Stock as provided in Sections 9 and 10 and for the redemption of all outstanding shares of Preferred Stock as provided in Section 6.

Section 14. Amendment. Other than pursuant to a merger agreement entered into by the Corporation at a time when there is no Acquiring Person, the Certificate of Incorporation

poration of the Corporation, including the provisions of the Certificate of Designations, Preferences and Rights of [Series ___ Convertible Preferred Stock], which embodies this resolution shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Preferred Stock so as to affect them adversely without the affirmative vote of the holders of 80% or more of the outstanding shares of Preferred Stock, voting together as a single class.

IN WITNESS WHEREOF, said _____ has caused this Certificate of Designations, Preferences and Rights of [Series ___ Convertible Preferred Stock], to be duly executed by its [President] and attested to by its Secretary and has caused its corporate seal to be affixed hereto, this ___ day of _____, 198_.

By _____

(Corporate Seal)

ATTEST:

To Our Clients

Takeovers: Convertible Preferred
Stock Dividend Plan

The Plan has now been used by three NYSE companies, Bell & Howell, ENSTAR and Lenox. In each case special circumstances dictated special provisions for the preferred that deviate from our suggested model form. Attached is our suggested model form and related memorandum describing the Plan. We again suggest that consideration be given to implementing the Plan before a takeover situation arises. On August 16, 1983 litigation attacking the Bell & Howell Plan was started in Delaware. The case is scheduled to be argued next week. The decision will be a major factor in determining whether to implement the Plan.

Those companies that do not have sufficient authorized blank check preferred or common stock to implement the Plan should consider obtaining stockholder authorization at the next annual or a special meeting. Since the Plan does not provide for supermajority votes or other shark repellents, and does provide for an increase in dividends, it should be much less difficult to obtain stockholder approval of the Plan than fair-price charter amendments, even for those companies with a large percentage of their stock held by institutions.

M. Lipton