

State of Delaware



Nov 9 8 50 AM '83
SECRETARY OF STATE

Office of Secretary of State

I, GLENN C. KENTON, SECRETARY OF STATE OF THE STATE OF DELAWARE DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF ANDERSON, CLAYTON & CO. FILED IN THIS OFFICE ON THE TWENTY-FOURTH DAY OF OCTOBER, A.D. 1983, AT 12 O'CLOCK P.M.

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Glenn C. Kenton, Secretary of State

AUTHENTICATION: 10096174

DATE: 10/26/1983

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CERTIFICATE OF AMENDMENT
OF
RESTATED CERTIFICATE OF INCORPORATION

Anderson, Clayton & Co., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY:

FIRST: That by unanimous vote of the Board of Directors of Anderson, Clayton & Co., at a meeting duly held on June 6, 1983, a resolution was duly adopted setting forth proposed amendments to the Restated Certificate of Incorporation of the Corporation, declaring said amendments to be advisable and directing that the amendments proposed be considered at the next Annual Meeting of the stockholders. The proposed amendments set forth in such resolution are as follows:

That said Restated Certificate of Incorporation be amended (i) by changing the Article thereof numbered "ELEVENTH" so that, as amended, said Article shall be and read as follows and (ii) by adding Articles TWELFTH, THIRTEENTH, FOURTEENTH, FIFTEENTH and SIXTEENTH so that said new Articles shall be and read as follows:

"ELEVENTH. 1.(a) In addition to any affirmative vote required by law or this Restated Certificate of Incorporation, and except as otherwise expressly provided in paragraph 2 of this Article Eleventh:

(i) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with (A) any Interested Stockholder (as hereinafter defined) or (B) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) of an Interested Stockholder; or

(ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any Interested Stockholder or any Affiliate of any Interested Stockholder of any assets of the Corporation or any Subsidiary having an aggregate Fair Market Value (as hereinafter defined) of \$10,000,000 or more; or

(iii) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of transactions) of any securities of the

Corporation or any Subsidiary to any Interested Stockholder or any Affiliate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) having an aggregate Fair Market Value of \$10,000,000 or more; or

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

(v) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any other transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of the Corporation or any Subsidiary which is directly or indirectly owned by any Interested Stockholder or any Affiliate of any Interested Stockholder; or

(vi) any series or combination of transactions having, directly or indirectly, the same effect as any of the foregoing; or

(vii) any agreement, contract or other arrangement providing, directly or indirectly, for any of the foregoing;

shall require the affirmative vote of the holders of at least 80% of the then outstanding shares of capital stock of the Corporation authorized to be issued from time to time under Article Fourth of this Restated Certificate of Incorporation (the "Voting Stock"), voting together as a single class. Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be specified, by law or in any agreement with any national securities exchange or otherwise. Notwithstanding any other provision of this Restated Certificate of Incorporation to the contrary, for purposes of this Article Eleventh, each share of the Voting Stock shall have one vote.

(b) The term "Business Combination" as used in this Article Eleventh shall mean any transaction which is referred to in any one or more of clauses (i) through (vii) of sub-paragraph (a) of this paragraph 1.

2. The provisions of paragraph 1 of this Article Eleventh shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Restated Certificate of Incorporation, if all of the conditions specified in either of the following sub-paragraphs (a) and (b) are met:

(a) The Business Combination shall have been approved by a majority of the Continuing Directors (as hereinafter defined); provided, however, that such approval shall only be effective if obtained at a meeting at which a Continuing Director Quorum (as hereinafter defined) is present.

(b) All of the following conditions shall have been met:

(i) The aggregate amount of (x) cash and (y) Fair Market Value as of the date of the consummation of the Business Combination of consideration other than cash, to be received per share by holders of Common Stock in such Business Combination shall be at least equal to the highest amount determined under sub-clauses (A), (B) and (C) below:

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any share of Common Stock acquired by it (1) within the two-year period immediately prior to the first public announcement of the proposal of the Business Combination (the "Announcement Date") or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

(B) The Fair Market Value per share of Common Stock on the Announcement Date or on the date on which the Interested Stockholder became an Interested Stockholder (such latter date is referred to in this Article Eleventh as the "Determination Date"), whichever is higher; and

(C) (if applicable) the price per share equal to the Fair Market Value per share of Common Stock determined pursuant to sub-paragraph (b) (i) (B) above, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of Common Stock acquired by it within the two-year period immediately prior to the Announcement Date to (2) the Fair Market Value per share of Common Stock on the first day in such two-year period on which the Interested Stockholder acquired any shares of Common Stock.

(ii) The aggregate amount of (x) cash and (y) Fair Market Value as of the consummation of the Business Combination of consideration other than cash, to be received per share by holders of shares of any class of outstanding Preferred Stock (as hereinafter defined) shall be at least equal to the highest amount determined under sub-clauses (A), (B), (C) and (D) below:

(A) (if applicable) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Preferred Stock acquired by it (1) within the two-year period immediately prior to the Announcement Date or (2) in the transaction in which it became an Interested Stockholder, whichever is higher;

(B) the highest preferential amount per share to which the holders of shares of such class of Preferred Stock would be entitled in the event of any voluntary or involuntary liquidation,

dissolution or winding up of the affairs of the Corporation, regardless of whether the Business Combination to be consummated constitutes such an event;

(C) the Fair Market Value per share of such class of Preferred Stock on the Announcement Date or on the Determination Date, whichever is higher; and

(D) (if applicable) the price per share equal to the Fair Market Value per share of such class of Preferred Stock determined pursuant to sub-paragraph (b) (ii) (C) above, multiplied by the ratio of (1) the highest per share price (including any brokerage commissions, transfer taxes and soliciting dealers' fees) paid by the Interested Stockholder for any shares of such class of Preferred Stock acquired by it within the two-year period immediately prior to the Announcement Date to (2) the Fair Market Value per share of such class of Preferred Stock on the first day in such two-year period upon which the Interested Stockholder acquired any shares of such class of Preferred Stock.

The provisions of this sub-paragraph (b) (ii) shall be required to be met with respect to every class of outstanding Preferred Stock, whether or not the Interested Stockholder has previously acquired any shares of a particular class of Preferred Stock.

(iii) Consummation of the Business Combination is proposed to take place within one year of the date of the transaction pursuant to which such person became an Interested Stockholder;

(iv) The consideration to be received by holders of a particular class of outstanding Voting Stock shall be in cash or in the same form as the Interested Stockholder has previously paid for shares of such class of Voting Stock. If the Interested Stockholder has paid for shares of any class of Voting Stock with varying forms of consideration, the form of consideration for such class of Voting Stock shall be either cash or the form used to acquire the largest number of shares of such class of Voting Stock previously acquired by it.

(v) After such Interested Stockholder has become an Interested Stockholder and prior to the consummation of such Business Combination: (A) except as approved by a majority of the Continuing Directors, there shall have been no failure to declare and pay at the regular date therefor any full quarterly dividends (whether or not cumulative) on the outstanding Preferred Stock; (B) there shall have been (1) no reduction in the annual rate of dividends paid on the Common Stock (except as necessary to reflect any subdivision of the Common Stock), except as approved by a majority of the Continuing Directors, and (2) an increase in such annual rate of dividends as necessary to reflect any reclassification (including any reverse stock split), recapitalization, reorganization or any similar transaction which has the effect of reducing the number of outstanding shares of Common

Stock, unless the failure so to increase such annual rate is approved by a majority of the Continuing Directors; and (C) such Interested Stockholder shall not have become the beneficial owner of any additional shares of Voting Stock except as part of the transaction which results in such Interested Stockholder becoming an Interested Stockholder. The approval by a majority of the Continuing Directors of any exception to the requirements set forth in clauses (A) and (B) above shall only be effective if obtained at a meeting at which a Continuing Director Quorum is present.

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

(vii) A proxy or information statement describing the proposed Business Combination and complying with the requirements of the Securities Exchange Act of 1934 and the rules and regulations thereunder (or any subsequent provisions replacing such Act, rules or regulations) shall be mailed to public stockholders of the Corporation at least 30 days prior to the consummation of such Business Combination (whether or not such proxy or information statement is required to be mailed pursuant to such Act or subsequent provisions).

3. For the purposes of this Article Eleventh:

(a) The term "person" shall mean any individual, firm, corporation or other entity.

(b) The term "Interested Stockholder" shall mean any person (other than the Corporation or any Subsidiary and other than any profit-sharing, employee stock ownership or other employee benefit plan of the Corporation or any Subsidiary or any trustee of or fiduciary with respect to any such plan when acting in such capacity) who or which, as a result of one or more transactions occurring on or after January 1, 1983:

(i) is the beneficial owner (as hereinafter defined) of more than ten percent of the Voting Stock; or

(ii) is an Affiliate (as hereinafter defined) of the Corporation and at any time within the two-year period immediately prior to the date in question was the beneficial owner of ten percent or more of the Voting Stock; or

(iii) is an assignee of or has otherwise succeeded to any shares of Voting Stock which were at any time within the two-year period immediately prior to the date in question beneficially owned by any Interested Stockholder, if such assignment or succession shall have

occurred in the course of a transaction or series of transactions not involving a public offering within the meaning of the Securities Act of 1933.

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

(i) which such person or any of its Affiliates or Associates (as hereinafter defined) beneficially owns, directly or indirectly; or

(ii) which such person or any of its Affiliates or Associates has, directly or indirectly, (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding; or

(iii) which are beneficially owned, directly or indirectly, by any other person with which such person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares of Voting Stock.

(d) For the purposes of determining whether a person is an Interested Stockholder pursuant to sub-paragraph (b) of this paragraph 3, the number of shares of Voting Stock deemed to be outstanding shall include shares deemed owned through application of sub-paragraph (c) of this paragraph 3 but shall not include any other shares of Voting Stock which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(e) The terms "Affiliate" and "Associate" shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on August 1, 1983.

(f) The term "Subsidiary" means any corporation of which a majority of any class of equity security is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in sub-paragraph (b) of this paragraph 3, the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(g) The term "Continuing Director" means any member of the Board of Directors of the Corporation (the "Board") who is unaffiliated with the Interested Stockholder and was a member of the Board prior to the time that the Interested Stockholder became an Interested Stockholder, and any successor of a Continuing Director who is unaffiliated with the Interested Stockholder and is recommended or elected to succeed a Continuing Director by a majority of Continuing Directors, provided that such recommendation or election shall only be effective if made at a meeting at which a Continuing

Director Quorum is present. Without limiting the generality of the foregoing, a director shall be deemed to be affiliated with an Interested Stockholder if he is an officer, director, Affiliate or Associate of an Interested Stockholder or is a relative of such Interested Stockholder or any such officer, director, Affiliate or Associate or if he performs services, or is a member, employee or stockholder of any organization which performs services, for such Interested Stockholder.

(h) The term "Continuing Director Quorum" means ten Continuing Directors capable of exercising the powers conferred upon them under the provisions of the Restated Certificate of Incorporation or By-Laws of the Corporation or by law.

(i) The term "Fair Market Value" means: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined in good faith by a majority of Continuing Directors, provided that such determination shall only be effective if made at a meeting at which a Continuing Director Quorum is present; and (ii) in the case of property other than cash or stock, the fair market value of such property on the date in question as determined in good faith by a majority of Continuing Directors, provided that such determination shall only be effective if made at a meeting at which a Continuing Director Quorum is present.

(j) The term "Preferred Stock" shall mean the Preferred Stock and any other class of preferred stock which may from time to time be authorized in or by the Restated Certificate of Incorporation of the Corporation and which by the terms of its issuance is specifically designated "Preferred Stock" for purposes of this Article Eleventh.

(k) In the event of any Business Combination in which the Corporation survives, the phrase "consideration other than cash" as used in sub-paragraphs (b) (i) and (ii) of paragraph 2 of this Article Eleventh shall include the shares of Common Stock, if any, and any shares of any other class of Voting Stock retained by the holders of such shares.

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

"TWELFTH. Notwithstanding any other provisions of this Restated Certificate of Incorporation or the By-Laws of the Corporation to the contrary, no action required to be taken or which may be taken at any annual or special meeting of stockholders of the Corporation may be taken by written consent without a meeting, except any action which may be taken solely upon the vote or consent of holders of Preferred Stock or any series thereof."

"THIRTEENTH. The number of directors which shall constitute the whole Board of Directors of the Corporation shall be not less than 13 or more than 19. Subject to the limitations set forth in the preceding sentence, the number of directors shall from time to time be fixed and determined by the Board of Directors and shall be set forth in the notice of any meeting of stockholders held for the purpose of electing directors. The directors shall be elected at the annual meeting of stockholders, except as provided in the By-Laws with respect to vacancies, additional directors and removal from office, and each director elected shall hold office until his successor shall be elected and shall qualify. Directors need not be residents of Delaware or stockholders of the Corporation."

"FOURTEENTH. Notwithstanding any other provisions of the Restated Certificate of Incorporation or the By-Laws of the Corporation to the contrary, the stockholders of the Corporation may exercise their power to alter, amend, repeal or adopt by-laws of the Corporation only by the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote for the election of directors, provided that notice of such proposed alteration, amendment, repeal or adoption is included in the notice of the meeting called for the taking of such action."

"FIFTEENTH. Notwithstanding any other provisions of this Restated Certificate of Incorporation or the By-Laws of the Corporation (and notwithstanding the fact that a lesser percentage may be specified by law, this Restated Certificate of Incorporation or the By-Laws of the Corporation), the affirmative vote of the holders of 80% or more of the shares of Voting Stock, voting together as a single class, shall be required to amend or repeal, or adopt any provisions inconsistent with, Article Eleventh, Article Twelfth, Article Thirteenth, Article Fourteenth or this Article Fifteenth of this Restated Certificate of Incorporation."

"SIXTEENTH. Subject to the provisions of Article Fifteenth of this Restated Certificate of Incorporation, the Corporation reserves the right to amend, alter, change, add to or repeal any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on officers, directors and stockholders herein are granted subject to this reservation."

SECOND: That thereafter, the next Annual Meeting of the stockholders of the Corporation was duly held, upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware, at which meeting a majority of the outstanding stock entitled to vote thereon, and a majority of the outstanding stock of each class entitled to vote thereon as a class, was voted in favor of the

aforesaid amendment.

THIRD: That said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

FOURTH: That said amendment shall become effective at the close of business on October 24, 1983.

FIFTH: That the capital of the Corporation will not be reduced under or by reason of said amendment.

IN WITNESS WHEREOF, said Anderson, Clayton & Co. has caused its corporate seal to be hereunto affixed and this certificate to be signed by W. Fenton Guinee, Jr. its President, and attested by J. Ray Riley, its Secretary, this 24th day of October, 1983.

ANDERSON, CLAYTON & CO.

ATTEST:

By J. RAY RILEY
Secretary

By W. FENTON GUINEE, JR.
President

ANDERSON, CLAYTON & CO.
CORPORATE
1929
SEAL
DELAWARE

STATE OF TEXAS)(

COUNTY OF HARRIS)(

BE IT REMEMBERED, that on this 24th day of October, 1983, personally appeared before me, a notary public in and for the County and State aforesaid, W. Fenton Guinee, Jr., President of Anderson, Clayton & Co., a corporation of the State of Delaware, the corporation described in and which executed the foregoing Certificate, known to me personally to be such, and he duly executed said Certificate before me and acknowledged the said Certificate to be his act and deed and the act and deed of said corporation and that the facts stated therein are true; and that the seal affixed to said Certificate and attested by the Secretary of said corporation is the common or corporate seal of said corporation.

CECILIA MOYER
Notary Public in and for
the State of Texas
My Commission Expires
August 25, 1986

SEAL