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Articles of Amendment

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Florida Power &
Light Company
Amendment to
Charter filed
May 16-1951

Filed in Office Secretary
of State, of the State of
Florida, this 16 day of

May A. D., 1951

R. A. GRAY
Secretary of State

BLD

No. 1

LOFTIN ANDERSON SCOTT McCARTHY & PRESTON

SCOTT M. LOFTIN
ROBERT M. ANDERSON
PAUL R. SCOTT
ALFRED L. McCARTHY
WILLIAM H. PRESTON

SHELBY G. GASKIN
WILLIAM B. FRATES
WILLIAM C. STELL
GEORGE P. GILLELAND
LOUIS J. HECTOR
MARSHALL S. SCOTT
DANIEL R. PAUL

May 14, 1951

CABLE ADDRESS
"ANSCO"

TELEPHONE 9-2441

INGRAMHAM BUILDING
BOX 1069
MIAMI 6, FLORIDA

Honorable R. A. Gray
Secretary of State
State of Florida
Tallahassee, Florida

Dear Mr. Gray:

C. 102
FRMS 2.00
R. G. MILLER
C. COPY 2.00
TOTAL 3.00
P. 101
M. F. USE

Re: Florida Power & Light Company
Amendment of Charter -
NO. ONE.

RECEIVED
MAY 16 AM 8:23
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

We are sending to you herewith executed original copies of

CERTIFICATE OF AMENDMENT
OF
AGREEMENT OF CONSOLIDATION

between
PENINSULA POWER & LIGHT COMPANY
AND SOUTHERN UTILITIES COMPANY
forming
FLORIDA POWER & LIGHT COMPANY

dated May 14, 1951, which you will please file in your office in accordance with law. When so filing the Certificate please show the hour or time of filing and please have your Certificates as to true copies show such hour or time of filing.

By this amendment the 50,000 shares of \$4.50 Preferred Stock which were covered by the Certificate of Amendment filed in your office on March 31, 1951, are eliminated and 50,000 shares of 4 1/2% Preferred Stock, Series A (\$100 par value) are created.

We are also sending to you herewith eight (8) executed copies of the Certificate of Amendment which we would appreciate your certifying and returning to us by return Air Mail. Please tell us what the Air Mail charges are so that we may reimburse you therefor.

We enclose herewith our check for \$34 made payable to you and covering

AIR
MAIL

Honorable R. A. Gray

-2-

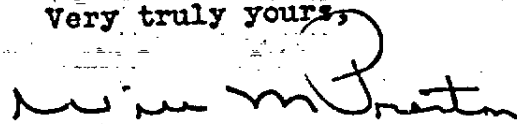
May 14, 1951

\$10.00 filing of certificate
\$24.00 certification of copies.

From our March 31, 1951 conversation and since the amendment does not cover an increase in authorized shares because of the elimination of the unissued shares of \$4.50 Preferred Stock, I am of the opinion that no fees are due except those above set forth. In this connection see my March 30 letter to you about the amendment which was filed in your office on March 31, 1951.

Thank you so much for your continued cooperation and assistance in the matters you handle for us and our clients.

Very truly yours,



Will M. Preston

WMP:MM
Enclosures

AIR
MAIL

CERTIFICATE OF AMENDMENT
of
AGREEMENT OF CONSOLIDATION
between
PENINSULA POWER & LIGHT COMPANY
AND SOUTHERN UTILITIES COMPANY
forming
FLORIDA POWER & LIGHT COMPANY

Florida Power & Light Company, a corporation organized and existing under and in pursuance of an Act of the Legislature of the State of Florida entitled "An Act Relating to Corporations" approved June 1, 1925, does hereby certify:

First: That at a meeting of the Board of Directors of said Florida Power & Light Company, duly called and held on the 2nd day of April, 1951, at 2:00 o'clock in the afternoon, at 25 Southeast Second Avenue, Miami, Florida, the resolution attached hereto, made a part hereof as if set out in words and figures herein and marked Exhibit A and setting forth proposed amendment to Section 3 of the Company's charter (Agreement of Consolidation between Peninsula Power & Light Company and Southern Utilities Company forming Florida Power & Light Company, and filed in the office of the Secretary of State of the State of Florida on December 31, 1925) as heretofore amended, was duly adopted.

That at said meeting a resolution was adopted by the Board of Directors of Florida Power & Light Company declaring the advisability of said amendment.

Second: That thereafter, and, because under said Company's charter such amendment could be adopted only if the holders of two-thirds of the total number of shares of the Company's 4½% Preferred Stock outstanding had, by vote at a meeting called for that purpose, consented to such amendment, a meeting of the holders of the 4½% Preferred Stock of said Florida Power & Light Company was duly held upon call by the Board of Directors at its April 2 meeting and due and statutory notice given the holders of all of the 4½% Preferred Stock then outstanding and entitled to vote on said amendment, at 25 Southeast Second Avenue, Miami, Florida, on May 14, 1951, at 11:00 o'clock in the forenoon; that at said meeting the vote of the 4½% Preferred stockholders of record entitled to vote was taken for and against the proposed amendment and that, upon the canvassing of said votes on the proposed amendment, it appeared from the Certificate of the Inspectors of Stockholders' Votes and Elections that the holders of in excess of two-thirds of the total number of shares of the Company's 4½% Preferred Stock outstanding had, by vote at said meeting, consented to the proposed amendment submitted to them.

That at said meeting the holders of 86,707 shares of the 100,000 shares of 4½% Preferred Stock of the Company issued and outstanding and entitled to vote at said meeting were present in person or by proxy, thereby constituting a quorum for the transaction of business.

Third: That the annual meeting of the common stockholders of said Florida Power & Light Company was duly held upon call by the Board of Directors at its April 2, 1951 meeting and due and statutory notice given the holders of all of the common stock of the Company then outstanding and entitled to vote on said amendment, as required by the said Act of the Legislature of the State of Florida, at 25 Southeast Second Avenue, Miami, Florida, on May 14, 1951, at 2:00 o'clock in the afternoon; that at said meeting the vote of the common stockholders of record entitled to vote was taken for and against the proposed amendment and that, upon the canvassing of said votes on the proposed amendment, it appeared from the Certificate of the Inspectors of Stockholders' Votes and Elections that stockholders of record of said Company holding common stock in said Company entitling them to exercise at least a majority of the voting power, had voted in favor of the proposed amendment.

That at said meeting the holders of 1,916,459 shares of the 2,450,000 shares of common capital stock of the Company issued and outstanding and entitled to vote at said meeting were present in person or by proxy, thereby constituting a quorum for the transaction of business.

IN WITNESS WHEREOF, Florida Power & Light Company has made this Certificate under its corporate seal and the hands of its Vice-President and Secretary, this 14th day of May, 1951.

FLORIDA POWER & LIGHT COMPANY

By *E. Simpson*
Vice President

Attest:

M. B. McDonald
Secretary

STATE OF FLORIDA

COUNTY OF DADE

ss:

~~Notary Public~~ E. SIMPSON and M. B. McDONALD, to me well known and known to me to be the individuals described in and who executed the foregoing Certificate of Amendment of Agreement of Consolidation between Peninsula Power & Light Company and Southern Utilities Company forming Florida Power & Light Company, and acknowledged before me that they executed the same for the purposes therein expressed and that the seal affixed thereto is the corporate seal of said Florida Power & Light Company and that said instrument is the act of said Florida Power & Light Company.

WITNESS my hand and official seal at Miami, Florida, this 14th day of May, 1951.

Levin Blackburn
Notary Public, State of Florida at Large

My Commission expires: Sept 15, 1953

EXHIBIT A

Resolution Setting Forth Proposed Amendment to Agreement of Consolidation

Resolved that Section 3 of the Agreement of Consolidation forming this Company, as amended, be amended to read as follows:

"3. (A) The total authorized number of shares of stock of this Company shall be 20,150,000 shares, of which 100,000 shares shall be 4½% Preferred Stock of the par value of \$100 each, 50,000 shares shall be 4½% Preferred Stock, Series A (hereinafter sometimes called 'Series A Stock') of the par value of \$100 each, and 20,000,000 shares shall be Common Stock without par value.

"(B) (1) The 4½% Preferred Stock, and the Series A Stock, *pari passu*, each with the other, shall be entitled, but only when and as declared by the Board of Directors, out of funds legally available for the payment of dividends, in preference to the Common Stock, to dividends at the rate per share of four and one-half per centum (4½%) per annum of the par value thereof, and no more, payable quarterly on December 1, March 1, June 1 and September 1 of each year to stockholders of record as of a date, not exceeding thirty (30) days and not less than ten (10) days preceding such dividend payment dates, to be fixed by the Board of Directors, such dividends to be cumulative from the dividend date immediately preceding the date of issue of the share to which such dividends shall pertain. Dividends in full shall not be paid or set apart for payment on the 4½% Preferred Stock or on the Series A Stock for any dividend period unless dividends in full have been or are contemporaneously paid or set apart for payment on all outstanding shares of both the 4½% Preferred Stock and the Series A Stock for such dividend period and for all prior dividend periods. When the stated dividends are not paid in full on the 4½% Preferred Stock or on the Series A Stock, the shares of 4½% Preferred Stock and Series A Stock shall share ratably in the payment of dividends, including accumulations, if any, in accordance with the sums which would be payable on said shares if all dividends were paid in full. A 'dividend period' is the period between any two consecutive dividend payment dates, including the first of such dates.

Dividends may be paid upon the Common Stock only when dividends have been paid or funds have been set apart for the payment of dividends as aforesaid on the 4½% Preferred Stock and the Series A Stock, from the dates after which dividends thereon became cumulative to the end of the

"(2) (a) So long as any shares of 4½% Preferred Stock or Series A Stock are outstanding, the Company shall not, without the consent (given by a vote at a meeting called for that purpose) of at least two-thirds of the total number of shares of the 4½% Preferred Stock and at least two-thirds of the total number of shares of the Series A Stock then outstanding create or authorize any new stock ranking prior to the 4½% Preferred Stock or to the Series A Stock as to dividends, or in liquidation, dissolution, winding up or other distribution, or create or authorize any security convertible into shares of any such stock.

(b) So long as any shares of 4½% Preferred Stock are outstanding, the Company shall not without the consent (given by a vote at a meeting called for that purpose) of at least two-thirds of the total number of shares of the 4½% Preferred Stock then outstanding amend, alter, change or repeal any of the express terms of the 4½% Preferred Stock then outstanding in a manner substantially prejudicial to the holders thereof.

(c) So long as any shares of Series A Stock are outstanding, the Company shall not without the consent (given by a vote at a meeting called for that purpose) of at least two-thirds of the total number

of shares of the Series A Stock then outstanding amend, alter, change or repeal any of the express terms of the Series A Stock then outstanding in a manner substantially prejudicial to the holders thereof.

"(3) So long as any shares of the 4½% Preferred Stock or Series A Stock are outstanding, the Company shall not, without the consent (given by a vote at a meeting called for that purpose) of the holders of a majority of the total number of shares of the 4½% Preferred Stock and of a majority of the total number of shares of the Series A Stock then outstanding:

(a) merge or consolidate with or into any other corporation or corporations or sell or otherwise dispose of all or substantially all of the assets of the Company, unless such merger or consolidation or sale or other disposition or the exchange, issuance or assumption of all securities to be issued or assumed in connection with any such merger or consolidation or sale or other disposition, shall have been ordered, approved or permitted by the regulatory authorities of the state or states or of the United States of America having jurisdiction with respect to such merger or consolidation or sale or other disposition or exchange, issuance or assumption of securities; provided that the provisions of this subparagraph (a) shall not apply to a purchase or other acquisition by the Company of franchises or assets of another corporation in any manner which does not involve a merger or consolidation; or

(b) issue any unsecured notes, debentures or other securities representing unsecured indebtedness, or otherwise assume or incur any such unsecured indebtedness, for purposes other than (i) the refunding of any outstanding unsecured indebtedness theretofore issued or assumed by the Company, (ii) the reacquisition, redemption or other retirement of any indebtedness issued or assumed by the Company, or (iii) the reacquisition, redemption or other retirement of all outstanding shares of the 4½% Preferred Stock and of all outstanding shares of the Series A Stock and of all outstanding shares of any other class or series of stock ranking on a parity, as to dividends, or in liquidation, dissolution, winding up or other distribution, with the 4½% Preferred Stock and the Series A Stock, if immediately after issuing, assuming or incurring such debt the total principal amount of all outstanding unsecured notes, debentures or other securities representing unsecured indebtedness of the Company, including unsecured indebtedness then to be issued, assumed or incurred (but excluding, until July 1, 1967, the principal amount of all of the Company's 3¼% Sinking Fund Debentures due 1972, which remain outstanding) would exceed 20% of the aggregate of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by the Company and then to be outstanding, and (b) the capital and surplus of the Company as then to be stated on the books of account of the Company; or

(c) issue, sell, or otherwise dispose of any shares of the 4½% Preferred Stock in excess of 100,000 shares thereof or any shares of the Series A Stock in excess of 50,000 shares thereof, or any shares of any other class of stock ranking prior to, or on a parity with, the 4½% Preferred Stock or the Series A Stock as to dividends, or in liquidation, dissolution, winding up or other distribution, unless the net income of the Company determined, after provision for depreciation and all taxes and in accordance with generally accepted accounting practices, to be available for the payment of dividends for a period of twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the issuance, sale or disposition of such stock, is at least equal to twice the annual dividend requirements on all outstanding shares of the 4½% Preferred Stock and of the Series A Stock and of all other classes of stock ranking prior to, or on a parity with, the 4½% Preferred Stock or the Series A Stock as to dividends or distributions, including the shares proposed to be issued, and unless the gross income of the Company for such period, determined in accordance with generally accepted accounting practices (but in any event after deducting the amount for said period charged by the Company on its books to depreciation expense and all taxes) to be available for the payment of interest, shall have been at least one and one-half times the sum of (i) the annual interest charges on all interest bearing indebtedness of the Company and (ii) the annual dividend requirements on all outstanding shares of the 4½% Preferred Stock and of the Series A Stock and of all other classes of stock ranking prior to, or on a parity with, the 4½% Preferred Stock or the Series A Stock as to dividends or distributions,

including the shares proposed to be issued; provided, that there shall be excluded from the foregoing computation interest charges on all indebtedness and dividends on all shares of stock which are to be retired in connection with the issue of such additional shares; and provided, further, that in any case where such additional shares are to be issued in connection with the acquisition of new property, the gross income and the net income of the property to be so acquired may be included on a pro forma basis in the foregoing computation, computed on the same basis as the gross income and the net income of the Company; or

(d) issue, sell, or otherwise dispose of any shares of the 4¼% Preferred Stock in excess of 100,000 shares thereof, or any shares of the Series A Stock in excess of 50,000 shares thereof, or any shares of any other class of stock ranking prior to, or on a parity with, the 4½% Preferred Stock or the Series A Stock as to dividends or distributions, unless the aggregate of the capital of the Company applicable to the Common Stock and the surplus of the Company shall not be less than the aggregate amount payable on the involuntary liquidation, dissolution, or winding up of the Company, in respect of all shares of the 4½% Preferred Stock and of the Series A Stock and all shares of stock, if any, ranking prior thereto, or on a parity therewith, as to dividends or distributions, which will be outstanding after the issue of the shares proposed to be issued; provided, that if, for the purposes of meeting the requirements of this subparagraph (d), it becomes necessary to take into consideration any earned surplus of the Company, the Company shall not thereafter pay any dividends on shares of the Common Stock which would result in reducing the Company's Common Stock Equity (the words 'Common Stock Equity' meaning the sum of the stated value of the outstanding Common Stock and the earned surplus and the capital and paid-in surplus of the Company, whether or not available for the payment of dividends on the Common Stock) to an amount less than the aggregate amount payable, on involuntary liquidation, dissolution, or winding up of the Company, on all shares of the 4½% Preferred Stock, of the Series A Stock and of any stock ranking prior to, or on a parity with, the 4½% Preferred Stock or the Series A Stock as to dividends or distributions, at the time outstanding.

"(4) In the event of any voluntary liquidation, dissolution or winding up of the Company, the 4½% Preferred Stock and the Series A Stock, *pari passu*, each with the other, shall have a preference over the Common Stock until an amount equal to the then current redemption price of all shares of the 4½% Preferred Stock and of the Series A Stock shall have been paid. In the event of any involuntary liquidation, dissolution or winding up of the Company, which shall include any such liquidation, dissolution or winding up which may arise out of or result from the condemnation or purchase of all or a major portion of the properties of the Company by (i) the United States Government or any authority, agency or instrumentality thereof, (ii) a state of the United States or any authority, agency or instrumentality thereof, or (iii) a district, cooperative or other association or entity not organized or instrumentality thereof, shall have a preference over the Common Stock until the full par value of all shares of the 4½% Preferred Stock and of the Series A Stock and an amount equal to all accumulated and unpaid dividends thereon shall have been paid by dividends or distribution. If the assets distributable on any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, shall be insufficient to permit the payment to the holders of the 4½% Preferred Stock and the Series A Stock of the full amounts to which they respectively are entitled as aforesaid, then said assets shall be distributed ratably among the holders of the 4½% Preferred Stock and the Series A Stock in proportion to the sums which would be payable on such liquidation, dissolution or winding up if all such sums were paid in full.

"(5) (a) The Company, by a majority vote of its Board of Directors, may at any time redeem all of said 4½% Preferred Stock or may from time to time redeem any part thereof, by paying in cash a redemption price consisting of the sum of (i) \$103.50 if redeemed prior to September 1, 1952, \$102.50 if redeemed thereafter and prior to September 1, 1957, \$101.50 if redeemed thereafter and prior to September 1, 1962, and \$101.00 if redeemed on or after September 1, 1962, and (ii) an amount equal to accumulated and unpaid dividends in each case, if any, to the date of redemption.

(b) The Company, by a majority vote of its Board of Directors, may at any time redeem all of said Series A Stock or may from time to time redeem any part thereof, by paying in cash a redemption price consisting of the sum of (i) \$3.00 per share if redeemed within the first five (5) years after the first date from which dividends on any shares of such stock shall become cumulative, \$2.00 per share if redeemed within the second five (5) years after the first date from which dividends on any shares of such stock shall become cumulative, and \$1.00 per share if redeemed subsequent to ten (10) years after the first date from which dividends on any shares of such stock shall become cumulative, (ii) in each instance an amount equivalent to the public offering price per share upon the initial issuance of such Series A Stock and (iii) an amount equivalent to the accumulated and unpaid dividends in each case, if any, to the date of redemption. The 'public offering price' of such Series A Stock, for the purpose of determination of the redemption price thereof, shall be the price (exclusive of an amount equivalent to accumulated dividends) at which the initial issue of such Series A Stock is offered for sale publicly by the Company or by underwriters or investment bankers, provided however, that if there shall be no public offering of the initial issue of the Series A Stock, the public offering price of the initial issue of the Series A Stock shall, for this purpose, be deemed to be the price (exclusive of an amount equivalent to accumulated dividends) paid by the purchaser or purchasers of the initial issue of such Series A Stock to the Company.

(c) Notice of the intention of the Company to redeem all or any part of the 4½% Preferred Stock or of the Series A Stock shall be mailed not less than thirty days nor more than sixty days before the date of redemption to each holder of record of 4½% Preferred Stock or Series A Stock to be redeemed, at his post-office address as shown by the Company's records and not less than thirty days' nor more than sixty days' notice of such redemption may be published in such manner as may be prescribed by resolution of the Board of Directors of the Company; and, in the event of such publication, no defect in the notice so mailed or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares so to be redeemed. Contemporaneously with the mailing or the publication of such notice as aforesaid or at any time thereafter prior to the date of redemption, the Company may deposit the aggregate redemption price (or the portion thereof not already paid) with any bank or trust company in the City of New York, New York, or in the City of Miami, Florida, named in such notice, payable to the order of the record holders of the shares so to be redeemed, on the endorsement and surrender of their certificates, and thereupon said holders shall cease to be stockholders with respect to such shares; and from and after the making of such deposit such holders shall have no interest in or claim against the Company with respect to said shares, but shall be entitled only to receive such moneys from said bank or trust company, with interest, if any, allowed by such bank or trust company on such moneys deposited as in this paragraph provided, on endorsement and surrender of their certificates, as aforesaid. Any moneys so deposited, plus interest thereon, if any, remaining unclaimed at the end of six years from the date fixed for redemption, if thereafter requested by resolution of the Board of Directors, shall be repaid to the Company, and in the event of such repayment to the Company, such holders of record of the shares so redeemed as shall not have made claim against such moneys prior to such repayment to the Company shall be deemed to be unsecured creditors of the Company for an amount, without interest, equivalent to the amount deposited, plus interest thereon, if any, allowed by such bank or trust company, as above stated, for the redemption of such shares and so paid to the Company. Shares of the 4½% Preferred Stock or of the Series A Stock which have been redeemed shall not be reissued. If less than all of the shares of the 4½% Preferred Stock or of the Series A Stock are to be redeemed, the shares to be redeemed shall be selected by lot, in such manner as the Board of Directors of the Company shall determine, by an independent bank or trust company selected for that purpose by the Board of Directors of the Company. Nothing in this paragraph contained shall limit any right of the Company to purchase or otherwise acquire any shares of 4½% Preferred Stock or of Series A Stock.

"(6) For the purpose of this paragraph (6): (a) the term 'Common Stock Equity' shall mean the sum of the stated value of the outstanding Common Stock and the earned surplus and the capital and paid-in surplus of the Company, whether or not available for the payment of dividends on the Common Stock; (b) the term 'total capitalization' shall mean the sum of the stated capital applicable

to the outstanding stock of all classes of the Company, the earned surplus and the capital and paid-in surplus of the Company, whether or not available for the payment of dividends on the Common Stock of the Company, any premium on capital stock of the Company and the principal amount of all outstanding debt of the Company maturing more than twelve months after the date of the determination of the total capitalization; and (e) the term 'dividends on Common Stock' shall embrace dividends on Common Stock (other than dividends payable only in shares of Common Stock), distributions on, and purchases or other acquisitions for value of, any Common Stock of the Company or other stock, if any, subordinate to the 4½% Preferred Stock and the Series A Stock. Subject to the rights of the holders of the 4½% Preferred Stock and the Series A Stock, and subordinate thereto (and subject and subordinate to the rights of any class of stock hereafter authorized), the Common Stock alone shall receive all dividends and shares in liquidation, dissolution, winding up or other distribution. So long as any shares of the 4½% Preferred Stock or of the Series A Stock are outstanding, the Company shall not declare or pay any dividends on the Common Stock, except as follows:

(a) If and so long as the Common Stock Equity at the end of the calendar month immediately preceding the date on which a dividend on Common Stock is declared is, or as a result of such dividend would become, less than 20% of total capitalization, the Company shall not declare such dividends in an amount which, together with all other dividends on Common Stock declared within the year ending with and including the date of such dividend declaration, exceeds 50% of the net income of the Company available for dividends on the Common Stock for the twelve full calendar months immediately preceding the month in which such dividends are declared; and

(b) If and so long as the Common Stock Equity at the end of the calendar month immediately preceding the date on which a dividend on Common Stock is declared is, or as a result of such dividend would become, less than 25% but not less than 20% of total capitalization, the Company shall not declare dividends on the Common Stock in an amount which, together with all other dividends on Common Stock declared within the year ending with and including the date of such dividend declaration, exceeds 75% of the net income of the Company available for dividends on the Common Stock for the twelve full calendar months immediately preceding the month in which such dividends are declared; and

(c) At any time when the Common Stock Equity is 25% or more of total capitalization, the Company may not declare dividends on shares of the Common Stock which would reduce the Common Stock Equity below 25% of total capitalization, except to the extent provided in subparagraphs (a) and (b) above.

"(C) Subject to the provisions of subsection (D) of this Section 3:
~~the holder of the stock, in person or by proxy, for each share of such stock standing in his name on the books of the Company.~~

"(2) At elections of directors of the Company each holder of record of Common Stock shall be entitled to as many votes, in person or by proxy, as shall equal the number of shares of such stock owned by him multiplied by the number of directors to be elected, and each holder of record of Common Stock may cast all of such votes for a single director or may distribute them among the number to be voted for or any two or more of them as he may see fit. see X

"(3) Except as expressly provided in this Section 3, the 4½% Preferred Stock and the Series A Stock shall have no power to vote.

"(D) Notwithstanding the provisions of subsection (C) of this Section 3:

"(1) If and when dividends payable on any of the Preferred Stock (which, for the purposes of this subsection (D), shall be deemed to be the 4½% Preferred Stock, the Series A Stock, and such other preferred stock, ranking on a parity with the 4½% Preferred Stock and the Series A

Stock as to dividends and distributions, as may be lawfully issued) shall be in default in an amount equal to four full quarterly payments or more per share, and thereafter until all dividends on any of the Preferred Stock in default shall have been paid, the holders of all of the then outstanding Preferred Stock, voting as a class, in contradistinction to the Common Stock as a class, shall be entitled to elect the smallest number of directors necessary to constitute a majority of the full Board of Directors, and the holders of the Common Stock, voting separately as a class, shall be entitled to elect the remaining directors of the Company, anything in this Agreement of Consolidation to the contrary notwithstanding. The terms of office, as directors, of all persons who may be directors of the Company at the time, shall terminate upon the election of a majority of the Board of Directors by the holders of the Preferred Stock, except that if the holders of the Common Stock shall not have elected the remaining directors of the Company, then, and only in that event, the directors of the Company in office just prior to the election of a majority of the Board of Directors by the holders of the Preferred Stock shall elect the remaining directors of the Company. Thereafter, while such default continues and a majority of the Board is being elected by the holders of the Preferred Stock, the remaining directors, whether elected by directors, as aforesaid, or whether originally or later elected by holders of the Common Stock, shall continue in office until their successors are elected by holders of the Common Stock and shall qualify. The term of office of the directors so elected by the holders of the Preferred Stock, voting as a class, and of the directors elected by the holders of the Common Stock, voting separately as a class, shall be until the next annual meeting or until the privilege of the preferred stockholders to elect directors shall terminate as hereinafter provided, whichever shall be the earlier date, and until their successors shall have been elected and shall have qualified.

"(2) If and when all dividends then in default on any of the Preferred Stock then outstanding shall be paid (such dividends to be declared and paid out of any funds legally available therefor as soon as reasonably practicable), the holders of the Preferred Stock shall be divested of any privilege with respect to the election of directors which is conferred upon the holders of such Preferred Stock under this subsection (1) and the voting power of the holders of the Preferred Stock and the holders of the Common Stock shall revert to the status existing before the first dividend payment date on which dividends on any of the Preferred Stock were not paid in full, but always subject to the same provisions for vesting such privilege in the holders of the Preferred Stock in case of further like default or defaults in the payment of dividends thereon. Upon termination of any such voting privilege upon payment of all accumulated and defaulted dividends on the Preferred Stock, the terms of office of all persons who have been elected directors of the Company by vote of the holders of the Preferred Stock as a class, pursuant to such voting privilege, shall forthwith terminate, and the resulting vacancies shall be filled by the vote of a majority of the remaining directors.

"(3) In case of any vacancy in the office of a director occurring among the directors elected by the holders of the Preferred Stock, by affirmative vote of a majority thereof, or the remaining director so elected if there be but one, may elect a successor or successors to hold office for the unexpired term or terms of the director or directors whose place or places shall be vacant. In case of any vacancy in the office of a director occurring among the directors elected by the holders of the Common Stock, voting separately as a class, the remaining directors elected by the holders of the Common Stock, by affirmative vote of a majority thereof, or the remaining director so elected if there be but one, may elect a successor or successors to hold office for the unexpired term or terms of the director or directors whose place or places shall be vacant.

"(4) Whenever dividends on Preferred Stock shall be in default as provided in paragraph (1) of this subsection (1), it shall be the duty of the president, a vice-president or the secretary of the Company, forthwith to cause notice to be given to the holders of the outstanding Preferred Stock and to the holders of the Common Stock of a meeting to be held at such time as the Company's officers may fix, not less than ten (10) nor more than sixty (60) days after the accrual of such privilege, for the purpose of electing directors. Each holder of record of any of the Preferred Stock, or his legal representative, shall be entitled at such meeting to one vote for each share of Preferred Stock standing

in his name on the books of the Company. At all meetings of stockholders held for the purpose of electing directors during such time as the holders of the Preferred Stock shall have the special right, voting separately as a class, to elect directors, the presence in person or by proxy of the holders of a majority of the outstanding Common Stock shall be required to constitute a quorum of such class for the election of directors, and the presence in person or by proxy of the holders of a majority of the outstanding Preferred Stock considered together as a class shall be required to constitute a quorum of either such Preferred Stock or Common Stock shall not prevent the election at any such meeting or adjournment thereof of directors by such other class, if the necessary quorum of the holders of such other class is present in person or by proxy at such meeting or any adjournment thereof; and provided, further, that in the event a quorum of the holders of the Common Stock is present but a quorum of the holders of the Preferred Stock is not present, then the election of the directors elected by the holders of the Common Stock shall not become effective and the directors so elected by the holders of Common Stock shall not assume their offices and duties until the holders of the Preferred Stock, with a quorum present, shall have elected the directors they shall be entitled to elect; and provided, further, that in the absence of a quorum of holders of stock of either class, a majority of the holders of the stock of the class which lacks a quorum who are present in person or by proxy shall have power to adjourn the election of the directors to be elected by such class from time to time without notice other than announcement at the meeting, until the requisite quorum of holders of such class shall be present in person or by proxy, but such adjournment shall not be made to a date beyond the date for the mailing of the notice of the next annual meeting of the Company or special meeting in lieu thereof.

"(5) Voting privileges similar to those set forth in the preceding paragraphs (1), (2), (3) and (4) may be conferred upon any preferred stock hereafter authorized and, in that case, such preferred stock hereafter authorized shall have voting privileges equal to and concurrent with the voting privileges so set forth of the 4½% Preferred Stock and the Series A Stock, and shall be deemed to be Preferred Stock for the purposes of this subsection (D).

"(E) (1) Upon any issue for money or other consideration of any stock of the Company that may be authorized from time to time, no holder of stock irrespective of the kind of such stock shall have any preemptive or other right to subscribe for, purchase or receive any proportionate or other share of the stock so issued, but the Board of Directors may dispose of all or any portion of such stock as and when it may determine free of any such rights, whether by offering the same to stockholders or by sale or other disposition as said Board may deem advisable; provided, however, that if the Board of Directors shall determine to offer any new or additional shares of Common Stock, or any securities convertible into Common Stock, for money, other than by a public offering of all of such shares or an offering of all of such shares to or through underwriters or investment bankers who shall have agreed ~~to the then outstanding shares of Common Stock of the Company upon terms not less favorable to the~~ purchaser (without deduction of such reasonable compensation, allowance or discount for the sale, underwriting or purchase as may be fixed thereafter by the Board of Directors) than those on which the Board of Directors issues and disposes of such stock or securities to other than such holders of Common Stock; and provided further, that the time within which such preemptive rights shall be exercised may be limited by the Board of Directors to such time as to said Board of Directors may seem proper, not less, however, than twenty days after mailing of notice that such stock rights are available and may be exercised. The consideration received by the Company from the issuance and sale of any additional shares of Common Stock without par value shall be entered in the capital stock account. The foregoing provisions of this paragraph shall not be changed unless the holders of record of not less than two-thirds (⅔) of the number of shares of Common Stock then outstanding shall consent thereto in writing or by voting therefor in person or by proxy at the meeting of stockholders at which any such change is considered.

"(2) Certificates of stock shall be signed by the President or a Vice-President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company. Where such

certificate is signed (1) by a transfer agent or a co-transfer agent or (2) by a transfer clerk acting on behalf of the Company and a registrar, the signature of any such President, Vice-President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary may be facsimile. In case any officer or officers who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be such officer or officers of the Company, whether because of death, resignation or otherwise, before such certificate or certificates shall have been delivered by the Company, such certificate or certificates may nevertheless be adopted by the Company and be issued and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of the Company. The corporate seal, if any, upon such certificate may be facsimile, engraved or printed."