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CORPORATION(S) NAME

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Transeastern Properties, Inc.

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| <input type="checkbox"/> NonProfit | | |
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| <input type="checkbox"/> Foreign | | |
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| <input type="checkbox"/> Reinstatement | <input type="checkbox"/> Reservation | <input type="checkbox"/> Change of R.A. |
| <input type="checkbox"/> Limited Liability Partnership | | <input type="checkbox"/> Fictitious Name |
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TRANSEASTERN PROPERTIES, INC.
Designating 1,515,152 shares of Preferred Stock
as shares of
SERIES C CONVERTIBLE PREFERRED STOCK
(par value \$.01 per share)
and
Designating 1,000 shares of Preferred Stock
as shares of
SERIES D CONVERTIBLE PREFERRED STOCK

Pursuant to Section 607.0602 of Business Corporation Act
of the State of Florida

Transeastern Properties, Inc., a corporation organized and existing under the laws of Florida (the "Corporation"), does hereby certify that:

Pursuant to the authority contained in Section 3.2 of the Articles of Incorporation of the Corporation, as amended (the "Charter"), and in accordance with the provisions of Section 607.0602 of the Business Corporation Act Corporation Law of the State of Florida, the Board of Directors of the Corporation duly adopted the following resolution on October 31, 1997 creating a series of the Preferred Stock, par value \$.01 (the "Preferred Stock"), designated as Series C Convertible Preferred Stock and a series of Preferred Stock designated as Series D Convertible Preferred Stock:

RESOLVED, that two series of the class of authorized Preferred Stock, par value \$.01, 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 qualifications, limitations and restrictions thereof are as follows:

Section 1. Designation, Amount and Stated Value.

Of the 20,000,000 authorized shares of Preferred Stock, 1,515,152 shares are designated Series C Convertible Preferred Stock (the "Series C Convertible Preferred Stock") and 1,000 shares are designated as Series D Convertible Preferred Stock (the "Series D Convertible Preferred Stock"). The Series C Convertible Preferred Stock will have a stated value equal to \$3.30 per share (the "Stated Value"). The Series C Convertible Preferred Stock is divided into two sub-series. Of the 1,515,152 shares of Series C Convertible

Preferred Stock, 757,576 shares are designated as the Series C-1 Convertible Preferred Stock (the "*Series C-1 Convertible Preferred Stock*") and 757,576 shares are designated as the Series C-2 Convertible Preferred Stock (the "*Series C-2 Convertible Preferred Stock*"). The Series C-1 Convertible Preferred Stock and the Series C-2 Convertible Preferred Stock shall be identical in all respects and share ratably with respect to all rights hereunder, except as may be set forth in Sections 5(a)(i) and 8 hereof. The Series D Convertible Preferred Stock will have such stated value as is determined in accordance with the provisions of the Warrant Agreement, dated as of October 31, 1997, between the Corporation and MS TEP III, L.L.C., as the same may be amended from time to time. The Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock shall be identical in all respects and share ratably with respect to all rights hereunder, except as expressly set forth herein.

Section 2. *Dividends and Distributions.*

(a) Holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be entitled to receive (when, as and if declared by the Board of Directors out of funds legally available for the payment of dividends) dividends (i) in an amount equal to the per share Common Stock Dividend Amount (defined hereinafter) with respect to all dividends declared in connection with a dividend declared with respect to the Common Stock, and (ii) in such amount declared by the Board of Directors with respect to all other dividends declared with respect to the Series C Convertible Preferred Stock. The holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock shall be paid dividends in the amount set forth in clause (i) above upon each payment by the Corporation of any dividends with respect to its Common Stock (other than a distribution payable solely in shares of Common Stock) and simultaneously therewith. Dividends with respect to the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock shall be payable at the close of the business day specified by the Board of Directors at the time such dividend or dividends with respect to (a) the Common Stock, Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, or (b) the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, as the case may be, is or are declared (each a "*Dividend Payment Date*"). The "*Common Stock Dividend Amount*" applicable as of any Dividend Payment Date shall mean the amount which is the product of (i) the dollar amount of the dividend paid per share of Common Stock with respect to the shares of Common Stock (other than a distribution payable solely in shares of Common Stock) which occurs on such Dividend Payment Date and (ii) the number of shares of Common Stock into which each share of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is entitled to be converted, at the Conversion Price then in effect and otherwise as set forth in this Certificate of Designation, as of the record date established for such Dividend Payment Date (determined, for purposes of this computation, to the fourth decimal place). If any Dividend Payment Date is not a Business Day, the dividend due on that Dividend Payment Date will be paid on the Business Day immediately succeeding that Dividend Payment Date. As used with regard to the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock: the term "*Business Day*" means a day on which both state and federally chartered banks in New York, New York are required to be open for

general banking business; and all declared but not yet paid dividends are referred to as "Accrued Dividends."

(b) Each dividend will be payable to holders of record of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock on a date (a "Record Date") selected by the Board of Directors which is not less than 10 nor more than 60 days before the Dividend Payment Date on which the dividend is to be paid. No Record Date will precede the close of business on the date the Record Date is fixed.

(c) Unless and until all dividends on the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock under clause (i) of the first sentence of Section 2(a) are declared and paid contemporaneously therewith, the Corporation may not (i) declare or pay any dividend, make any distribution (other than a distribution payable solely in shares of Common Stock), or set aside any funds or assets for payment or distribution with regard to any Junior Shares (as herein defined) other than shares of the Corporation's Series B Redeemable Preferred Stock, or (ii) redeem or purchase (directly or through Subsidiaries), or set aside any funds or other assets for the redemption or purchase of, any Junior Shares other than shares of the Corporation's Series A Redeemable Preferred Stock. As used with regard to the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, the term "Junior Shares" means all shares of Common Stock and all shares of any other class or series of stock of the Corporation to which the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are prior in rank with regard to payment of dividends or payments upon the liquidation, dissolution or winding-up of the Corporation or any other rights to purchase shares of any such class (including, without limitation, any warrants or options or other Convertible Securities), including, without limitation, the Series A Redeemable Preferred Stock and the Series B Redeemable Preferred Stock of the Corporation. The Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock will be pari passu in all respects except as expressly set forth herein. As used herein, "Person" shall mean an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or other entity of whatever nature; and the term "Subsidiary" means any Person in which the Company directly or indirectly owns any equity interest.

(d) While any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are outstanding, the Corporation may not pay any dividend, or set aside any funds for the payment of a dividend, with regard to any shares of any class or series of stock of the Corporation (other than (i) shares of Common Stock; provided a contemporaneous dividend is paid, as provided herein, upon the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock; and (ii) shares of the Series B Redeemable Preferred Stock) unless there exist no Accrued Dividends and at least a proportionate payment is made with regard to the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock (except, as to any shares of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock as to which a notice of

conversion has been furnished by the holder thereof, at the effective time of conversion). A payment of dividends with regard to the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be proportionate to a payment of a dividend with regard to another class or series of stock if the dividend per share of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is the same percentage of the Liquidation Preference (as herein defined) (except as aforesaid) with regard to a share of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock that the dividend paid with regard to a share of stock of the other class or series is of the liquidation preference (except as aforesaid) with regard to a share of stock of that other class or series.

(e) Any dividend paid with regard to shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be paid equally with regard to each outstanding share of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock.

Section 3. *Voting Rights.*

The voting rights of the holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be only the following:

(a) The holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will have the right to vote on all matters on which the holders of Common Stock are entitled to vote on an "as converted" basis with holders of shares of the Common Stock, as though part of the same class as holders of Common Stock, with such number of shares of Common Stock deemed held of record by holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock on any Record Date as would be the number of shares of Common Stock into which the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock held by such holder would be entitled to be converted on such Record Date. The holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock shall receive all notices of meetings of the holders of shares of Common Stock, and all other notices and correspondence to the holders of shares of Common Stock provided by the Corporation, and shall be entitled to take such actions, and shall have such rights, as are set forth in this Certificate of Designation or are otherwise available to the holders of shares of Common Stock in the Charter and in the By-laws of the Corporation as are in effect on the date hereof, in each case with the same effect as would be taken by holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock if deemed to be holders of such number of shares of Common Stock as determined as aforesaid.

(b) While any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are outstanding, the Corporation will not, directly or indirectly, including through a merger or consolidation with any other corporation or otherwise, without approval of holders of at least 51% of the outstanding shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, voting together as a separate class (on an "as converted basis"), (i) issue any securities of any nature (including, without limitation

Convertible Securities (as defined in section 5(e)(iv)) or rights, options or warrants to purchase such securities other than (A) issuances of Common Stock for cash consideration, (B) issuances of up to an aggregate of 750,000 shares of Common Stock Employee Shares and Acquisition Shares and (C) issuances upon the exercise of rights, warrants or options or conversions or exchanges of Convertible Securities which, in each case, were outstanding prior to the issuance of the Series C Convertible Preferred Stock; (ii) increase the authorized number of shares of equity securities of the Corporation other than that of the Common Stock; (iii) combine, split or reclassify the outstanding shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock into a smaller or larger number of shares; (iv) exchange or convert any shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock for other securities or the right to receive cash, or propose or require an exchange or conversion other than as provided in this Certificate of Designation, or reclassify any shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock; (v) authorize, create, classify, reclassify or issue any class or series of stock ranking prior to or on a parity with the Series C Convertible Preferred Stock or Series D Convertible Preferred Stock either as to dividends or upon liquidation, dissolution or winding-up of the Corporation or as to the rights of the Series C Convertible Preferred Stock or Series D Convertible Preferred Stock set forth in this Section 3; (vi) amend, alter or repeal, or permit to be amended, altered or repealed, any of the provisions of the Charter, this Certificate of Designation, the By-laws of the Corporation or any organizational document of any Subsidiary, in such a manner as would affect adversely the preferences, conversion and other rights, voting powers, restrictions, rights as to dividends and other distributions, qualifications and terms and conditions of redemption of the Series C Convertible Preferred Stock or Series D Convertible Preferred Stock; (vii) through January 1, 1999, make any payment on account of the indebtedness of the Corporation relating to any of the Insider Affiliate Loans (other than payment of interest thereon); (viii) engage in any business activities, except (1) the Corporation may engage directly or through a Subsidiary formed or acquired after the date hereof in those business activities in which the Company is currently engaged (i.e. the development of single family dwellings in the State of Florida), (2) Ameripride Mortgage, Inc. may engage in those business activities in which it is currently engaged (i.e. providing mortgage brokerage services), and (3) each of the Corporation's other existing subsidiaries may complete the development projects in which they are currently engaged, however, once those projects have been completed such subsidiaries may not engage in any further activities; nor permit its subsidiaries to so engage in any such other business; (ix) undergo or agree to undergo a Change of Control; or (x) declare or pay any non-cash dividends or other distributions.

As used herein: (i) "Employee Shares" means shares of Common Stock shares of the Corporation's Common Stock issued or to be issued or underlying Convertible Securities issued or to be issued to employees, directors, consultants, agents or independent contractors of the Corporation, including without limitation, all shares of Common Stock underlying Convertible Securities issued to employees, directors, consultants, agents or independent contractors of the Corporation outstanding on the date of issuance of the Series C Convertible Preferred Stock which taken together with the Acquisition Shares, in the aggregate shall not exceed 750,000; "Acquisition Shares" means shares of Common Stock shares of the

Corporation's Common Stock issued or to be issued in connection with acquisitions of real property assets or businesses by the Corporation (provided such number of Acquisition Shares may be increased by the number of Employee Shares which the Board of Directors determines will be unused) which taken together with the Employee Shares, in the aggregate shall not exceed 750,000; and "Insider Affiliate Loans" means the loans whereby the Corporation has borrowed funds from the following: (A) Art Falcone, (B) Ed Falcone and (C) Phil Cucci, other than the Permitted Affiliate Loans as defined under the Credit Agreement, dated July 23, 1997, between the Corporation and MS TEP I, L.L.C.

As used herein, a "Change of Control" of the Corporation shall be deemed to have occurred if any of the following occur (or, in the case of any proposal, if any of the following could occur as a result thereof): (i) any "person" (as defined in Sections 13(d) and 14(d) of the Exchange Act) (other than the Principals (as herein defined), MS TEP I, L.L.C., MS TEP III, L.L.C., or any of its affiliates) becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of either (A) 33% or more of the outstanding shares of Common Stock, or (B) 33% (by right to vote or grant or withhold any approval) of the outstanding securities of any other class or classes which individually or together have the power to elect a majority of the members of the Board (other than such a person who or which is such a beneficial owner of such a 33% or greater interest as of the issue date of the Series C Convertible Preferred Stock); (ii) the Board determines to recommend, or fails to determine to not recommend, the acceptance of any proposal by any person (other than the Principals (as herein defined), MS TEP I, L.L.C., MS TEP III, L.L.C. or any of its affiliates) which indicates the intention on the part of that person to acquire, or acceptance of which would otherwise have the effect of that person acquiring, either (A) 33% or more of the outstanding shares of the Common Stock, or (B) 33% (by right to vote or grant or withhold any approval) of the outstanding securities of any other class or classes which individually or together have the power to elect a majority of the members of the Board; or (iii) other than as a result of the death or disability of one or more of the directors within a three-month period, and other than by reason of the holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred exercising voting rights as set forth in Section 3(c) of this Certificate of Designation, a majority of the members of the Board for any period of three consecutive months are not persons who (A) had been directors of the Corporation for at least the preceding 24 consecutive months or (B) when they initially were elected to the Board, (x) were nominated (if they were elected by the stockholders) or elected (if they were elected by the directors) with the affirmative concurrence of a majority of the directors who were Continuing Directors at the time of the nomination or election by the Board and (y) were not elected as a result of an actual or threatened solicitation of proxies or consents by a person other than the Board or an agreement intended to avoid or settle such a proxy solicitation (the directors described in clauses (A) and (B) of this subsection (iii) being "Continuing Directors").

(c) The holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted basis", shall be entitled at all times and at any time to elect one director (the "Series C Preferred Director") to the Board of Directors of the Corporation (the "Board"). The

Series C Preferred Director, who has been elected by the Board and has agreed to serve until his successor is elected and qualified shall sit as he may request on each committee of the Board or on any other group so acting, whether or not formally constituted as a committee of the Board. In the event that the Series C Preferred Director is unable to attend any meeting of the Board for any reason, then such Series C Preferred Director may designate, in writing, one person (the "Observer") who shall have the right to attend, but not vote at, such meeting. The Observer shall not be deemed to be a member of the Board of Directors and shall have none of the rights, duties, privileges or powers of a member of the Board of Directors, including, without limitation, the right to notice of or to vote at meetings of the Board of Directors, and shall not be counted as a member of the Board of Directors for the purpose of determining whether a quorum is present at any meeting of the Board of Directors. The Series C Preferred Director from time to time sitting as a member of the Board may be removed for any reason by the holders of record of not less than 51% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis, and, if so removed, a successor individual to serve as the Series C Preferred Director may be appointed by the holders of record of not less than 51% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis. At any annual meeting of the holders of Common Stock at which directors are to be elected, the incumbent Series C Preferred Director shall be nominated and, upon the affirmative vote of not less than 51% of the holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis, shall be elected to serve as the Series C Preferred Director. Whenever the holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock have the right under this Section 3(c) to elect a director or directors, but have not done so due to an act or omission by the Corporation or its Board of Directors, the Secretary of the Corporation will, upon the written request of the holders of record of at least 25% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis, call a special meeting of the holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock for the purpose of removing and/or electing a director or directors, as the case may be. The meeting will be held at the earliest practicable date upon the notice required for annual meetings of the stockholders of the Corporation (or such shorter notice as is stipulated in the written requests for such meeting or is otherwise agreed in writing by the holders of record of at least 25% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis, before or within 10 days after the meeting) at the place specified in the request for a meeting, or if there is none, at a place in New York, New York, designated by the Secretary of the Corporation. If the meeting has not been called within two days after delivery of the written request to the Secretary of the Corporation, or within four days after the request is mailed by registered mail, addressed to the Secretary of the Corporation at the Corporation's principal office, the holders of record of at least 25% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis, may designate in writing one holder to call and appoint an individual to

chair (who need not be an officer or member of the Board) the meeting at the expense of the Corporation, and the meeting may be called by that person upon the notice required for annual meetings (or such shorter notice as aforesaid). Any holder of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock or its representative will have access to the stock ledger of the Corporation relating to the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock for the purpose of causing a meeting of shareholders to be called in accordance with this Section 3(c). Except as otherwise provided above in this Section 3(c), a director elected in accordance with this Section 3(c) will serve until the next annual meeting of the shareholders of the Corporation and until his or her successor is elected and qualified by the holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock.

(d) Notwithstanding anything herein to the contrary, shares of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock which have been purchased or redeemed by the Principals (as herein defined) or the Corporation or any Subsidiary thereof (including, without limitation, shares of the Series C-2 Convertible Preferred Stock which have been purchased or redeemed by the Principals, the Corporation, or otherwise, pursuant to the provisions of Section 8) shall not be deemed to be outstanding for the purposes of this Section 3 and the holders thereof shall not be entitled to vote on any matters submitted to the holders of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock and shall not be considered as outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock for the purpose of determining the attainment of the required holders of a number of shares for any purpose, including any quorum requirements, or for the purpose of determining the sufficiency of any vote of the holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock.

Section 4. *Liquidation.*

(a) In the event of a voluntary or an involuntary liquidation, dissolution or winding-up of the Corporation, the holders of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, may at their option receive, and, if so electing by written notice to the Corporation to such effect, shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, before any distributions made to holders of any Junior Shares (including, without limitation, the payment of then accrued dividends upon shares of Series B Redeemable Preferred Stock), an amount per share as set forth in this Section 4(a) as a liquidation preference (the "*Liquidation Preference*") equal to the sum of (i) Stated Value plus (ii) the per share amount of Accrued Dividends with respect to the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock to the date of final distribution, plus (iii) if Series D Convertible Preferred Stock has not yet been issued as of the date of final distribution, the amount per share, if any, which would be required to be paid to holders of Series C Convertible Preferred Stock on the date of payment of the Liquidation Preference to provide such holder with a monthly IRR (as defined in Section 8(b)) of at least 2 1/12%.

(b) Holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock may elect, upon delivering a written notice to the Corporation with respect to such election, in lieu of receiving the Liquidation Preference to receive Common Stock on conversion of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock (without regard to the time restriction on conversion established in clause (B) of Section 5(a) of this Certificate of Designation) in the manner and as provided in Section 5 of this Certificate of Designation.

(c) If, upon any liquidation, dissolution or winding-up of the Corporation, the assets of the Corporation, or proceeds of those assets, available for distribution to the holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock and of shares of all other classes or series which are on a parity as to distributions on liquidation with the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock are not sufficient to pay in full the Liquidation Preference to the holders of the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock who have not elected to convert such stock pursuant to Section 4(b) and any liquidation preference of all other classes or series which are on a parity as to distributions on liquidation with the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, then the assets, or the proceeds of those assets, which are available for distribution to such holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock and of the shares of all other classes or series which are on a parity as to distributions on liquidation with such Series C Convertible Preferred Stock and Series D Convertible Preferred Stock will be distributed to the holders of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock and of the shares of all other classes or series which are on a parity as to distributions on liquidation with the Series C Convertible Preferred Stock and Series D Convertible Preferred Stock ratably in accordance with the respective amounts of the liquidation preferences of the shares held by each of them. After payment of the full amount of the Liquidation Preference, such holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will not be entitled to any further distribution of assets of the Corporation.

Section 5. *Conversion Into Common Stock.*

(a) *Optional Conversion.*

(i) (A) At any time, and from time to time, each holder of Series C-1 Convertible Preferred Stock, and (B) at any time, and from time to time, on and after December 31, 1998 (or earlier than December 31, 1998 as provided in Section 4(b)), each holder of shares of Series C-2 Convertible Preferred Stock, will have the right, at the holder's option, exercised by notice to such effect (the "Notice of Election to Convert"), to convert all or any of the shares of Series C Convertible Preferred Stock held of record by the holder into shares of Common Stock, such that each share of Series C Convertible Preferred Stock will be entitled to be converted into (A) a number of fully paid and non-assessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) equal to Stated Value plus the amount, if

any, of the per share amount of Accrued Dividends as of the effective time of the conversion, divided by the Conversion Price, as defined below, then in effect, or (B) such other securities or assets as the holder is entitled to receive in accordance with Section 5(e).

(ii) At any time from and after the issuance of the Series D Convertible Preferred Stock (if the holder thereof has not elected to cause the Corporation to redeem such shares pursuant to the provisions of Section 8(g) hereof) each holder of shares of Series D Convertible Preferred Stock, will have the right, at the holder's option (exercised by Notice of Election to Convert) to convert all or any of the shares of Series D Convertible Preferred Stock held of record by such holder into (A) such number of fully paid and non-assessable shares of Common Stock, such that, upon issuance of such Common Stock, the then aggregate Current Market Price (as herein defined) of such Common Stock would equal the aggregate stated value of such shares of Series D Convertible Preferred Stock or (B) such other securities or assets as the holder is entitled to receive in accordance with Section 5(e).

(iii) The holder of each share of Series C Convertible Preferred Stock to be converted must surrender the certificate representing that share to the conversion agent for the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock appointed by the Corporation (which may be the Corporation itself), with the Notice of Election to Convert on the back of that certificate duly completed and signed, at the principal office of the conversion agent. If the shares issuable on conversion are to be issued in a name other than the name in which the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is registered, each share surrendered for conversion must be accompanied by an instrument of transfer, in form reasonably satisfactory to the Corporation, duly executed by the holder or the holder's duly authorized attorney and by funds in an amount sufficient to pay any transfer or similar tax which is required to be paid in connection with the transfer or evidence that such tax has been paid or is not payable.

(b) **Mandatory Conversion.** Except for such shares of Series C Convertible Preferred Stock which are to be redeemed in accordance with the provisions of Section 8(f), automatically, immediately prior to, and conditioned upon, the closing of an IPO and on the date thereof (the "*Mandatory Conversion Date*"), (i) each outstanding share of Series C Convertible Preferred Stock shall be converted into (A) a number of fully paid and non-assessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) equal to Stated Value, divided by the Conversion Price, as defined below, then in effect, or (B) such other securities or assets as the holder is entitled to receive in accordance with Section 5(e) and (ii) each outstanding share of Series D Convertible Preferred Stock shall be converted into (A) the number of shares of Common Stock then issuable upon such conversion or (B) such other securities or assets as the holder is entitled to receive in accordance with Section 5(f). For the purposes hereof, "*IPO*" means the initial underwritten offer and sale of Common Stock of the Corporation pursuant to a registration statement on Form S-1 (or similar form) that has been declared effective by the Securities and Exchange

Commission (or any successor agency) pursuant to the Securities Act of 1933, as amended (or any successor statute).

(c) *Conversion Procedures.*

(i) The effective time of the conversion under Section 5(a) shall be immediately prior to the close of business on the day when all the conditions in Section 5(a)(i) have been satisfied. The effective time of the conversion under Section 5(b) shall be the close of business on the Mandatory Conversion Date.

(ii) If shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are surrendered for conversion between the close of business on a dividend payment Record Date and the opening of business on the corresponding Dividend Payment Date, the dividend with respect to those shares will be payable on the Dividend Payment Date to the holder of record of the shares of Common Stock issued upon such conversion.

(iii) As promptly as practicable after the effective time for conversion of shares of Series C Convertible Preferred Stock, the Corporation will issue and will deliver to the holder at the office of the holder set forth in the Notice of Election to Convert, or on the holder's written order, or, in the absence of any Notice of Election or written order to the address of such holder set forth in the Corporation's records, a certificate or certificates representing the number of full shares of Common Stock issued upon the conversion of the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock. Any fractional interest in respect of a share of Common Stock arising upon a conversion will be settled as provided in Section 5(d).

(iv) Each conversion will be deemed to have been effected at the effective time provided in Section 5(c)(i), and the person in whose name a certificate for shares of Common Stock is (or, in the case of a conversion of less than all shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock pursuant to Section 5(a), in whose name certificates for shares of Common Stock and Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are) to be issued upon a conversion will be deemed to have become the holder of record of the shares of Common Stock represented by that certificate at such effective time. All shares of Common Stock delivered upon conversion of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will upon delivery be duly and validly issued and fully paid and nonassessable, free of all liens and charges and not subject to any preemptive rights. The shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock so converted will no longer be deemed to be outstanding and all rights of the holder with respect to those shares will immediately terminate, except the right to receive the shares of Common Stock, the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock not converted on a Conversion Date, Accrued Dividends payable in accordance with the

provisions of Section 5(c)(ii), and, if applicable, other securities, cash or other assets to be issued or distributed as a result of the conversion.

(d) *Fractional Shares.* No fractional shares of Common Stock will be issued upon conversion of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock and/or Series D Convertible Preferred Stock. Any fractional interest in a share of Common Stock resulting from conversion of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be paid in cash (computed to the nearest cent) based on the Current Market Price (as herein defined) of the Common Stock on the Trading Date next preceding the date of conversion. If more than one share of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is surrendered for conversion at substantially the same time by the same holder, the number of full shares of Common Stock issuable upon the conversion will be computed on the basis of all the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock surrendered at that time by that holder.

(e) *Conversion Price for Series C Convertible Preferred Stock.* The "Conversion Price" per share of Series C Convertible Preferred Stock will initially be a price (the "Initial Conversion Price") equal to \$3.30 and will be adjusted as follows from time to time, subject to Section 5(e)(ix), if any of the events described below occurs:

(i) If the Corporation (A) pays a dividend or makes a distribution on its Common Stock in shares of its Common Stock or (B) subdivides, splits or reclassifies its outstanding Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to that event will be reduced so that the holder of a share of Series C Convertible Preferred Stock surrendered for conversion after that event will receive the number of shares of Common Stock which the holder would have received if the share of Series C Convertible Preferred Stock had been converted immediately before the happening of the event (or, if there is more than one such event, if the share of Series C Convertible Preferred Stock had been converted immediately before the first of those events and the holder had retained all the Common Stock or other securities or assets received after the conversion). If the Corporation combines its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to that event will be increased so that the holder of a share of Series C Convertible Preferred Stock surrendered for conversion after that event will receive the number of shares of Common Stock which the holder would have received if the shares of Series C Convertible Preferred Stock had been converted immediately before the happening of the event (or, if there is more than one such event, if the share of Series C Convertible Preferred Stock had been converted immediately before the first of those events and the holder had retained all the Common Stock or other securities or assets received after the conversion). An adjustment made pursuant to this Section 5(e)(i) will become effective immediately after the Record Date in the case of a dividend or distribution, and will become effective immediately after the effective date in the case of a subdivision, split, reclassification or combination. If such dividend or distribution is declared but is not paid or made, the Conversion Price

then in effect will be appropriately readjusted. However, a readjustment of the Conversion Price will not affect any conversion which takes place before the readjustment.

(ii) If the Corporation issues rights or warrants to the holders of its Common Stock as a class entitling them to subscribe for or purchase Common Stock at a price per share less than the Conversion Price then in effect at the Record Date for the determination of stockholders entitled to receive the rights or warrants, the Conversion Price in effect immediately before the issuance of the rights or warrants will be reduced in accordance with the equation set forth on Exhibit A hereto, which is hereby incorporated by reference herein. The adjustment provided for in this Section 5(e)(ii) will be made successively whenever any such rights or warrants are issued, and will become effective immediately after each Record Date. In determining whether any rights or warrants entitle the holders of the Common Stock to subscribe for or purchase shares of Common Stock at less than the Conversion Price then in effect and in determining the aggregate sale price of the shares of Common Stock issuable on the exercise of rights or warrants and any consideration to be received by the Corporation for the exercise of such rights or warrants, there will be taken into account any consideration received by the Corporation for the rights or warrants, with the value of that consideration, if other than cash, to be determined by the Board of Directors of the Corporation (whose determination, if made in good faith, will be conclusive).

(iii) If the Corporation distributes to the holders of its Common Stock as a class any shares of stock of the Corporation (other than Common Stock) or evidences of indebtedness or assets (other than cash dividends or distributions) or rights or warrants (other than those referred to in Section 5(e)(ii)) to subscribe for or purchase any of its securities, then, in each such case, the Conversion Price will be reduced so that it will equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the Record Date for the distribution by (B) a fraction of which the numerator is the Current Market Price of the Common Stock on the Record Date for the distribution less the then fair market value (as determined by the Board of Directors, whose determination, if made in good faith, will be conclusive) of the stock, evidences of indebtedness, assets, rights or warrants which are distributed with respect to one share of Common Stock, and of which the denominator is the Current Market Price of the Common Stock on that Record Date. Each adjustment will become effective immediately after the Record Date for the determination of the stockholders entitled to receive the distribution.

(iv) If the Corporation issues or sells (or any Subsidiary issues or sells) any equity or debt securities which are convertible, directly or indirectly, into or exchangeable for shares of Common Stock ("Convertible Securities") or any rights, options or warrants to purchase Common Stock at conversion, exchange or exercise price per share which is less than the Conversion Price then in effect (other than any issuance of Employee Shares or Acquisition Shares), unless the provisions of Section 5(e)(ii) or (iii) are applicable, the Corporation will be deemed to have issued or sold,

on the date on which the Convertible Securities, rights, options or warrants are issued, the maximum number of shares of Common Stock into or for which the Convertible Securities may then be converted or exchanged or which are then issuable upon the exercise of the rights, options or warrants immediately prior to the close of business on the date on which the Convertible Securities, rights, options or warrants are issued, and the Conversion Price shall be adjusted downward as if it were an event covered by Section 5(e)(v). However, no further adjustment of the Conversion Price will be made as a result of the actual issuance of shares of Common Stock upon conversion, exchange or exercise of Convertible Securities, rights, options or warrants which were, upon the issuance thereof, subject to the adjustment provisions of Section 5(e)(ii), (iii) or (iv). For the purposes of this Section 5(e)(iv), (x) the price of shares of Common Stock issued or sold upon conversion or exchange of Convertible Securities or upon exercise of rights, options or warrants will be (A) the consideration paid to the Corporation for the Convertible Securities, rights, options or warrants, plus (B) the consideration payable to the Corporation upon conversion, exchange or exercise of the Convertible Securities, rights, options or warrants, with the value of the consideration, if other than cash, to be determined by the Board of Directors of the Corporation (whose determination, if made in good faith, will be conclusive) and (y) any change in the conversion or exchange price of Convertible Securities or the exercise price of rights, options or warrants will be treated as an exchange, when the change becomes effective, for the Convertible Securities, rights, options or warrants which had the old conversion, exchange or exercise price and an immediate issuance for new Convertible Securities, rights, options or warrants with the new conversion, exchange or exercise price.

(v) If the Corporation issues or sells any Common Stock (other than (A) on conversion or exchange of Convertible Securities which were, upon the issuance thereof, subject to the provisions of Section 5(e)(ii), (iii) or (iv), (B) exercise of rights, options or warrants or conversions or exchange of Convertible Securities which were, in each case, outstanding prior to the issuance of the Series C Convertible Preferred Stock or were, upon the issuance thereof, subject to the provisions of Section 5(e)(ii), (iii) or (iv), or (C) Employee Shares or Acquisition Shares) for a consideration per share less than the Conversion Price then in effect, on the date of the issuance or sale (or on exercise of options or warrants, for less than the Conversion Price then in effect on the date the options or warrants are issued), upon consummation of the issuance or sale, the Conversion Price in effect immediately prior to the issuance or sale will be reduced in accordance with the equation set forth on Exhibit A hereto, which is hereby incorporated by reference herein.

(vi) If there is a reclassification or change of outstanding shares of Common Stock (other than a change in par value, or as a result of a subdivision or combination), or a merger or consolidation of the Corporation with any other entity that results in a reclassification, change, conversion, exchange or cancellation of outstanding shares of Common Stock, or a sale or transfer of all or substantially all of the assets of the Corporation or dissolution, liquidation or winding-up of the

Corporation, upon any subsequent conversion of Series C Convertible Preferred Stock, each holder of the Series C Convertible Preferred Stock will be entitled to receive the kind and amount of securities, cash and other property which the holder would have received if the holder had converted the shares of Series C Convertible Preferred Stock into Common Stock immediately before the first of those events and had retained all the securities, cash and other assets received as a result of all those events. In the event that a transaction may be viewed as causing this Section 5(e)(vi) to be applicable and 5(e)(iii) is also applicable, then Section 5(e)(iii) will be applied and this Section 5(e)(vi) will not be applied.

(vii) For the purpose of any computation under this Section 5(e), the "Current Market Price" of the Common Stock on any date will be (A) if there is no active public market for the Common Stock on such date, the fair market value thereof as mutually determined by the Corporation and the holders of not less than 51% of the outstanding shares of Series C Convertible Preferred Stock, provided that if the Corporation and the holders of 51% of the outstanding shares of Series C Convertible Preferred Stock are unable to reach agreement, then by independent appraisal by an investment banker hired and paid by the Corporation, but acceptable to the holders of 51% of the outstanding shares of Series C Convertible Preferred Stock; or (B) if there is an active public market for the Common Stock on such date, the average of the last reported sale prices per share of the Common Stock on each of the twenty consecutive Trading Days (as defined below) preceding the date of the computation. The last reported sale price of the Common Stock on each day will be (A) the last reported sale price of the Common Stock on the principal stock exchange on which the Common Stock is listed, or (B) if the Common Stock is not listed on a stock exchange, the last reported sale price of the Common Stock on the principal automated securities price quotation system on which sale prices of the Common Stock are reported, or (C) if the Common Stock is not listed on a stock exchange and sale prices of the Common Stock are not reported on an automated quotation system, the mean of the high bid and low asked price quotations for the Common Stock as reported by National Quotation Bureau Incorporated if at least two securities dealers have inserted both bid and asked quotations for the Common Stock on at least five of the ten preceding Trading Days. As used with regard to the Series C Convertible Preferred Stock, the term "Trading Day" means (A) if the Common Stock is listed on at least one stock exchange, a day on which there is trading on the principal stock exchange on which the Common Stock is listed, (B) if the Common Stock is not listed on a stock exchange, but sale prices of the Common Stock are reported on an automated quotation system, a day on which trading is reported on the principal automated quotation system on which sales of the Common Stock are reported, or (C) if the Common Stock is not listed on a stock exchange and sale prices of the Common Stock are not reported on an automated quotation system, a day on which quotations are reported by National Quotation Bureau Incorporated.

(viii) No adjustment in the Conversion Price will be required unless the adjustment would require a change of at least 1% in the Conversion Price; provided, however, that any adjustments which are not made because of this Section 5(e)(ix) will

be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 5 will be made to the nearest cent or to the nearest one hundredth of a share, as the case may be.

(ix) Notwithstanding anything herein to the contrary, no adjustment to the Conversion Price will be required upon the occurrence of any of the events in Sections 5(e)(i) through 5(e)(vii) directly resulting from the issuance of up to an aggregate of 750,000 Employee Shares and Acquisition Shares.

(x) If any one of the events in Sections 5(e)(i) through 5(e)(vii) occurs, then the Corporation will mail to the holders of record of the Series C Convertible Preferred Stock, at least 15 days before the applicable date specified below, a notice stating the applicable one of (A) the date on which a record is to be taken for the purpose of the dividend, distribution or grant of rights or warrants, or, if no record is to be taken, the date as of which the holders of Common Stock of record who will be entitled to the dividend, distribution or rights or warrants will be determined, (B) the date on which it is expected the Convertible Securities will be issued or the date on which the change in the conversion, exchange or exercise price of the Convertible Securities, rights, options or warrants will be effective, (C) the date on which the Corporation anticipates selling Common Stock for less than the Conversion Price on the date of the sale (except that no notice need be given of the anticipated date of sale of Common Stock upon exercise of options or warrants which have been described in a notice to the holders of record of Series C Convertible Preferred Stock given at least 15 days before the options or warrants are exercised), or (D) the date on which the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective, and the date as of which it is expected that holders of record of Common Stock will be entitled to exchange their shares of Common Stock for securities or other property deliverable upon the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give any such notice or any defect in the notice will not affect the legality or validity of the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Whenever the Conversion Price is adjusted, the Corporation will promptly send each holder of record of shares of Series C Convertible Preferred Stock a notice of the adjustment of the Conversion Price setting forth the adjusted Conversion Price and the date on which the adjustment becomes effective and containing a brief description of the events which caused the adjustment.

(xi) (A) In addition to any other adjustment to the Conversion Price as set forth herein, if (I) the Corporation does not consummate the Apartment Properties Sale (as herein defined) on or before June 30, 1998, or (II) the net cash sale proceeds received by the Corporation from the Apartment Properties Sales generate less than \$2,000,000 in After-Tax Net Income (as herein defined) which After-Tax Net Income is retained by the Corporation as Retained Earnings (as herein defined), then the Conversion Price shall be reduced by \$0.0133 for each \$100,000 by

which Retained Earnings have not been increased by such After-Tax Net Income as at June 30, 1998.

(B) As used herein, "*Apartment Properties Sale*" means a sale by the corporation for cash of all of its interest in the Pinehurst Club Apartments and the Carlyle Club Apartments; and "*After-Tax Net Income*" and "*Retained Earnings*" have the meanings ascribed thereto under generally accepted accounting principles in effect in the United States on the date of issuance of the Series C Convertible Preferred Stock.

(f) *Conversion Price for Series D Convertible Preferred Stock.* The "*Conversion Price*" for the Series D Convertible Preferred Stock will be \$0.01 per share.

(i) If there is a reclassification or change of outstanding shares of Common Stock (other than a change in par value, or as a result of a subdivision or combination), or a merger or consolidation of the Corporation with any other entity that results in a reclassification, change, conversion, exchange or cancellation of outstanding shares of Common Stock, or a sale or transfer of all or substantially all of the assets of the Corporation or dissolution, liquidation or winding-up of the Corporation, upon any subsequent conversion of Series D Convertible Preferred Stock, each holder of the Series D Convertible Preferred Stock will be entitled to receive the kind and amount of securities, cash and other property which the holder would have received if the holder had converted the shares of Series C Convertible Preferred Stock into Common Stock immediately before the first of those events and had retained all the securities, cash and other assets received as a result of all those events.

(ii) If any one of the events in Section 5(f)(i) occurs, then the Corporation will mail to the holders of record of the Series D Convertible Preferred Stock, at least 15 days before the applicable date specified below, a notice stating the date on which the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective, and the date as of which it is expected that holders of record of Common Stock will be entitled to exchange their shares of Common Stock for securities or other property deliverable upon the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation, or winding-up. Failure to give any such notice will not affect the legality or validity of the reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up.

(g) (i) The Corporation will at all times reserve and keep available, free from preemptive rights, out of the authorized but unissued shares of Common Stock, for the purpose of effecting conversion of the Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock, the maximum number of shares of Common Stock which the Corporation would be required to deliver upon the conversion of all the outstanding shares of Series C Convertible Preferred Stock and upon conversion of the Series D Convertible Preferred Stock whether or not then issued. If for any reason the remaining number of authorized but unissued shares of Common Stock is insufficient to provide for the issuance of all Common Stock issuable upon conversion of all outstanding shares of the Series C

Convertible Preferred Stock, the Series D Convertible Preferred Stock and all other Convertible Securities issued by the Corporation, then the Corporation shall not issue any Common Stock upon the conversion of any such securities other than upon conversion of the Series C Convertible Preferred Stock and the Series D Convertible Preferred Stock until the earlier of (1) the date of the effectiveness of an amendment to the Charter increasing the number of authorized shares of Common Stock so that a sufficient number of shares of Common Stock will be authorized but unissued so that all shares of Common Stock issuable upon the conversion of the Series C Convertible Preferred Stock, the Series D Convertible Preferred Stock and all other Convertible Securities then outstanding will be duly and validly issued, or (2) the date when all of the Series C Convertible Preferred Stock and all of the Series D Convertible Preferred Stock have been converted into Common Stock and all such Common Stock has been duly and validly issued. For the purposes of this Section 5(f)(i), the number of shares of Common Stock which the Corporation would be required to deliver upon the conversion of all the outstanding shares of Series C Convertible Preferred Stock will be computed as if at the time of the computation all the outstanding shares of Series C Convertible Preferred Stock were held by a single holder.

(ii) Before taking any action that would cause an adjustment reducing the Conversion Price below the then par value (if any) of the shares of Common Stock deliverable upon conversion of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, the Corporation will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at the adjusted Conversion Price.

(iii) The Corporation will seek to list the shares of Common Stock required to be delivered upon conversion of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, prior to the delivery, upon each national securities exchange or automated quotation system, if any, upon which the outstanding shares of Common Stock are listed or included for trading at the time of delivery.

(g) The Corporation will pay any documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of shares of Common Stock on conversion of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock; *provided, however*, that the Corporation will not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Common Stock in a name other than that of the holder of record of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock to be converted and no such issue or delivery will be made unless and until the person requesting the issue or delivery has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that the tax has been paid or is not payable.

Section 6. *Status.*

Shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock converted pursuant to the terms hereof or otherwise acquired by the

Corporation shall automatically be retired upon such conversion or other acquisition, as the case may be, shall not be reissued as shares of Series C Convertible Preferred Stock or Series D Convertible Preferred Stock and shall be restored to the status of authorized but unissued shares of Preferred Stock, undesignated as to series.

Section 7. *Preemptive Rights.*

The Corporation elects that the holders of the Series C Convertible Preferred Stock will have the preemptive rights described below to acquire shares of Common Stock to be issued by the Corporation (excluding Employee Shares and Acquisition Shares; but including any other shares to be issued to directors, officers, employees, consultants, agents or independent contractors of the Corporation or its Subsidiaries or affiliates) other than shares of Common Stock to be issued to the public in an IPO other than pursuant to the exercise of rights, options or warrants or conversion or exchange of Convertible Securities which, in each case, were outstanding prior to the date of issuance of the Series C Convertible Preferred Stock. The Corporation will, by at least 30 days prior written notice given to all holders of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock (a "*Notice of Proposed Issuance*"), notify such holders of any proposed issuance of Common Stock. The Notice of Proposed Issuance will include the terms of the proposed issuance of Common Stock (including, without limitation, the number of shares of Common Stock proposed to be issued, the proposed purchase price therefor (the "*Proposed Purchase Price*"), and the proposed issuance date (the "*Proposed Issuance Date*")) and the number of shares of Common Stock which such holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is entitled to purchase pursuant to the provisions of this Section 7. Each holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will be entitled to purchase, at the Proposed Purchase Price per share, up to such number of shares of Common Stock which results from multiplying (i) the number of shares of Common Stock proposed to be issued by (ii) a fraction equal to (A) the number of shares of Common Stock into which the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock held by such holder would be entitled to be converted on the Proposed Issuance Date by (B) the sum of the number of outstanding shares of Common Stock as of the Proposed Issuance Date plus the aggregate number of shares of Common Stock into which all outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock would be entitled to be converted on the Proposed Issuance Date. A holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock shall exercise such holder's rights under this Section 7 by delivering to the Corporation on or prior to 10 days prior to the Proposed Issuance Date a written election (the "*Notice of Election of Preemptive Rights*") stating that such holder elects to purchase shares of Common Stock on the Proposed Issuance Date or such later date as may be determined by the Corporation and setting forth the number of shares that such holder elects to purchase; provided if the closing of the such issuance of Common Stock does not occur on the Proposed Issuance Date, any holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock who has submitted a Notice of Election of Preemptive Rights may rescind his, her or its election at any time thereafter. Any holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock who does not deliver a Notice of Election of Preemptive

Rights on or prior to 10 days prior to the Proposed Issuance Date will be deemed to have waived his, her or its rights under this Section 7, with respect to such proposed issuance of Common Stock only, for a period of 60 days.

Section 8. *Redemption and Other Purchase Rights*

(a) The Persons referred to in clause (i) of the definition of Principals (as herein defined), their spouses or any trusts created for the benefits of the foregoing, or the Corporation may, at any time or from time to time prior to the earlier of (A) December 31, 1998 or (B) an IPO (upon at least 30 days but not more than 45 days prior written notice (a "Repurchase Notice") delivered to each holder of Series C-2 Convertible Preferred Stock) purchase some or all of the then outstanding shares of Series C-2 Convertible Preferred Stock at a purchase price per share (the "Series C-2 Repurchase Price"), in cash, equal to the greater of (I) \$4.25 per share and (II) an amount per share equal to the amount per share which would be required to be paid to such holder on the Series C-2 Repurchase Date (as herein defined) to give such holder an IRR equal to the Minimum IRR (as herein defined) with respect to the shares being repurchased. The Repurchase Notice shall set forth the aggregate number of shares of Series C-2 Convertible Preferred Stock to be purchased, the number of shares of Series C-2 Convertible Preferred Stock to be purchased from such holder, the identity of the purchaser or purchasers (the "Purchaser"), the purchase date therefor (the "Series C-2 Repurchase Date") and the Series C-2 Repurchase Price therefor (together with a calculation, in reasonable detail, of the Minimum IRR). If less than all shares of Series C-2 Convertible Preferred Stock are to be purchased on the applicable Series C-2 Repurchase Date, the number of shares of Series C-2 Convertible Preferred Stock to be purchased will be allocated *pro rata* among the holders of Series C-2 Convertible Preferred Stock. On the Series C-2 Repurchase Date, the Purchaser or Purchasers shall tender to each applicable holder of shares of Series C-2 Convertible Preferred Stock being repurchased the applicable Series C-2 Repurchase Price and such holder shall deliver the applicable shares.

(b) For the purposes hereof, "Minimum IRR" means a monthly IRR of 2-11/12%. For the purposes hereof, "IRR" means, as of any date of determination, the monthly percentage rate of interest (compounded monthly) which results in (a) the sum of all cash distributions or payments made with respect to each applicable share of Series C Convertible Preferred Stock (discounted on a monthly basis at such rate from such date of determination back to the last day of the month in which such distribution is received) inclusive of (in the case of shares of Series C-2 Convertible Preferred Stock only) the Series C-2 Repurchase Price, equaling (b) the purchase price paid for each applicable share of Series C Convertible Preferred Stock on the original issue date thereof plus all other contributions or investments made with respect to such share of Series C Convertible Preferred Stock (discounted on a monthly basis at such rate from such date of determination back to the last day of the month in which such contribution or investment is made). For the purposes hereof "Principal" means any of (i) Arthur Falcone, Philip Cucci, or Edward Falcone; (ii) any other officer or director of the Corporation; (iii) any family member of any of the foregoing; (iv) any trust created by or for the benefit of any of the foregoing; (v) any Person of which any of

the foregoing has a 10% or greater equity interest or otherwise has the power to control such Person.

(c) If the closing for the shares of Series C-2 Convertible Preferred Stock referred to in any applicable Repurchase Notice does not occur on the applicable Series C-2 Repurchase Date, then no Purchaser will be permitted to purchase such shares unless and until he, she or it delivers another Repurchase Notice and otherwise complies with the provisions of this Section 8.

(d) Notwithstanding anything to the contrary contained herein, the Corporation shall not purchase, or otherwise provide (in any manner) any other Purchaser with funds to purchase (or otherwise extend financial support for such purchase of), any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock pursuant to this Section 8 or otherwise unless (i) the consummation of such purchase (or provision of funds or financial support) would not violate any terms or provisions of any indebtedness of the Corporation or its Subsidiaries, and (ii) (A) such purchase (or provision of funds or financial support) is entered into in conjunction with a transaction or series of transactions the result of which is that, the net worth of the Corporation as shown on its balance sheet as of completion of such purchase (or provision of funds or financial support) is not less than the net worth of the Corporation as shown on its balance sheet as of the date immediately prior to the earlier of such purchase (or provision of funds or financial support) and the date of the consummation of such transaction or the first of such series of transactions, or (B) the net earnings of the Corporation for the 12 months most recently completed prior to the purchase date of such Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, exceeds the net earnings for such 12 months as shown on the budget or budgets for such 12-month period as delivered (on or prior to the date hereof) to MS TEP III, L.L.C. by at least 20%. In the event of a purchase (or provision of funds or financial support) permitted by clause (B) above, the Corporation shall only be permitted to apply funds or other assets to such purchase (or provision of funds or financial support) to the extent of the excess over 20% referred to in clause (B).

(e) Upon (i) any Charter Breach (as herein defined) or (ii) from and after the sixth anniversary of the date of issuance of the Series C Convertible Preferred Stock through the seventh anniversary thereof, each holder of Series C Convertible Preferred Stock (other than (A) Principals, (B) the Corporation, or (C) Persons who or which have waived his, her, its or their rights under this Section 8 (e)) may, upon written notice given to the Corporation, elect to cause the Corporation to purchase some or all of such holder's shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock at a price per share equal to the amount per share which would be required to be paid to such holder on the date of repurchase to give such holder an IRR equal to a monthly IRR of at least 2-1/12%. Each applicable holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will include in such written notice the number of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock which such holder elects to be purchased by the Corporation and shall deliver the applicable shares to the Corporation together with such notice. The Corporation will repurchase such shares within

one business day of receipt of such notice. Upon receipt by each applicable holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock of the applicable redemption payment, shares so redeemed will no longer be deemed outstanding and all rights of the holder with respect to those shares will immediately terminate. As used herein, "*Charter Breach*" means the acceleration of a payment of any material indebtedness or other obligation of this Corporation including, without limitation, those arising under the Credit Agreement, dated July 23, 1997, between MS TEP I, L.L.C. and Transeastern Properties, Inc., and all other documents, exhibits and schedules referenced therein and relating thereto.

(f) The Corporation shall immediately notify the holders of shares of Series C Convertible Preferred Stock upon the filing of a registration statement by the Corporation with the Securities and Exchange Commission with respect to an IPO ("*IPO Notification*"). Within 20 days of their receipt of the IPO Notification, by delivery to the Corporation of written notice (an "*IPO Mandatory Redemption Notice*"), (i) if there are no shares of Series D Convertible Preferred Stock outstanding, each holder of shares of Series C Convertible Preferred Stock may elect to cause the Corporation to repurchase some or all of such holder's then outstanding shares of Series C Convertible Preferred Stock, at a purchase price per share (a "*Mandatory Repurchase Price*"), in cash, equal to the amount which would be required to be paid to such holder as at the IPO closing date to give such holder an IRR equal to a monthly IRR of at least 2-1/12% and (ii) if there are shares of Series D Convertible Preferred Stock outstanding, each holder of shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock may elect to cause the Corporation to repurchase some or all of such holder's then outstanding shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, at a Mandatory Repurchase Price, in cash, equal to the Stated Value thereof. The IPO Mandatory Redemption Notice shall set forth the number of shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, as the case may be, to be repurchased from such holder. The purchase date therefor shall be the same date as the IPO closing (the "*Repurchase Date*"). On the Repurchase Date, the Corporation shall tender to each applicable holder of shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, as the case may be, being repurchased the applicable Mandatory Repurchase Price and such holder shall deliver the applicable shares. If less than all shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, as the case may be, are to be repurchased on the applicable Repurchase Date, then the remaining Series C Convertible Preferred Stock and Series D Convertible Preferred Stock, as the case may be, not repurchased at such time shall be converted into Common Stock pursuant to Section 5(b) hereof. The Mandatory Repurchase Price may be payable from proceeds received by the Company in an IPO.

(g) At any time from and after the issuance of the Series D Convertible Preferred Stock through the first anniversary thereof, by delivery to the Corporation of a written notice (a "*Series D Mandatory Redemption Notice*"), each holder of shares of Series D Convertible Preferred Stock may elect to cause the Corporation to repurchase some or all of such holder's then outstanding shares of Series D Convertible Preferred Stock at a purchase price per share equal to the Stated Value per share thereof. The Series D Mandatory Redemption Notice shall set forth the number of shares of Series D Convertible Preferred

Stock to be repurchased from such holder. Promptly after receipt of a Series D Mandatory Redemption Notice (and in no event longer than 10 business days thereafter), the Corporation shall tender to each applicable holder of shares of Series D Convertible Preferred Stock being repurchased the purchase price therefor and such holder shall deliver the applicable shares.

Section 9. *Ranking.*

The shares of Series C Convertible Preferred Stock and Series D Convertible Preferred Stock will, with respect to the payment of dividends, the right to receive the Liquidation Preference, and any other distribution of assets on liquidation, dissolution or winding-up of the Corporation, rank *pari passu* with each other and prior to any other series of Preferred Stock, prior to Common Stock and prior to any other class or series of capital stock of the Corporation.

Section 10. *Reporting Requirements*

The Corporation will furnish to each record holder of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock any documents filed by the Corporation pursuant to Section 13, 14 or 15(d) of the Securities Exchange Act of 1934, as amended (or any successor statute (the "Exchange Act") and any annual, quarterly, or other reports furnished to the Corporation's public securityholders, if any; *provided that*, if the Corporation is not subject to the requirements of Section 13, 14, or 15(d) of the Exchange Act, the Corporation will promptly furnish to each such record holder:

(a) as soon as available and in any event within 30 days after the end of each month, copies of the unaudited financial statements of the Corporation, including consolidated balance sheets of the Corporation as of the end of each such period, and consolidated statements of earnings and cash flows of the Corporation for each such period and for the portion of the fiscal year ending with such period, in each case setting forth in comparative form the figures for the corresponding period of the preceding fiscal year, all in reasonable detail, and certified on behalf of the Corporation by its chief financial officer to fairly represent the financial position of the Corporation as of such date and to have been prepared in accordance with generally accepted accounting principles, subject to normal year-end audit adjustments and the absence of full footnote disclosures;

(b) as soon as available and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Corporation (on a consolidated basis), a balance sheet as of the end of the month ending such quarter and the related statements of income and statement of cash flows for such month and for the portion of the Corporation's fiscal year ended at the end of such month, setting forth in each case in comparative form the figures for the corresponding month and the corresponding portion of the Corporation's preceding fiscal year, all certified (subject to normal year-end audit adjustments) as to fairness of presentation, generally accepted

accounting principles, and consistency by the principal financial and accounting officers; and

(c) as soon as available and in any event within 120 days after the end of each fiscal year of the Corporation a consolidated balance sheet of the Corporation as of the end of such fiscal year and the related statements of income and retained earnings and statement of cash flows for such fiscal year, in each case (commencing with any such reports delivered after the date hereof) setting forth comparative figures for the preceding fiscal year, accompanied by an opinion of independent public accountants of nationally recognized standing selected by the Corporation as to the fair presentation in accordance with generally accepted accounting principles by such financial statements of the Corporation's consolidated financial position, results of operations, and statement of cash flows; and

For so long as any Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock is outstanding, the Corporation will furnish to each holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, no later than 15 days after the receipt by the Corporation of audited financial statements for each fiscal year (and in no event later than 120 days after the close of each fiscal year), a compliance certificate, executed by the Corporation's chief financial officer or president, stating that the Corporation has complied with all the covenants set forth herein, or, if such statement cannot be made, explaining the reasons therefor in detail.

Section 11. *Affiliate Transactions.*

For so long as any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock are outstanding, the Corporation shall not, and shall not permit any Subsidiary to (except upon approval of holders of 51% of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock voting together as a separate class on an "as converted basis"), conduct any business or enter into any transaction or series of related transactions (including, without limitation, the sale, purchase, exchange, or lease of any assets or property or the rendering of any services) with any Principal or other affiliate of the Corporation, unless the terms of such business transaction or series of related transactions are no less favorable to the Corporation or such Subsidiary, as the case may be, than would be obtainable in comparable transaction or series of related transactions in arms' length dealing with an unrelated third party and such transaction or series of related transactions has been determined to be fair, from a financial point of view, to the Corporation or such subsidiary, by a majority of the Board of Directors. The foregoing provisions do not prohibit (i) any transaction with an officer or director of the Corporation or a subsidiary thereof entered into in the ordinary course of business (including compensation or employee benefit arrangements with any such officer or director pursuant to plans or agreements approved by a majority of the disinterested directors of the Corporation), (ii) required payments under any tax sharing agreement entered into among the Corporation and its Subsidiaries and approved by a majority of the Board of Directors of the Corporation, or

(iii) any transaction between the Corporation and a wholly-owned Subsidiary or between or among any wholly-owned Subsidiaries of the Corporation.

Section 12. *Miscellaneous.*

(a) Except as otherwise expressly provided to this Certificate of Designation, whenever a notice or other communication is required or permitted to be given to holders of shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, the notice or other communication will be deemed properly given if deposited in the United States mail, postage prepaid, addressed to the persons shown on the books of the Corporation as the holders of the shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock at the addresses as they appear on the books of the Corporation, as of the Record Date or dates determined in accordance with applicable law and with the Charter and Bylaws, as in effect from time to time, with a copy sent to MS TEP III, L.L.C. at c/o The Morgan Stanley Real Estate Fund II, L.P., 1585 Broadway, New York, New York 10036, in each case by documented overnight delivery service or, to the extent receipt is confirmed, telecopy, telefax or other electronic transmission service.

(b) Shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock will not have any designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or terms and conditions of redemption, other than those specifically set forth herein, in the Charter, and as may be provided under applicable law insofar as any such provision does not conflict with the terms hereof.

(c) The headings of the various subdivisions herein are for convenience only and will not affect the meaning or interpretation of any of the provisions herein.

(d) Notwithstanding Section 3 hereof, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock may be waived, and any of such provisions of the Series C Convertible Preferred Stock may be amended, only with the approval of holders of at least a majority of the outstanding shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, voting together as a separate class on an "as converted" basis.

(e) Notwithstanding anything to the contrary contained in Section 2, 3, 4, 5, 7, 8(a) or 12(d) hereof, each holder of record of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock hereby agrees that, in determining whether any holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock has (i) voted to remove or elect any director of the Corporation under Section 3, (ii) approved any action by the Corporation under Section 3, (iii) elected the Liquidation Preference, or shares of Common Stock in lieu of either thereof under Section 4, (iv) elected to cause the conversion of such holder's Series C Convertible Preferred Stock and/or Series D Convertible Preferred

Stock into Common Stock or other assets under Section 5, (v) received any notice of the Corporation required or permitted by this Certificate of Designation, or (vi) granted any waivers in accordance with Section 8(d), MS TEP III, L.L.C. shall have the right to grant or deny such approvals, make or decline any such elections or receive any such notices with regard to all shares of the Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock held of record by such holder, and a notice received by MS TEP III, L.L.C. and a document executed by MS TEP III, L.L.C. calling a meeting of shareholders, exercising the right to take action by written consent without a meeting, exercising voting rights either together with holders of shares of Common Stock or separately as a class, including without limitation the granting or denying of approval to any action by the Corporation, or electing or removing any director, or electing or declining to the Corporation to effect the conversion as to any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, or electing or declining to the Corporation to effect the redemption as to any shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, shall determine the matter for such holders as MS TEP III, L.L.C. may indicate. Upon written notice by MS TEP III, L.L.C. to the Corporation, MS TEP III, L.L.C. may relinquish such rights and powers over any or all shares of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock. The foregoing may, but need not, be evidenced by execution by each holder of Series C Convertible Preferred Stock and/or Series D Convertible Preferred Stock, other than MS TEP III, L.L.C., of a proxy in favor of MS TEP III, L.L.C..

(f) The term "*outstanding*," when used with reference to shares of stock, shall mean issued shares, excluding shares held by the Corporation or a subsidiary.


Section 13. *Severability of Provisions.*

Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation by its President and attested by its Secretary as of this 29th day of October, 1997.

TRANSEASTERN PROPERTIES, INC.

By: 
Name: Les Campbell
Chief Financial Officer

[SEAL]

Attest:

Name:

Title: Secretary

Exhibit A
to Transeastern Properties, Inc.
Certificate of Designation

Transeastern Properties, Inc.
Series C Convertible Preferred Stock ("Preferred Stock")
Anti-Dilution Conversion Price Example

Adjustment Formula Pursuant to
Sections 5(e)(ii) and 5(e)(v) ("Adjustment Formula")

OBJECTIVE: To keep the Preferred Stock holders' relative ownership percentage of shares constant (as compared to a transaction consummated at the Conversion Price), upon the issuance of a "New Dilutive Security" (see definition below), the then-applicable Conversion Price of the Preferred Stock will be adjusted as follows:

$$\begin{array}{ccc} \text{PRIOR} & & \text{ANTI-DILUTION} \\ \text{CONVERSION PRICE} & & \text{ADJUSTMENT FORMULA} \\ & \times & \\ & & \frac{(A+B+C) + EX}{(A+B+C^{\wedge}) + EX^{\wedge}} = \\ & & \text{ADJUSTED} \\ & & \text{CONVERSION PRICE} \end{array}$$

↑
..... must be solved for per calculation included
in example below

DEFINITIONS:

- X - Conversion Price of Preferred Stock prior to issuance of "New Dilutive Security".
- X[^] - Conversion Price of Preferred Stock adjusted for issuance of "New Dilutive Security".
- A - The number of common stock equivalent shares outstanding which includes: (i) Common Stock issued and outstanding, (ii) all Dilutive (defined below) convertible securities outstanding, excluding Preferred Stock and (iii) all Dilutive options issued and outstanding on an as-exercised basis prior to issuance of "New Dilutive Security". For purposes of this definition, a security described under (ii) or (iii) will be considered "Dilutive" in all subsequent applications of the Adjustment Formula if it triggers the Adjustment Formula upon issuance. Moreover, a security described under (ii) will be considered "Dilutive" if at issuance the security is issued at a premium of 10% or less to the Current Market Price of the Common Stock and a security described under (iii) will be considered "Dilutive" if at the time of a calculation under the Adjustment Formula the Common Stock equivalent price of the security reflects a premium of 10% or less to the Current Market Price of the Common Stock. The Current Market Price is defined in the Certificate of Designation.

- B - Shares of Common Stock issuable upon conversion of all convertible Operating Partnership Units outstanding prior to issuance of "New Dilutive Security".
- C - Shares of Common Stock issuable upon conversion of all outstanding Preferred Stock, assuming the prior Conversion Price (or X).
- C[^] - Shares of Common Stock issuable upon conversion of all outstanding Preferred Stock, assuming the adjusted Conversion Price for the New Dilutive Security issuance (or X[^]).
- EX - "New Dilutive Security" equivalent common shares, assuming the prior Conversion Price, or X.
- EX[^] - "New Dilutive Security" equivalent common shares, based on actual conversion of security.

For purposes of any calculation pursuant to this Exhibit A, common stock equivalent shares will be deemed to include the shares of Preferred Stock purchased pursuant to the certain Stock Purchase Agreement between the Corporation and the Buyer (as defined therein), dated October __, 1997, as amended. Any calculation performed prior to the final purchase of shares of Preferred Stock pursuant to such Stock Purchase Agreement will be recalculated giving effect to all shares of Preferred Stock sold under such agreement as if such shares had been issued and outstanding at all times for purposes of the Adjustment Formula.

Example:

Assume a 2.5 million share common stock issuance at \$2.50/share (the "New Dilutive Security") following an investment of \$5 million in Preferred Stock at a \$3.33 Conversion Price:

Solution:

- Prior to solving for C[^], the following table must be created:

	Pre-New Dilutive Security Issuance		Post-New Dilutive Security Issuance As Issued at \$2.50 Per Share and Unadjusted		Post-New Dilutive Security Issuance As If Issued at \$3.33 Per Share	
	# of Shares	Percentage	# of Shares	Percentage	# of Shares	%
<i>Share Capitalization of Company</i>						
Common Stock Equivalent Shares(A)		%		%		%
Convertible OP Units Outstanding (B)		%		%		%
1996A Equivalent Common Stock (C)		%		%		%
New Dilutive Security Shares (EX [^] /EX)	0	%		%		%
TOTAL		100.0%		100.0%		100.0%

C[^] is the number of shares of Common Stock into which the outstanding shares of Preferred Stock must convert in order to maintain the Preferred Stock holders' ownership percentage at 14.9% (i.e., as if the issuance were done at the Conversion Price prior to the issuance (or X)) given the New Dilutive Security issuance at \$2.50 per common share. To solve for C[^], the following calculations must be made:

of Common Equivalent Shares

Share Capitalization, post New Dilutive Security Issuance as issued
at \$20 per share and unadjusted

- (C)	
= Share Capitalization less Preferred Stock equivalent Common Stock	10,630,000
/ (100%-14.9% or 100% less ownership holders of Preferred Stock are to maintain	85.1%
= Total Share Capitalization Required for holders of Preferred Stock to maintain ownership percentage at ____%	

x Required Buyer ownership percentage pursuant to above %

= C^

Given C^, one solves for X^ as follows:

Prior Conversion Price or X		Adjustment Formula		Adjusted Conversion Price or X^
\$3.33	x	$(\frac{1}{1} + \frac{1}{1} + \frac{1}{1}) + (\frac{1}{1} - / \$3.33)$	=	X^
\$3.33	x	$(\frac{1}{1} + \frac{1}{1} + \frac{1}{1}) + (\frac{1}{1} - / \$2.50)$	=	X^
			=	X^

Proof of Calculation:

	Post-New Dilutive Security Issuance as Issued at \$2.50 Per Share and As Adjusted
Share Capitalization of Company	%
Common Stock Equivalent Shares(A)	%
Convertible OP Units Outstanding (B)	%
Preferred Stock Equivalent Common Stock (C^/C)	%
New Dilutive Security Shares (EX^/EX)	%
TOTAL	100.00%