

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News and Norfolk
Divisions

Blumberg No. 5113
PLAINTIFF'S
EXHIBIT
S-91

ESTHER BAILEY, Executrix of the
Estate of Samuel Bailey, Jr.,
Deceased, et al.,

Plaintiffs

v.

CA No. 77-155-N

JOHNS-MANVILLE CORP., et al.,

Defendants.

JOHN WHITE, et al.,

Plaintiffs

v.

CA No. 76-173-NN

JOHNS-MANVILLE CORP., et al.,

Defendants.

JOHNS-MANVILLE CORP., et al.,

Plaintiffs

v.

CA No. 77-30-N

UNITED STATES OF AMERICA,

Defendants.

JOHN E. FLETCHER, JR.,

Plaintiff

v.

CA No. 77-43-N

JOHNS-MANVILLE CORP. and
JOHNS-MANVILLE SALES CORP.,

Defendants.

DAVID C. DURHAM, et al.,

Plaintiffs

v.

CA No. 77-135-N

JOHNS-MANVILLE CORP., et al.,

Defendants.

JOYCE J. BARLOW, Executrix of the
Estate of Robert James Barlow,
Deceased,

Plaintiff

v.

CA No. 77-0011-N

JOHNS-MANVILLE CORP., et al.,

Defendants.

ALL CASES

CP No. 77-1

SECOND
SUPPLEMENTAL ANSWER TO INITIAL
INTERROGATORIES PROPOUNDED BY
PLAINTIFFS TO DEFENDANTS
SOUTHERN ASBESTOS COMPANY
AND
H. K. PORTER COMPANY, INC.

TO: ALL ATTORNEYS OF RECORD.

The defendants Southern Asbestos Company and H. K. Porter Company, Inc., hereby amend and supplement their initial Answers to Interrogatories which they have previously given herein, in accordance with their stated intent to do the same in the event additional information became available and in an attempt to assure full compliance with the applicable Rules of Civil Procedure. Those questions and answers being amended and supplemented are restated herein fully and are as follows:

QUESTION 1. Please state the name, address and job title of each person who has supplied information used in answering these interrogatories.

ANSWER 1. Ernest C. Bratt
100 Seaboard Street
Charlotte, North Carolina 28206
Telephone (704) 372-2980

Mr. Bratt is the President of Southern Asbestos Company.

R. W. DAVISON
Executive Vice President
H. K. Porter Company, Inc.
Porter Building
Pittsburgh, Pennsylvania

J. R. Kountz
Secretary and General Counsel
H. K. Porter Company, Inc.
Porter Building
Pittsburgh, Pennsylvania

QUESTION 4. State whether you have controlled, purchased, or in any way acquired any interest in any corporation or business entity which has mined, manufactured, produced, processed, compounded, converted, sold, merchandised, supplied, distributed, and/or otherwise placed in the stream of commerce asbestos, material containing asbestos, asbestos products and compounds, If so, state:

- a. The name and address of said corporation or business entity;
- b. The date you controlled, purchased or acquired any interest;
- c. The manner of acquisition, including percentage of ownership.

ANSWER 4. Southern Asbestos Company is a wholly owned subsidiary of H. K. Porter Company, Inc. At the time of its formation the asbestos cloth plants of H. K. Porter Company, Inc., in Charlotte, North Carolina, and Bennettsville, South Carolina, were transferred to Southern Asbestos Company.

H. K. Porter Company, Inc. purchased the majority of the stock of Pacific Asbestos Corporation, a Nevada corporation, with its headquarters and mine in Copperopolis, California, on December 31, 1968, and mined and sold asbestos fibers from that location until April 4, 1974, at which time operations ceased.

H. K. Porter Company, Inc., a Delaware corporation, effective May 1, 1974, formed a wholly owned subsidiary, Southern Asbestos Company, a Delaware corporation; as of May 1, 1974, H. K. Porter Company, Inc. transferred the Charlotte, North Carolina, and the Bennettsville, South Carolina works to Southern Asbestos Company. A copy of the "General Conveyance and Assumption of Liabilities" by and between H. K. Porter Company, Inc. and Southern Asbestos Company, bearing effective date May 1, 1974, is attached as Exhibit 4-A.

Southern Asbestos Company, as a Delaware corporation, was originally incorporated December 8, 1927. See Exhibit 4-B attached. Under the provisions of Article Third A of the "Certificate of Incorporation" (Exhibit 4-B), one of the purposes was to purchase or otherwise acquire the assets and business of Southern Asbestos Manufacturing Company, a North Carolina corporation. Southern Asbestos Company, as a Delaware corporation, accomplished the above purpose and did acquire Southern Asbestos Manufacturing Company, the North Carolina corporation. The origins of Southern Asbestos Manufacturing Company, the North Carolina corporation, are unknown at this time.

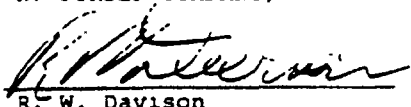
At some unknown date between 1927 and 1941 Thermoid Company, a Delaware corporation, apparently purchased most of the stock of Southern Asbestos Company the Delaware corporation. In 1941 Southern Asbestos transferred the Charlotte, North Carolina property to Thermoid Company.

In 1958 H. K. Porter Company, Inc., a Pennsylvania corporation, and Thermoid Company, a Delaware corporation, merged into H. K. Porter Company, Inc., a Delaware corporation. By this merger H. K. Porter Company acquired Thermoid Company. A copy of the "Agreement and Joint Plan of Merger" is attached as Exhibit 4-C. As a result of this transaction H. K. Porter Company acquired the stock of Southern Asbestos Company, the Delaware corporation.

In 1959 H. K. Porter Company, Inc. liquidated Southern Asbestos Company in accordance with a "Plan of Liquidation", a copy of which is attached as Exhibit 4-D, and accomplished the same by a "General Conveyance and Assumption of Liabilities" dated December 1, 1959, a copy of which is attached as Exhibit 4-E.

H. K. PORTER COMPANY, INC.

By


R. W. Davison
Executive Vice President

STATE OF PENNSYLVANIA

COUNTY OF ALLEGHENY

Sworn and subscribed to before me this 16th day of
January, 1978, in my jurisdiction aforesaid.

My commission expires:

My seal is hereby affixed:

Notary Public

H. K. PORTER COMPANY, INC.
SOUTHERN ASBESTOS COMPANY

By counsel

Archibald Wallace, III
Archibald Wallace, III
Sands, Anderson, Marks & Miller
Post Office Box 1998
Richmond, Virginia 23216

CERTIFICATE

I certify that on this the 24 day of January, 1978,
I mailed a copy of the foregoing to all counsel of record.

[Signature]

GENERAL CONVEYANCE AND ASSUMPTION OF LIABILITIES

KNOW ALL MEN BY THESE PRESENTS:

1. THAT H. K. PORTER COMPANY, INC., a Delaware corporation with its Executive Offices located at 1500 Porter Building 601 Grant Street, Pittsburgh, Pennsylvania 15219 (hereinafter called "Transferor"), in consideration of the issue and delivery to Transferor by SOUTHERN ASBESTOS COMPANY, a Delaware corporation with its Executive Offices located at 1000 Seaboard Street, Charlotte, North Carolina 28206 (hereinafter called "Transferee"), of 1,000 shares of Common Stock, with no par value, of Transferee, and in further consideration of the assumption by Transferee of certain of the debts, liabilities and obligations of Transferor as hereinbelow provided, has granted, bargained, sold, assigned, conveyed, transferred and set over and does hereby grant, bargain, sell, assign, convey, transfer and set over to Transferee, its successors and assigns, forever, all of the right, title and interest of Transferor in and to the following assets and properties of Transferor as the same exist on the date hereof:

- A. All tangible real and personal property, goods and chattels of every kind and description of Transferor's Charlotte Works located at 1000 Seaboard Street, Charlotte, North Carolina, and Bennettsville Works located at Salem Road, Bennettsville, South Carolina (hereinafter collectively called the "WORKS"), which as of the date hereof are shown on the books of the WORKS or are located at or normally used in or on, or operated from the WORKS, or are in the possession of the WORKS' sales or other personnel wherever located and are normally and customarily used in conducting the business of the WORKS, including, but not limited to, all real property and real estate (including, but not limited to, chattels real, easements and servitudes of every kind), buildings, structures, appurtenances, improvements, machinery, equipment, parts and appliances, fixtures, tools, dies, jigs, containers, inventories, raw materials, work-in-

process and finished goods, but not limited to, goods

credits, cash on hand or in banks, debts, bills, discounts, prepaid items and other intangible assets which are reflected on the books of the WORKS and the LIFO reserve as of the date hereof carried on the books of Transferor as and to the extent said LIFO reserve is applicable to inventories of the WORKS.

E. All claims, rights and interests of Transferor in, to and under any and all leases (whether of personal or real property and including, but not limited to, leaseholds and chattels real, easements and servitudes of every kind), assignments, options, mortgages, licenses, commitments, sales and purchase contracts, distributor and sales agency agreements, operating service contracts, union contracts and hourly worker's pension agreements, and other contracts of every kind and description entered into or acquired by assignment or in any other manner by Transferor on behalf of the WORKS prior to the date hereof, to the extent the same shall not have been performed by the other parties thereto, which contracts, agreements and other instruments Transferee agrees to assume, perform, pay and discharge from and after the date hereof in accordance with their terms.

F. The business of the WORKS as the same exists as of the date hereof.

Transferor has executed and delivered or will execute and deliver as of the date hereof in favor of Transferee (1) deeds in recordable form covering all real property and real estate transferred under subparagraph A above; (2) bills of sale covering all other tangible property transferred under subparagraph A above containing appropriate disclaimers of all express and implied warranties with respect thereto, but warranting only Transferor's title thereto; (3) assignments of Transferor's right, title and interest in and to all trademarks, patents, copyrights and other rights transferred under subparagraph B above and of all lease agreements conveyed under subparagraph E above, all in recordable form; and (4) such other conveyances, assignments and other instruments and documents as may reasonably be required by Transferee to properly evidence the transfer of the assets and business conveyed hereunder.

and business sold and transferred or intended to be sold and transferred to Transferee by this Conveyance and Assumption, to defend or compromise any and all actions, suits or proceedings in respect of any such assets, properties and business, and to do all such acts and things in relation thereto as Transferee shall deem advisable; and

- C. To take all action which Transferee shall deem proper in order to provide for Transferee the benefits under any contracts, claims, licenses, leases, commitments, sales orders, purchase orders, distributor or sales agency agreements or operating service contracts where any required consent of another party to the assignment thereof to Transferee pursuant to this Conveyance and Assumption shall not have been obtained as provided in paragraph two (2) hereof.

Transferor hereby declares that the foregoing powers are coupled with an interest and shall be irrevocable by it or by its subsequent dissolution or in any manner or for any reason. Transferee shall be entitled to retain for its own account any amounts collected pursuant to the foregoing powers including any amounts payable as interest in respect thereof.

5. That Transferee hereby agrees and covenants with Transferor to assume, pay, perform and discharge all debts, liabilities and obligations of Transferor of every kind and description, present or future, known or unknown, contingent or absolute, which are unpaid or not fully performed on the date hereof and which in any way, in whole or in part, pertain to, arise out of or are attributable to the past, present or future operations of the WORKS.

6. That this Conveyance and Assumption shall not apply to or be deemed to transfer any of the assets of Transferor's Common Pension Trust referred to in this Conveyance and Assumption. However, within thirty (30) days after the date hereof the Trustees of Transferor's Common Pension Trust will obtain from their actuaries a certificate as to the amount of all funds which as of the date hereof are held in Transferor's Common Pension Trust in respect to the hourly workers' pension plans in effect at the WORKS, those former salaried employees of Transferor who have retired from the WORKS and on the date hereof were en-

8. That Transferor and Transferee each agree to retain for no less than six (6) years after the date hereof and, during said six (6) year period and thereafter, to make available to the other party, such books, records, files and other technical and business data and information as are in their possession and shall reasonably be required to prepare and/or substantiate their respective tax returns or reports, to properly enforce any and all claims and rights of either party or to defend adverse claims against either party, or which may otherwise be required in the conduct of either party's business.

IN WITNESS WHEREOF, the parties hereto have caused this Conveyance and Assumption to be duly executed in their respective corporate names and under their respective corporate seals, all as of the opening of business on May 1, 1974.

ATTEST:

H. K. PORTER COMPANY, INC.
a Delaware corporation

R. P. Lucier
Secretary

BY: *H. K. Porter*
President

ATTEST:

SOUTHERN ASBESTOS COMPANY
a Delaware corporation

H. J. Stuck
Secretary

BY: *E. C. Brund*
President

Revised 1/1/27



SOUTHERN ASBESTOS COMPANY

Incorporated under the Laws of the State of Delaware

Certificate of Incorporation

DECEMBER 8, 1927.

CERTIFICATE OF INCORPORATION

OF

SOUTHERN ASBESTOS COMPANY

We, the undersigned, for the purpose of associating to establish a corporation for the transaction of the business and the promotion and conduct of the objects and purposes hereinafter stated, under the provisions of, and subject to the requirements of, the laws of the State of Delaware (particularly an act entitled, "An Act providing a General Corporation Law," approved March 10, 1899, and the several acts amendatory thereof and supplemental thereto, and known as the "General Corporation Law of the State of Delaware"), do make and file this Certificate of Incorporation in writing and do hereby certify as follows:

FIRST: The name of the corporation (which is hereinafter referred to as the Corporation) is

SOUTHERN ASBESTOS COMPANY.

SECOND: The respective names of the county and of the city within the county in which the principal office of the Corporation is to be located in the State of Delaware are the County of New Castle and the City of Wilmington. The name of the resident agent of the Corporation is Corporation Trust Company of America. The street and number of said principal office and the address of said resident agent is No. 7 West Tenth Street, in said City of Wilmington.

Title: The nature of the business of the Corporation, and the objects or purposes to be transacted, promoted or carried on by it are as follows:

(a) To purchase or otherwise acquire all or any part of the goodwill, rights, assets, properties and business of Southern Asbestos Manufacturing Company, a North Carolina corporation, and of any person, firm, association or corporation, heretofore or hereafter engaged in any business in which the Corporation is authorized to engage hereunder; to pay for the same in cash or in bonds, notes or other evidences of indebtedness or shares of stock of the Corporation or otherwise; to hold, utilize, enjoy or in any manner dispose of the whole or any part of the goodwill, rights, assets, properties and business so acquired; and to assume in connection with such acquisition any liabilities or obligations of said Southern Asbestos Manufacturing Company and of any such person, firm, association or corporation, and to conduct in any lawful manner the whole or any part of the business thus acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(b) To manufacture, prepare, use, develop, experiment with, acquire, buy, sell, import, export, trade and deal in asbestos, asbestos yarns, cloths, rope, wick and any and all manufactured products in which asbestos may form a part, or any mixture or combination thereof, including any or all of said articles in the natural, raw, partly manufactured or finished state; and to conduct in all its branches a general textile, milling and manufacturing business.

(c) To manufacture, prepare, use, develop, experiment with, equip, remodel, construct, acquire, hold, operate, buy, sell, lease, instal, import, export, trade and deal in and with, goods, wares, merchandise, engines, motors, machines, machinery, apparatus, instruments, fixtures, appliances, devices and contrivances of any kind or nature whatsoever, or any other article or articles of any kind or nature whatsoever.

(d) To adopt, apply for, obtain, register, purchase, lease or otherwise acquire, and to maintain, protect, hold, use, own, exercise, develop, operate and introduce, and to sell, grant licenses or other rights in respect of, assign or otherwise dispose of or turn to account any trade marks, trade names, patents, patent rights, copyrights and distinctive marks and rights analogous thereto, and inventions, improvements, processes, formulas and the like, including such thereof as may be covered by, used in connection with, or secured or received under, Letters Patent of the United States of America or elsewhere, or otherwise, which may be deemed capable of use in connection with any of the purposes of the Corporation herein stated; and to acquire, use, exercise or otherwise turn to account licenses in respect of any such trade marks, trade names, patents, patent rights, copyrights, distinctive marks and rights analogous thereto, inventions, improvements, processes, formulas and the like, or any such property or rights.

(e) To acquire by purchase, exchange, lease or otherwise and to own, hold, develop, operate, sell, assign, lease, transfer, convey, exchange, mortgage, pledge or otherwise dispose of or encumber, real and personal property of any class or description and

rights and privileges therein in the State of Delaware and in other states, territories, districts, colonies and dependencies of the United States of America and in all foreign countries, subject to the laws thereof.

(f) To acquire, by purchase or otherwise, erect, construct, make, improve and operate, or aid in or subscribe towards, the erection, construction, making, improvement and operation of, mills, factories, storehouses, buildings, roads, docks, piers, wharves, machinery, cars and other rolling stock, steamers, steamboats, tugs and works of all kinds, in so far as the same may appertain to, or be useful in, the conduct of the business of the Corporation, and to maintain and operate the same.

(g) To borrow or raise moneys for any of the purposes of the Corporation without limit as to amount; from time to time to issue bonds, debentures, notes or other obligations, secured or unsecured, of the Corporation, including obligations convertible into stock of the Corporation, for moneys so borrowed, or in payment for property acquired, or for any of the other objects or purposes of the Corporation or in connection with its business; to secure such bonds, debentures, notes and other obligations by mortgage or mortgages or deed or deeds of trust, or pledge or other lien upon any or all of the property, rights, privileges or franchises of the Corporation, wheresoever situated, acquired or to be acquired, and to sell, pledge or otherwise dispose of any or all of such bonds, debentures, notes and other obligations of the Corporation for its corporate purposes.

(h) To acquire by purchase, subscription or otherwise, to hold, mortgage, pledge, sell, assign, transfer, exchange, or otherwise dispose of shares of the capital stock of, or voting trust certificates for shares of the capital stock of, or any bonds or other securities or evidences of indebtedness created by, any other corporation or association organized under the laws of the State of Delaware or of any other state, territory, district, colony or dependency of the United States of America or of any other country, nation or government, and to pay therefor, in whole or in part, with cash or other property or with shares of the capital stock, bonds or other obligations of the Corporation; and while the owner or holder of any such shares of the capital stock, voting trust certificates, bonds or other securities or evidences of indebtedness of any other corporation or association to possess and exercise in respect thereof all the rights, powers and privileges of ownership, including the right to vote thereon or consent in respect thereof for any and all purposes; and upon a distribution of the assets or a division of the profits of the Corporation to distribute any such shares of capital stock, voting trust certificates, bonds or other securities or evidences of indebtedness, or the proceeds thereof, among the stockholders of the Corporation.

(i) To purchase, hold, cancel, reissue, sell, exchange or transfer shares of its own capital stock, bonds or other obligations provided that it shall not use its own funds for the purchase of shares of its own capital stock, when said use would cause any impairment of its capital, and further that shares of its own capital stock so acquired and held by it shall not be voted upon directly or indirectly.

(j) To aid by loan, guaranty, subsidy or in any other manner whatsoever, in so far as may be permitted by law, any corporation or association, domestic or foreign, any shares of the capital stock, or voting trust certificates for shares of the capital stock, or bonds, or other securities or evidences of indebtedness of which shall be held by or for the Corporation, or in which, or in the welfare of which, the Corporation shall have any interest, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such shares, voting trust certificates, bonds or other securities or evidences of indebtedness, or the property of the Corporation.

(k) To guarantee the payment of dividends upon any shares of the capital stock, or any sinking fund payments in respect of the capital stock, or the payment of the principal of, or interest on, any bonds or other securities or evidences of indebtedness, or the performance of any contract, of any other corporation or corporations in so far as, and to the extent that, such guarantee may be permitted by law.

(l) To carry out all or any part of the foregoing objects and purposes as principal, factor, agent, contractor, or otherwise, either alone or in conjunction with any person, firm, association or other corporation, and in any part of the world; and in carrying on its business and for the purpose of attaining or furthering any of its objects or purposes, to make and perform such contracts of any kind and description with any person, firm, association, corporation, municipality, body politic, county, state or government or colony or dependency thereof, to do such acts and things, and to exercise any and all such powers, as a natural per-

7

son could lawfully make, perform, do or exercise, provided that the same be not inconsistent with the laws of the State of Delaware.

(m) To conduct its business in all or any of its branches in the State of Delaware and in any or all other states, territories, possessions, colonies and dependencies of the United States of America, and in the District of Columbia, and in any or all foreign countries; to have one or more offices within and without the State of Delaware; and to carry on all or any of its operations and business without restriction or limit as to amount.

(n) To do any and all things necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or designed directly or indirectly to promote the interests of the Corporation, or to enhance the value of any of its properties; and in general to do any and all things and exercise any and all powers which it may now or hereafter be lawful for the Corporation to do or to exercise under the laws of the State of Delaware that may now or hereafter be applicable to the Corporation.

powers

It is the intention that, except where otherwise expressed in this Certificate, the objects and purposes specified in any of the foregoing clauses of this Article Tenth shall not in any wise be limited or restricted by reference to, or inference from, the terms of any other clause of this or any other article of this Certificate, but that the objects and purposes specified in each of the clauses of this Article shall be regarded as independent objects and purposes.

It is also the intention that the objects and purposes specified in said clauses shall be and shall be construed as powers as well as objects and purposes; and, generally, that the Corporation shall be authorized to exercise and enjoy all other powers, rights and privileges granted by the aforesaid act entitled "An Act providing a General Corporation Law," approved March 10, 1899, to corporations of the character of the Corporation, and all the powers conferred upon such corporations by the then existing laws of the State of Delaware in so far as not in conflict therewith, or which may be conferred by all acts heretofore or hereafter amendatory of said Act of March 10, 1899, or of said laws, or supplemental thereto; but the enumeration herein of certain powers is not intended to be exclusive of, or a waiver of, any of the powers, rights or privileges granted or conferred by said Act of March 10, 1899, or the laws of said State now or hereafter in force; provided, however, that the Corporation shall not in any state, district, territory, possession or country, carry on any business or exercise any powers which a corporation organized under the laws of said state, district, territory, possession or country could not carry on or exercise, except to the extent permitted or authorized by the laws of said state, district, territory, possession or country; and provided, further, that the Corporation shall not have the power to carry on the business of constructing, maintaining or operating railroads, railways, telegraph or telephone lines or any public utility business within the State of Delaware; nor shall it possess the right of taking and condemning lands within said State; nor shall it, by any implication or construction, be deemed to possess the power of issuing bills, notes or other evidences of debt for circulation as money, or the power of carrying on the business of receiving deposits of money, or the business of buying gold and silver bullion or foreign coins, or the power of engaging in the business of banking or insurance.

81,500 shares of \$1.00 per share

FOURTH: The total number of shares of capital stock that may be issued by the Corporation is one hundred thousand (100,000), all of which are to be without par value.

The amount of capital with which the Corporation shall commence business is ten (10) shares of stock without par value.

FIFTH: The names and places of residence of each of the original subscribers to the capital stock of the Corporation, and the number of shares of stock subscribed for by each, are as follows:

<i>Names</i>	<i>Places of Residence</i>	<i>Number of Shares</i>
T. L. Crotenu	Wilmington, Delaware	5
T. L. Fray	Wilmington, Delaware	3
Alfred Jervis	Wilmington, Delaware	2

SIXTH: The Corporation is to have perpetual existence.

SEVENTH: The private property of the stockholders of the Corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

EIGHTH: For the regulation of the business and for the conduct of the affairs of the Corporation, and for the creation, definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders, it is further provided:

(a) Any and all shares of the capital stock herein authorized may be issued by the Corporation from time to time for such consideration as may be fixed from time to time by the Board of Directors thereof.

(b) The Corporation may issue \$1,250,000 principal amount of its obligations and 50,000 shares of its capital stock without par value either (1) for the sum of \$1,250,000 in cash or (2) for the properties and assets, subject to the assumption of the liabilities, of Southern Asbestos Manufacturing Company, a North Carolina corporation, and any and all stock so issued shall be fully paid and non-assessable.

(c) The number of directors of the Corporation shall be fixed by the by-laws and may be altered from time to time by amending the by-laws as therein provided, but shall never be less than three. Directors need not be stockholders. They shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business, unless the by-laws shall provide that a different number shall constitute a quorum, which in no case shall be less than one-third of the total number of directors nor less than two directors.

(d) Except as otherwise provided by law, vacancies in the Board of Directors shall be filled by a majority of the remaining directors, though less than a quorum; and the directors so chosen shall hold office until the next annual election and until their successors shall be duly elected and qualified, unless sooner displaced. In case of any increase in the number of directors the additional directors may be elected by the directors then in office, by a majority vote thereof.

(e) Any director or any officer elected or appointed by the stockholders or by the Board of Directors may be removed at any time in such manner as shall be provided in the by-laws of the Corporation.

(f) In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized:

1. To make by-laws for the Corporation and from time to time to alter or repeal by-laws so made, but the by-laws made or altered by the Board of Directors may be altered or repealed by the stockholders at any annual or special meeting thereof, provided that notice of the proposal so to alter or repeal such by-laws be included in the notice of such meeting.

2. To make regulations from time to time for the closing of the stock transfer books of the Corporation in anticipation of any meeting of the stockholders, or for the fixing (without actual closing of said books) of dates as of which lists of stockholders entitled to vote at any such meeting shall be prepared.

3. To determine, from time to time, whether and to what extent and at what times and places and under what conditions and regulations the accounts and books of the Corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Corporation, except as conferred by the laws of the State of Delaware, unless and until authorized so to do by resolution of the Board of Directors or of the stockholders of the Corporation.

4. By resolution or resolutions, passed by a majority of the whole board, to designate one or more committees, each committee to consist

of two or more of the directors of the Corporation, which to the extent provided in said resolution or resolutions or in the by-laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may have power to authorize the seal of the Corporation to be affixed to any papers which may require it.

5. Without the assent or vote of the stockholders, from time to time, without limit as to amount, and upon any terms to borrow or raise money for any of the purposes of the Corporation; and to authorize the issue of bonds, debentures, notes or other obligations of the Corporation, of any nature, or in any manner, for moneys so borrowed and to authorize the creation of mortgages upon, or the pledge or conveyance or assignment in trust of, the whole or any part of the property of the Corporation, real or personal, whether at the time owned or thereafter acquired, including contract rights, to secure the payment of such bonds, debentures, notes or other obligations and the interest thereon; and to authorize the sale or pledge or other disposition of such bonds, debentures, notes or other obligations of the Corporation for its corporate purposes.

6. By resolution to set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve or reserves.

7. To determine from time to time by resolution the amount of the capital of the Corpora-

(h) In the absence of fraud, no contract or other transaction between the Corporation and any other corporation, and no act of the Corporation, shall in any way be invalidated or otherwise affected by the fact that any one or more of the directors of the Corporation are pecuniarily or otherwise interested in, or are directors or officers of, such other corporation. Any director of the Corporation individually, or any firm or association of which any director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Corporation, provided that the fact that he individually or such firm or association is so interested shall be disclosed or shall have been known to the Board of Directors of the Corporation or a majority thereof; and any director of the Corporation, who is also a director or officer of such other corporation or who is so interested, may be counted in determining the existence of a quorum at any meeting of the Board of Directors or of any committee of the Corporation which shall authorize any such contract or transaction and may vote thereon to authorize any such contract or transaction, with like force and effect as if he were not such director or officer of such other corporation or not so interested.

(i) Any contract, transaction or act of the Corporation or of the directors or of any committee which shall be ratified by a majority of a quorum of the stockholders having voting powers at any annual meeting, or at any special meeting called for such purpose, shall, so far as permitted by law and by this Certificate of Incorporation, be as valid and as binding as though ratified by every stockholder of the Corporation.

(j) The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF we, the undersigned, being all of the original subscribers to the capital stock of the Corporation hereinbefore named, do certify that the statements of fact hereinabove set forth are true, and do respectively agree to take the number of shares of stock hereinabove set opposite our respective names, waiving all requirements of the statutes of the State of Delaware relating to notice of assessments on the stock hereby subscribed, and accordingly hereunto have set our respective hands and seals this 8th day of December, 1927.

T. L. CHUTEAU [SEAL]

T. L. FRAY [SEAL]

ALFRED J. JERVIS [SEAL]

In the presence of:

ALBERT L. MILLER

STATE OF DELAWARE, }
COUNTY OF NEW CASTLE, } ss.:

BE IT REMEMBERED that on this 8th day of December, A. D. 1927, personally appeared before me, the undersigned, a Notary Public in and for the County and State aforesaid T. L. Croten, T. L. Fray, and Alfred Jervis, all of the parties to the foregoing Certificate of Incorporation, known to me personally to be such, and I having first made known to them and each of them the contents of said Certificate of Incorporation, they did each severally acknowledge said Certificate to be the act and deed of the signers, respectively, and that the facts therein stated are truly set forth.

Given under my hand and seal of office the day and year aforesaid.

ALBERT L. MILLER
Notary Public

ALBERT L. MILLER
Notary Public

Appointed Sept. 1, 1927
Term 2 Years
Delaware

AGREEMENT AND JOINT PLAN OF MERGER

THIS AGREEMENT AND JOINT PLAN OF MERGER (hereinafter called "this Agreement"), which also shall be deemed to be an Agreement of Merger, dated this 31st day of October, 1958, made and entered into by and between Thermoid Company, a Delaware corporation (hereinafter sometimes called "Thermoid"), H. K. Porter Company, Inc., a Pennsylvania corporation (hereinafter sometimes called "Porter Inc."), and H. K. Porter Company (Delaware), a Delaware corporation (hereinafter sometimes called "Porter Delaware").

WITNESSETH:

WHEREAS, Thermoid, whose Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on January 28, 1929, has an authorized capital stock consisting of 99,314 shares of Preferred Stock, of the par value of \$50 per share, of which none will be outstanding from and after November 1, 1958 (the redemption date for all such shares presently outstanding), and 1,500,000 shares of Common Stock, of the par value of \$1 per share, of which 825,254 shares (excluding 25,292 Treasury shares) are now issued and outstanding; and

WHEREAS, Porter Inc., whose Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on January 12, 1939, has an authorized capital stock consisting of 48,350 shares of Cumulative Preferred Stock, 4 1/4% Series, of the par value of \$100 per share, of which 48,350 shares are now issued, 46,136 shares being outstanding and 2,214 shares being held in a Sinking Fund, and 1,500,000 shares of Common Stock, of the par value of \$5 per share, of which 1,059,372 shares are now issued and outstanding; and

WHEREAS, Porter Delaware, whose Certificate of Incorporation was filed in the office of the Secretary of State of Delaware on June 11, 1956, has an authorized capital stock consisting of 20,000 shares of Common Stock, of the par value of \$5 per share, of which 5,000 shares are now issued and outstanding and all of which are owned by Porter Inc.; and

WHEREAS, the Boards of Directors of Thermoid, Porter Inc. and Porter Delaware (such corporations being hereinafter sometimes called the "Constituent Corporations") have deemed it advisable for the respective mutual benefit of the Constituent Corporations and their respective stockholders that Thermoid and Porter Inc. be merged into Porter Delaware, which shall continue as the surviving corporation (hereinafter sometimes called the "Surviving Corporation"), pursuant to the statutory merger provisions of the Pennsylvania Business Corporation Law (particularly Article IX thereof) and of Title 8 of the Delaware Code of 1953, as amended (particularly Section 252 thereof).

Now, THEREFORE, Thermoid through a majority of its directors duly authorized by its Board of Directors, Porter Inc. through its proper officers duly authorized by its Board of Directors, and Porter Delaware through all of its directors duly authorized by its Board of Directors, have agreed and hereby do agree each with the others that Thermoid and Porter Inc. shall be merged into Porter Delaware and Porter Delaware shall merge into itself Thermoid and Porter Inc., and hereby do adopt a plan of merger and agree upon and prescribe the terms and conditions of said merger, the mode of carrying the same into effect, the manner and basis of converting the shares of each of the Constituent Corporations into shares of the Surviving Corporation, and other details and provisions, as follows:

I

Thermoid Company, a Delaware corporation, and H. K. Porter Company, Inc., a Pennsylvania corporation, shall be merged into H. K. Porter Company (Delaware), a Delaware corporation. The separate existence of Thermoid and of Porter Inc., except insofar as continued by statute, shall cease

i. To acquire by purchase, subscription or otherwise, and to receive, hold, own, guarantee, sell, assign, exchange, transfer, mortgage, pledge or otherwise dispose of or deal in and with any of the shares of the capital stock, or any voting trust certificates in respect of the shares of capital stock, scrip, warrants, rights, bonds, debentures, notes, trust receipts and other securities, obligations, choses in action and evidences of indebtedness or interest issued or created by any corporations, joint stock companies, syndicates, associations, firms, trusts or persons, public or private, or by the government of the United States of America, or by any foreign government, or by any state, territory, province, municipality or other political sub-division or by any governmental agency, and as owner thereof to possess and exercise all the rights, powers and privileges of ownership, including the right to execute consents and vote thereon, and to do any and all acts and things necessary or advisable for the preservation, protection, improvement and enhancement in value thereof.

j. To enter into, make and perform contracts of every kind and description with any person, firm, association, corporation, municipality, county, state, body politic or government or colony or dependency thereof.

k. To borrow or raise moneys for any of the purposes of the Corporation and, from time to time, without limit as to amount to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment of any thereof and of the interest thereon by mortgage upon or pledge, conveyance or assignment in trust of the whole or any part of the property of the Corporation, whether at the time owned or thereafter acquired, and to sell, pledge or otherwise dispose of such bonds or other obligations of the Corporation for its corporate purposes.

l. To loan to any person, firm or corporation any of its surplus, either with or without security.

m. To purchase, hold, sell and transfer the shares of its own capital stock; provided it shall not use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of its capital except as otherwise permitted by law, and provided further that shares of its own capital stock belonging to it shall not be voted upon directly or indirectly.

n. To have one or more offices, to carry on all or any of its operations and business and without restriction or limit as to amount to purchase or otherwise acquire, hold, own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description in any of the States, Districts, Territories or Colonies of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony or Country.

o. In general, to carry on any other business in connection with the foregoing, and to have and exercise all the powers conferred by the laws of Delaware upon corporations formed under the General Corporation Law of the State of Delaware, and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

The objects and purposes specified in the foregoing clauses shall be in nowise limited or restricted by reference to, or inference from, the terms of any other clause in the Certificate of Incorporation, as amended, but the objects and purposes specified in each of the foregoing clauses of this article shall be regarded as independent objects and purposes.

ARTICLE FOURTH. The total number of shares of stock which the Corporation shall have authority to issue is one million seven hundred ninety-eight thousand three hundred fifty (1,798,350) shares, consisting of forty-eight thousand three hundred fifty (48,350) shares of 4 1/4% Cumulative Preferred Stock, of the par value of \$100 per share, two hundred fifty thousand (250,000) shares of 5 1/4% Cumulative

price, shall cease and determine. The $4\frac{1}{4}\%$ Cumulative Preferred Stock redeemed under the provisions hereof shall not be reissued and shall be cancelled.

4. *Sinking Fund:* The Corporation shall create on its books a sinking fund account (hereinafter called "Preferred Stock Sinking Fund"), for the purchase or redemption of $4\frac{1}{4}\%$ Cumulative Preferred Stock, and shall place in such account the unexpended amount remaining in the sinking fund account of H. K. Porter Company, Inc., a Pennsylvania corporation, for its Cumulative Preferred Stock, $4\frac{1}{4}\%$ Series, which said unexpended amount the Corporation shall apply on or prior to April 30, 1959, for the purpose of redemption or purchase for retirement of shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock then outstanding. The Corporation shall pay into said Preferred Stock Sinking Fund, for the purchase or redemption of $4\frac{1}{4}\%$ Cumulative Preferred Stock, on or before April 30, 1959, and on or before April 30th of each year thereafter, so long as any shares of the $4\frac{1}{4}\%$ Cumulative Preferred Stock shall remain outstanding, an amount equal to 10% of the consolidated net profits of the Corporation and its subsidiary companies, after taxes (as hereinafter defined), for the preceding calendar year; provided, however, that in no event shall such amount exceed \$600,000 for the calendar year 1958. During the year following each April 30th Preferred Stock Sinking Fund payment and on or prior to each succeeding April 30th, so long as any shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock shall remain outstanding, the Corporation shall apply all amounts so paid into the Preferred Stock Sinking Fund for the purpose of redemption or purchase for retirement of shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock then outstanding. Shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock purchased for retirement through the Preferred Stock Sinking Fund may be purchased at either public or private sale on the best terms then reasonably obtainable but only at a price less than the redemption price therefor hereinabove specified. Except for purchases or redemptions through the Preferred Stock Sinking Fund, the Corporation shall not purchase or redeem any shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock. All shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock which shall be redeemed or purchased or otherwise acquired by or through the operation of the Preferred Stock Sinking Fund, shall be cancelled and shall not be reissued.

5. *Priorities and Restrictions:* The rights of the holders of the $4\frac{1}{4}\%$ Cumulative Preferred Stock as to dividends and assets shall be prior to the rights of the holders of any other class of stock of the Corporation. So long as any of the $4\frac{1}{4}\%$ Cumulative Preferred Stock is outstanding the Corporation shall not increase the authorized amount of $4\frac{1}{4}\%$ Cumulative Preferred Stock or authorize or create any stock of any class having preference or priority as to dividends or assets over or ranking on a parity as to dividends or assets with the $4\frac{1}{4}\%$ Cumulative Preferred Stock, and shall maintain at all times a consolidated net working capital (current assets minus current liabilities as determined in accordance with sound accounting principles) of at least two (2) times the aggregate par value of all shares of $4\frac{1}{4}\%$ Cumulative Preferred Stock outstanding.

b. $5\frac{1}{2}\%$ Cumulative Sinking Fund Preference Stock:

1. *Dividends:* The holders of record of the Sinking Fund Preference Stock shall be entitled to receive, when and as declared by the Board of Directors out of any funds legally available for the purpose, cumulative cash dividends at the rate of $5\frac{1}{2}\%$ per annum, and no more, payable quarterly on the last days of January, April, July and October in each year. Such dividends on each share of Sinking Fund Preference Stock shall be cumulative, as follows:

a. if issued prior to the record date for the first dividend on shares of such class of stock, then from the first day of the calendar month in which such issue occurs or such earlier or later date as may be fixed for the purpose by the Board of Directors;

b. if issued during the period commencing immediately after the record date for a dividend on shares of such class of stock and terminating at the close of the payment date for such dividend, then from such dividend payment date; and

the shares of Sinking Fund Preference Stock so called for redemption shall not have been surrendered for cancellation, dividends on the shares so called for redemption shall cease to accrue from and after the date of redemption so designated, and all rights with respect to the shares so called for redemption shall forthwith after such redemption date cease and terminate, except only the right of the holders thereof to receive the redemption price thereof, but without interest.

The Corporation, however, at any time prior to the redemption date specified in the notice of redemption, may deposit in trust, for the account of the holders of the Sinking Fund Preference Stock to be redeemed, with a bank or trust company in the City of New York having a capital and undivided surplus aggregating at least \$5,000,000, named in the notice of redemption, all funds necessary for the redemption, and deliver irrevocable written instructions authorizing and directing such bank or trust company, on behalf of and at the expense of the Corporation, to cause notice of redemption to be duly mailed and publication of the notice to be made as hereinabove provided promptly upon receipt of such irrevocable instructions, and thereupon, notwithstanding that any certificate for the shares of Sinking Fund Preference Stock so called for redemption shall not have been surrendered for cancellation, all shares of Sinking Fund Preference Stock with respect to which the deposit shall have been made shall no longer be deemed to be outstanding and all rights with respect to such shares of Sinking Fund Preference Stock shall forthwith upon the deposit in trust, accompanied by irrevocable instructions as provided above, cease and terminate, except only the right of the holders thereof to receive from such bank or trust company, at any time after the time of the deposit, the redemption price of the shares so to be redeemed, but without interest. Any interest accrued on such funds shall be paid to the Corporation from time to time.

Any funds so set aside or deposited, as the case may be, and unclaimed at the end of six years from such redemption date shall be released or repaid to the Corporation upon its request expressed in a resolution of its Board of Directors, after which release or repayment the holders of the shares so called for redemption shall look only to the Corporation for the payment of the redemption price thereof, but without interest.

All shares of Sinking Fund Preference Stock which shall be redeemed at the option of the Corporation or for the Sinking Fund, or which shall be purchased for the Sinking Fund, shall be cancelled and shall not be reissued.

4. *Sinking Fund:* The Corporation shall provide on its books, as a Sinking Fund reserve for the redemption or purchase of Sinking Fund Preference Stock, on or before the April 30th next following the calendar year during which any shares of Sinking Fund Preference Stock are first issued and on or before April 30th of each year thereafter, so long as any shares of Sinking Fund Preference Stock shall remain outstanding, an amount equal to the same proportionate part of 10% of the consolidated net profits of the Corporation and its subsidiary companies, after taxes (as hereinafter defined), for the calendar year next preceding such April 30th, as the cumulative total number of shares of Sinking Fund Preference Stock that has been issued prior to such April 30th bears to 250,000 shares. Whenever a Sinking Fund reserve is so provided on or before any April 30th, the Corporation, during the 12-month period beginning on the next following May 1st and so long as any shares of Sinking Fund Preference Stock shall remain outstanding, shall (subject to the provisions of paragraph 1 of subdivision a of this Article Fourth) apply the amount of such Sinking Fund reserve, at any time or from time to time, to redeem shares of Sinking Fund Preference Stock then outstanding at the Sinking Fund redemption price plus an amount equal to all accrued and unpaid dividends thereon to the date fixed for redemption, or to purchase for the Sinking Fund shares of Sinking Fund Preference Stock then outstanding, at either public or private sale, at a purchase price or prices not in excess of the Sinking Fund redemption price plus an amount equal to all accrued and unpaid dividends thereon to the date of purchase.

shareholder of record of any class of stock of the Corporation shall be entitled at each meeting of stockholders to one vote for each share standing in the name of such shareholder on the books of the Corporation.

In addition, if at any time dividends on any shares of the 4 1/4% Cumulative Preferred Stock shall be unpaid or in arrears to an amount equal to or exceeding the dividends to which such shares are entitled for six (6) quarterly dividend periods, then the number of Directors shall be increased by two and the holders of the 4 1/4% Cumulative Preferred Stock, until such default shall have been cured by the payment of dividends so that no accumulated dividends remain unpaid on the 4 1/4% Cumulative Preferred Stock, shall have the right, voting as a class, to elect said two additional Directors to represent the 4 1/4% Cumulative Preferred Stock.

In addition, if at any time dividends on any shares of the Sinking Fund Preference Stock shall be unpaid or in arrears to an amount equal to or exceeding the dividends to which such shares are entitled for six (6) quarterly dividend periods, then the number of Directors shall be increased by two and the holders of the Sinking Fund Preference Stock, until such default shall have been cured by the payment of dividends so that no accumulated dividends remain unpaid on the Sinking Fund Preference Stock, shall have the right, voting as a class, to elect said two additional Directors to represent the Sinking Fund Preference Stock.

Upon the happening of any such default so entitling the 4 1/4% Cumulative Preferred Stockholders or the Sinking Fund Preference Stockholders to elect two additional Directors representing such class of stock, a meeting of the holders of shares of such class of stock for the election of such two additional Directors shall be held upon call by the Secretary of the Corporation which shall be issued at the request of the holders of record of not less than 10% of the shares of such class of stock. At any such meeting of the holders of either such class of stock the presence in person or by proxy of the holders of a majority of the outstanding shares of such class of stock shall be required for a quorum. In the event any such default shall have been cured by the payment of dividends on the outstanding 4 1/4% Cumulative Preferred Stock or Sinking Fund Preference Stock, as the case may be, so that no accumulated dividends remain unpaid on such class of stock, the term of office of the Directors so elected to represent such class of stock shall thereupon terminate and the authorized number of members of the Board of Directors shall be reduced accordingly, subject, however, to being again revived upon any subsequent failure of the Corporation to pay dividends as aforesaid.

2. Cumulative Voting: At all elections of Directors of the Corporation (including any election of additional Directors by the holders of 4 1/4% Cumulative Preferred Stock or by holders of the Sinking Fund Preference Stock pursuant to the provisions of paragraph 1 of this subdivision d), each stockholder shall be entitled to as many votes as shall equal the number of votes which (except for this provision as to cumulative voting) he would be entitled to cast for the election of Directors to be elected with respect to the shares of stock held of record by him multiplied by the number of Directors to be elected, and he may cast all such votes for a single Director or may distribute them among the number to be voted for, or for such number of those to be voted for, as he may see fit.

3. Pre-emptive Rights: No stockholder shall be entitled as a matter of right to subscribe for or receive additional shares of any class of stock of the Corporation, whether now or hereafter authorized, or any bonds, debentures or other securities convertible into, or exchangeable for or carrying the right to purchase, stock, but such additional shares of stock or other securities may be issued or disposed of by the Board of Directors to such persons and on such terms as it shall deem in the best interests of the Corporation.

4. Consolidated Net Profits: The term "consolidated net profits of the Corporation and its subsidiary companies, after taxes," for any year or period as used hereinabove shall be deemed to mean the consolidated net profits of the Corporation and its subsidiary companies, after taxes, for such year or period, determined in accordance with sound accounting principles.

to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the By-Laws of the Corporation or as may be determined from time to time by resolution adopted by the Board of Directors.

ARTICLE TENTH. In the absence of fraud, no contract or other transaction of the Corporation shall be affected or invalidated by the fact that any of the Directors or officers of the Corporation are in any way interested in or connected with any other party to such contract or transaction or are themselves parties to such contract or transaction, provided that the interest in any such contract or transaction of any such Director or officer shall at the time be fully disclosed or otherwise known to the Board of Directors; and each and every person who may from time to time become a Director or officer of the Corporation is hereby relieved from any liability whatsoever that might otherwise exist from contracting with the Corporation for the benefit of himself or any person in or with which he may be in any way interested or connected. Any Director of the Corporation may vote and act upon any matter, contract or transaction between the Corporation and any other person without regard to the fact that he is also a stockholder, Director or officer of, or has any interest in, such other person. Any contract or other transaction of the Corporation or of the Board of Directors or of any Committee thereof which shall be ratified by a majority of the holders of the issued and outstanding stock entitled to vote at any annual meeting or any special meeting called for the purpose shall be as valid and as binding as though ratified by every stockholder of the Corporation; provided, however, that any failure of the stockholders to approve or ratify such contract or other transaction, when and if submitted, shall not be deemed in any way to render the same invalid or deprive the Director and officer of their right to proceed with such contract or other transaction.

ARTICLE ELEVENTH. Each Director, each officer, each former Director and each former officer of the Corporation and each person who may have served at the request of the Corporation as a director or officer of another corporation in which the Corporation owns shares of capital stock or of which it is a creditor shall be indemnified by the Corporation against expenses actually and necessarily incurred by or imposed upon him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of his being or having been a Director or officer of the Corporation or of such other corporation, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding, to be liable for negligence or misconduct in the performance of his duties as such officer or Director. Such right of indemnification shall not be deemed exclusive of any other right to which he may be entitled, under any By-Law, agreement, vote of stockholders or otherwise.

ARTICLE TWELFTH. Meetings of stockholders may be held without the State of Delaware, if the By-Laws so provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be from time to time designated by the Board of Directors or in the By-Laws of the Corporation.

III

The manner and basis of converting shares of the Constituent Corporations into shares of the Surviving Corporation, as of the effective date of the merger, shall be as follows:

(a) Each share of Common Stock, of the par value of \$1 per share, of Thermoid which shall then be outstanding and which shall not be owned by Porter Inc. or held in the Treasury of Thermoid shall be converted into and exchanged for one-sixth (1/6th) of one share of 5½% Cumulative Sinking Fund Preference Stock of the Surviving Corporation; provided, however, that no fractional shares, or scrip in lieu of fractional shares, of such 5½% Cumulative Sinking Fund Preference Stock shall be issued by the Surviving Corporation to any holder of Thermoid Common Stock but, in lieu of such issue, the Surviving Corporation will make arrangements with an Exchange Agent so that for a period of 120 days after the effective date of the merger, any such stockholder may purchase through the Exchange Agent any additional fraction required to make up a full

subsequent to the effective date of the merger, shall be paid to the holder of any outstanding certificate for shares of capital stock of a Constituent Corporation until such certificate shall be so surrendered, but upon such surrender there shall be paid to the record holder of the certificate or certificates for shares of capital stock of the Surviving Corporation issued upon such surrender, the amount of such dividends which theretofore became payable with respect to such shares of the capital stock of the Surviving Corporation, but without interest.

IV

The By-Laws of the Surviving Corporation shall be the present By-Laws of Porter Delaware, the Surviving Corporation, as amended from time to time.

V

Subject to the provisions of paragraph 1 of subdivision d of Article Fourth of the Certificate of Incorporation, as amended, of the Surviving Corporation, the number of directors of the Surviving Corporation shall be such number, not less than five, as from time to time shall be fixed by, or in the manner provided in the By-Laws. The following individuals shall constitute the Board of Directors of the Surviving Corporation as of the effective date of the merger, who shall hold office until the next annual meeting of stockholders of the Surviving Corporation and until their successors, respectively, are elected in accordance with the By-Laws:

<u>Names</u>	<u>Addresses</u>
A. B. Brushaber	King Edward Apartments Pittsburgh, Pennsylvania
H. A. Eggerss	3222 East Hampshire Street Milwaukee, Wisconsin
T. M. Evans	Round Hill Road Greenwich, Connecticut
F. C. Foy	4625 Fifth Avenue Pittsburgh, Pennsylvania
W. E. Hill	19 Greenhouse Drive Princeton, New Jersey
C. L. Holbert	Bigelow Apartments Pittsburgh, Pennsylvania
W. S. Landes	29 West Lane Madison, New Jersey
G. D. Lockhart	5215 Westminster Place Pittsburgh, Pennsylvania
C. W. Veatch	146 North Dithridge Pittsburgh, Pennsylvania

If, on the effective date of the merger, a vacancy shall exist in the Board of Directors of the Surviving Corporation by reason of the failure or inability of any of the above named persons to accept a directorship in the Surviving Corporation, such vacancy may be filled in the manner provided by law and the By-Laws of the Surviving Corporation.

VI

Upon the merger herein provided for becoming effective, all and singular the rights, privileges, powers and franchises as well of a public as of a private nature, subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all property and assets, real, personal and mixed, and all debts due on whatever account, and each and every other interest and all manner of things in action of or belonging to the Constituent Corporations shall be vested in the Surviving Corporation without further act, deed or other transfer; and all property, rights, privileges, powers and franchises,

by the stockholders of each of the Constituent Corporations, then the Secretary or Assistant Secretary of each of the Constituent Corporations shall certify such fact on this Agreement and this Agreement and appropriate Articles of Merger incorporating this Plan of Merger, as required by Section 903 of the Pennsylvania Business Corporation Law, shall be executed, signed and verified or acknowledged by the proper officers of each of the Constituent Corporations under their respective corporate seals, and this Agreement shall be filed in the office of the Secretary of State of Delaware, and said Articles of Merger shall be filed in the office of the Department of State of the Commonwealth of Pennsylvania, and shall be duly recorded if and where required by law, whereupon the plan of merger set forth in this Agreement shall become effective.

IX

Notwithstanding anything herein or elsewhere to the contrary, this Agreement may be terminated and abandoned as follows:

- a. By the Board of Directors of any one of the Constituent Corporations at any time prior to its adoption by their respective stockholders, by written notice thereof to the other Constituent Corporations.
- b. By mutual consent of the Boards of Directors of all the Constituent Corporations at any time prior to the effective date hereof.
- c. By the Board of Directors of any one of the Constituent Corporations if, in the opinion of such Board, the merger is deemed inadvisable or impracticable by reason of new legislation, Federal or State, or the institution or threat of litigation or proceedings against any of the Constituent Corporations.
- d. By the Board of Directors of any one of the Constituent Corporations if, in the opinion of such Board, the merger is deemed inadvisable or impracticable by reason of written objections or demands made by stockholders of any of the Constituent Corporations.
- e. By the Board of Directors of any one of the Constituent Corporations if, in the opinion of such Board, any of the other Constituent Corporations has suffered any substantial loss as a result of any catastrophe or has suffered any material adverse change in its condition or business, financial or otherwise, since September 30, 1958.

Notwithstanding the approval and adoption of this Agreement and of the plan of merger set forth herein by the affirmative votes of the holders of the requisite number of outstanding shares of the Constituent Corporations, the Boards of Directors of Porter Inc. and Porter Delaware by resolutions duly adopted at meetings called and held for the purpose of considering such action, subsequent to the date of such approval by the stockholders of the Constituent Corporations and prior to the effective date of the merger, may direct that the plan of merger set forth herein shall be modified so as to eliminate therefrom all provisions concerning Thermoid and the conversion of Thermoid Common Stock, the aforesaid option of Warren E. Hill with respect thereto, and the addition of Messrs. W. E. Hill, H. A. Eggers and W. S. Landes as Directors of the Surviving Corporation (resulting in a reduction in the number of Directors from 9 to 6), all as set forth in a modified Agreement and Joint Plan of Merger of even date herewith, executed on behalf of Porter Inc. and Porter Delaware, so that as so modified the provisions of this Agreement shall be carried out to permit a merger of Porter Inc. and Porter Delaware.

In order to facilitate the filing and recording of this Agreement, it is hereby agreed that the same may be executed, signed, verified or acknowledged in triplicate counterparts, each of which shall constitute an original and shall be given full force and effect as an original.

IN WITNESS WHEREOF, pursuant to authority duly given by their respective Boards of Directors, this Agreement has been executed by the proper officers of H. K. Porter Company, Inc., by a majority of

CERTIFICATE OF THE SECRETARY

OF

THERMOID COMPANY

AS TO

VOTE OF STOCKHOLDERS

I, E. R. MORAN, Secretary of THERMOID COMPANY, a Delaware corporation, hereby certify, as said Secretary and under the seal of said corporation, that the Agreement and Joint Plan of Merger to which this Certificate is attached, after having been signed on behalf of said corporation by a majority of the Directors thereof, having been signed on behalf of H. K. PORTER COMPANY (DELAWARE), a Delaware corporation, by all of the Directors thereof, and having been signed on behalf of H. K. PORTER COMPANY, INC., a Pennsylvania corporation, by its President and Secretary, was duly submitted to the stockholders of said Thermoid Company at a special meeting of stockholders called and held on December 10, 1958, separately from the meeting of stockholders of any other corporation, pursuant to written notice thereof to all of its stockholders, for the purpose of considering and taking action upon said Agreement and Joint Plan of Merger, that 825,254 shares of stock of said corporation on said date were issued and outstanding and entitled to vote thereon, and that the holders of 667,480 shares voted by ballot in favor of said Agreement and Joint Plan of Merger and that 33,394 shares were voted against the same, the said affirmative vote representing more than two-thirds of the shares of the outstanding capital stock of said corporation entitled to vote thereon and that thereby the Agreement and Joint Plan of Merger was at said meeting duly adopted as the act of the stockholders of said Thermoid Company, and the duly adopted agreement of the said corporation.

WITNESS my hand and the seal of said Thermoid Company on this 10th day of December, 1958.

E. R. MORAN

Secretary

[CORPORATE SEAL]

**CERTIFICATE OF THE SECRETARY
OF
H. K. PORTER COMPANY (DELAWARE)
AS TO
VOTE OF STOCKHOLDER**

I, F. A. REHORST, Secretary of H. K. PORTER COMPANY (DELAWARE), a Delaware corporation, hereby certify, as such Secretary and under the seal of the said corporation, that the Agreement and Joint Plan of Merger to which this certificate is attached, after having been signed on behalf of said corporation by all of the Directors thereof, having been signed on behalf of THERMOID COMPANY, a Delaware corporation, by a majority of the Directors thereof, and having been signed on behalf of H. K. PORTER COMPANY, INC., a Pennsylvania corporation, by its President and Secretary, was duly submitted to the stockholder of said H. K. Porter Company (Delaware) at a special meeting of stockholders called and held on December 9, 1958, separately from the meeting of stockholders of any other corporation, upon Waiver of Notice, signed by said stockholder, for the purpose of considering and taking action upon said Agreement and Joint Plan of Merger, that 5,000 shares of stock of said corporation were on said date issued and outstanding and entitled to vote thereon, and that the holder of 5,000 shares voted by ballot in favor of said Agreement and Joint Plan of Merger and that no shares were voted against the same, the said affirmative vote representing all of the shares of the outstanding capital stock of said corporation entitled to vote thereon, and that thereby the Agreement and Joint Plan of Merger was at said meeting duly adopted as the act of the stockholder of said H. K. Porter Company (Delaware), and the duly adopted agreement of the said corporation:

WITNESS my hand and the seal of said H. K. Porter Company (Delaware) on this 9th day of December, 1958.

F. A. REHORST
Secretary

[CORPORATE SEAL]

STATE OF NEW JERSEY }
COUNTY OF MERCER } ss.:

BE IT REMEMBERED that on this 10th day of December, A. D. 1958, personally came before me, ROSE F. DE CARA, a Notary Public in and for the County and State aforesaid, WARREN E. HILL, President of THERMOID COMPANY, a Delaware corporation and one of the corporations described in and which executed the foregoing Agreement and Joint Plan of Merger, known to me personally to be such, and he, the said WARREN E. HILL, as such President, duly executed said Agreement and Joint Plan of Merger before me and acknowledged said Agreement and Joint Plan of Merger to be the act, deed and agreement of said Thermoid Company, that the signatures of said President and the Secretary of said corporation to said foregoing Agreement and Joint Plan of Merger are in the handwriting of the said President and Secretary of said Thermoid Company, and that the seal affixed to said Agreement and Joint Plan of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

ROSE F. DE CARA
Notary Public

Notary Public of New Jersey
My Commission Expires July 24, 1961

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

BE IT REMEMBERED that on this 9th day of December, A. D. 1958, personally came before me, MATTHEW R. ARMSTRONG, a Notary Public in and for the County and Commonwealth aforesaid, C. L. HOLBERT, President of H. K. PORTER COMPANY, INC., a Pennsylvania corporation and one of the corporations described in and which executed the foregoing Agreement and Joint Plan of Merger, known to me personally to be such, and he, the said C. L. HOLBERT, as such President, duly executed said Agreement and Joint Plan of Merger before me and acknowledged said Agreement and Joint Plan of Merger to be the act, deed and agreement of said H. K. Porter Company, Inc., that the signatures of the said President and the Secretary of said corporation to said foregoing Agreement and Joint Plan of Merger are in the handwriting of said President and Secretary of said H. K. Porter Company, Inc., and that the seal affixed to said Agreement and Joint Plan of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

MATTHEW R. ARMSTRONG
Notary Public

MATTHEW R. ARMSTRONG, NOTARY PUBLIC
Pittsburgh, Allegheny County, Pa.
My Commission Expires May 14, 1959

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF ALLEGHENY } ss.:

BE IT REMEMBERED that on this 9th day of December, A. D. 1958, personally came before me, MATTHEW R. ARMSTRONG, a Notary Public in and for the County and Commonwealth aforesaid, C. L. HOLBERT, President of H. K. PORTER COMPANY (DELAWARE), a Delaware corporation and one of the corporations described in and which executed the foregoing Agreement and Joint Plan of Merger, known to me personally to be such, and he, the said C. L. HOLBERT as such President, duly executed said Agreement and Joint Plan of Merger before me and acknowledged said Agreement and Joint Plan of Merger to be the act, deed and agreement of said H. K. Porter Company (Delaware), that the signatures of said President and the Secretary of said corporation to said foregoing Agreement and Joint Plan of Merger are in the handwriting of the said President and Secretary of said H. K. Porter Company (Delaware), and that the seal affixed to said Agreement and Joint Plan of Merger is the common corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office the day and year aforesaid.

MATTHEW R. ARMSTRONG
Notary Public

[NOTARIAL SEAL]

MATTHEW R. ARMSTRONG, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires May 14, 1959

PLAN OF LIQUIDATION

SOUTHERN ASBESTOS COMPANY

a Delaware corporation

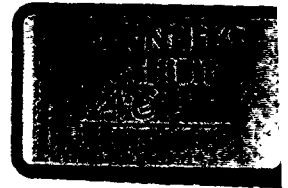
Southern Asbestos Company, a Delaware corporation (hereinafter called "Southern"), has an authorized capital of 56,090 shares of common stock of the par value of \$4.00 per share, 56,070 shares of which are issued and outstanding. Of the 56,070 shares of common stock of the par value of \$4.00 per share issued and outstanding, 44,818 shares are owned by H. K. Porter Company, Inc., a Delaware corporation (hereinafter called "Porter"), and 11,252 shares are owned by others (hereinafter called "Other Stockholders").

Southern is in all respects solvent.

Southern and Porter desire that Southern be liquidated and that all of Southern's property and assets be distributed in complete liquidation of Southern and in complete cancellation or redemption of all of Southern's shares in accordance with the following Plan of Liquidation:

1. Southern shall cease to do business on or before the close of business on December 31, 1959, and thereafter confine its activities to winding up its affairs and dissolving.
2. Each of the Other Stockholders, owning in the aggregate 11,252 shares of the issued and outstanding common stock of Southern, shall, in cancellation and redemption of their shares upon distribution under (4) hereof, receive cash according to their respective rights and in proportion of their interests in the property and assets of Southern, which is determined to be \$16.12 cash for each of said 11,252 shares owned by Other Stockholders. The cash to be distributed to Other Stockholders shall be distributed by Southern to Mellon National Bank and Trust Company, Smithfield Street, Pittsburgh 19, Pennsylvania, as custodian for the Other Stockholders, when distribution under this Plan is made and shall be paid out by said custodian to the Other Stockholders, respectively, upon their surrender to said custodian of the cancelled and redeemed certificates that represented their shares of capital stock of Southern.
3. Porter, owner of 44,818 shares of the issued and outstanding common stock of Southern, shall surrender the certificates representing all of said shares of common stock to Southern for cancellation or redemption upon the receipt of all the property and assets of Southern (except cash reserved to pay Other Stockholders), subject to all of Southern's liabilities which shall be assumed by Porter.
4. The distribution by Southern of all of its property and assets under this Plan shall be made forthwith when Southern ceases to do business and confines its activities to winding up its affairs and dissolving, and on or before December 31, 1959.
5. Southern shall take such steps and do such things as are necessary to wind up its affairs, dissolve and distribute all of its property and assets under this Plan.

GENERAL CONVEYANCE
AND
ASSUMPTION OF LIABILITIES



KNOW ALL MEN BY THESE PRESENTS:

That SOUTHERN ASBESTOS COMPANY, a Delaware corporation (hereinafter called "Transferor"), in accordance with Plan of Liquidation of said corporation and in complete cancellation of its capital stock, owned by H. K. PORTER COMPANY, INC., a Delaware corporation (hereinafter called "Transferee"), and for the assumption by Transferee of all debts, liabilities and obligations of the Transferor as hereinbelow provided, has assigned, transferred, and set over and does hereby assign, transfer, and set over unto the Transferee, its successors and assigns, FOREVER:

All of the Transferor's business, property and assets of every kind and nature and wheresoever situated, whether tangible or intangible, and all right, title and interest of the Transferor therein and thereto, including, without limiting the generality of the foregoing, all land, buildings, machinery and equipment, drawings, parts and appliances; all furniture and fixtures and all vehicles, including automobiles and trucks; all inventory, finished goods, raw materials, work in process, merchandise, products, supplies and stores; all United States and foreign trade-marks, trade-rights and trade-names of every sort and kind, belonging to the Transferor and its business, and the good will thereof, and the right to continue said business and to use said good will and the corporate title, SOUTHERN ASBESTOS COMPANY, or any similar title, and the exclusive right to use all of said titles, trade-marks, trade-rights and trade-names in carrying on the said or any other business; all rights to the corporate title, SOUTHERN ASBESTOS COMPANY, or any similar title; all United States and foreign copyrights, applications for copyrights, patents, applications for patents, patent rights, patent licenses and contracts to

This instrument is delivered pursuant to Plan of Liquidation of the Transferor duly approved and adopted by the Transferor and by the Transferee.

IN WITNESS WHEREOF, the Transferor has caused these presents to be duly executed by its duly authorized officers this 1st day of December, 1959.

ATTEST:

SOUTHERN ASBESTOS COMPANY

E. R. Moran
Secretary

By C. L. Holbert
President

STATE OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:

Before me, a Notary Public in and for said County and State, personally appeared the above named SOUTHERN ASBESTOS COMPANY by C. L. HOLBERT, its President, and E. R. MORAN, its Secretary, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Pittsburgh, Pennsylvania, this 1st day of December, 1959.

FRANK A. EFLOST, Notary Public
PITTSBURGH, ALLEGHENY COUNTY
My Commission Expires January 7, 1961

Frank A. Eflorst
Notary Public

The foregoing is hereby accepted and agreed to this 1st day of December, 1959.

ATTEST:

H. K. PORTER COMPANY, INC.

E. R. Moran
Secretary

By C. L. Holbert
President