

60659

# Commonwealth of Kentucky

## Department of State



### Office of Secretary of State

THELMA L. STOVALL, SECRETARY

### FOREIGN CORPORATION DEPARTMENT

I, THELMA L. STOVALL, Secretary of State of the Commonwealth of Kentucky, hereby certify that certified copies of  
Certificate of Merger merging THE ELKANA COMPANY, a West Virginia  
corporation,

into  
~~of~~ THE ELKANA COMPANY DEPARTMENT STORE CO.  
Name of Corporation

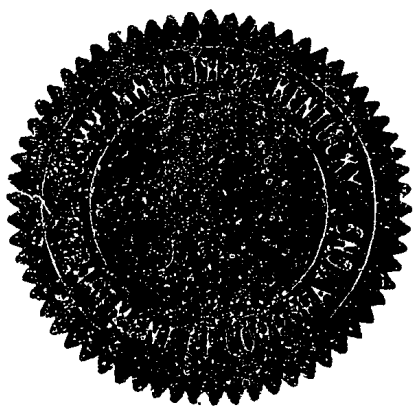
a corporation of the State of West Virginia, with home  
Name of State  
office at Charleston, West Virginia; have or has been filed in  
Address

my office. This corporation has complied with the existing laws of the Commonwealth of Kentucky, and is now authorized to transact business in this State, subject to the restrictions imposed by law.

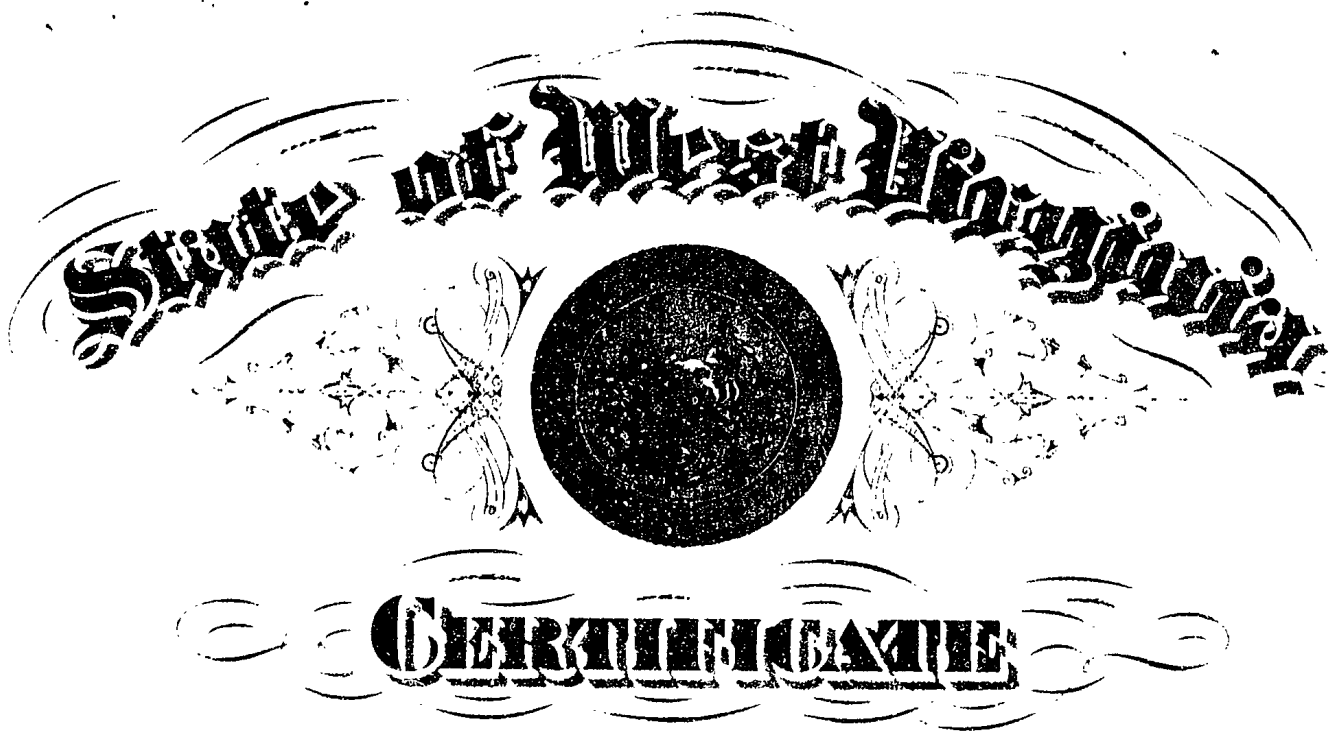
Given under my hand as Secretary of State,  
this 2nd day of March 1966

Thelma L. Stovall  
Secretary of State

By \_\_\_\_\_  
Assistant Secretary of State.



SECRETARY OF STATE



ROBERT D. BAILEY

I, ~~XXXXXXXXXXXX~~, Secretary of State of the State of West Virginia, hereby certify that the following and hereto attached is a true copy of

Certificate of Merger

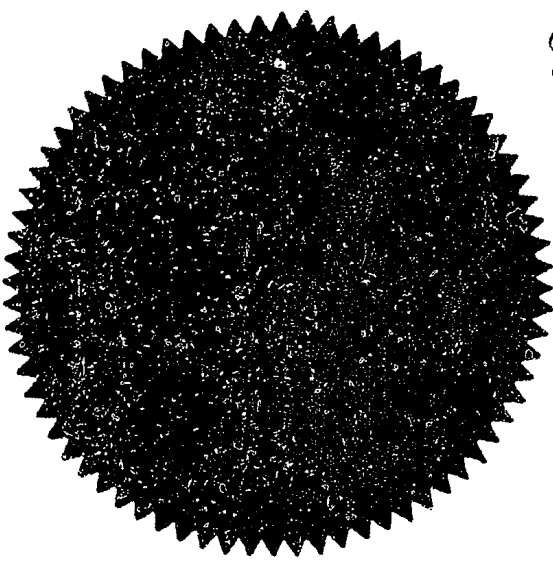
of

THE ELKANA COMPANY  
with and into  
A. W. COX DEPARTMENT STORE CO., the survivor

dated February 4, 1966; as appears from the records of my said Office.

Given under my hand and the Great Seal of the said State at the City of Charleston, this

\_\_\_\_\_ TWENTY-EIGHTH \_\_\_\_\_ day of  
\_\_\_\_\_ FEBRUARY, \_\_\_\_\_ 19 66.



*Robert D. Bailey*  
Secretary of State

AGREEMENT OF MERGER  
AND  
PLAN OF MERGER AND CONSOLIDATION

This Agreement of Merger, dated this 17th day of January, 1966, between A. W. COX DEPARTMENT STORE CO., a West Virginia corporation (herein called "Cox Store") and THE ELKANA COMPANY, a West Virginia corporation (herein called "Elkana"), and at least a majority of the Directors of Cox Store and Elkana, said Corporations being hereinafter sometimes called the "Constituent Corporations".

W I T N E S S E T H:

Cox Store is a corporation organized and existing under the laws of the State of West Virginia, incorporated in 1914. The authorized capital stock of Cox Store consists of Eight Thousand (8,000) shares of common stock of \$100 par value, of which Two Thousand Eight Hundred Eighteen and One Hundred Ninety-three One Thousandths (2818.193) shares are issued and outstanding.

Elkana is a corporation organized and existing under the laws of the State of West Virginia, incorporated in 1935. The authorized capital stock of Elkana consists of Forty (40) shares of common stock without nominal or par value, and Four Hundred Ninety (490) shares of preferred stock of the par value of \$100 each, of which

Forty (40) shares of common stock without nominal or par value are issued and outstanding.

The Board of Directors of each of the Constituent Corporations deems it advisable and in the best interests of the Corporations and their stockholders that Elkana be merged with and into Cox Store upon the terms and conditions hereinafter set forth, such merger to be effected pursuant to Section 63, Article 1, Chapter 31 of the Code of West Virginia of 1931, as amended.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree that Elkana shall be merged into Cox Store and hereby agree upon and describe the terms and conditions of said merger, and the manner of carrying the same into effect as follows:

I

The Surviving Corporation: Elkana shall be and is hereby merged into Cox Store, to be a single corporation, by the name of "A. W. Cox Department Store Co.", a corporation organized under the laws of the State of West Virginia, which shall be the Surviving Corporation and is hereinafter referred to as the "Corporation" or the "Surviving Corporation". The separate existence of Elkana shall cease as of the effective time of this merger, except so far as it may be continued by law or in order to carry out the purposes of this Agreement of Merger, and except as continued in the Surviving Corporation.

## II

### Articles of Organization of the Surviving Corporation:

The facts required to be set forth in the Agreement of Incorporation of a corporation incorporated under the laws of the State of West Virginia which are required or permitted to be stated in case of the merger provided for in this Agreement are as follows:

A. The name of the Corporation shall be "A. W. Cox Department Store Co."

B. The principal office or place of business of said Corporation shall be located at 222 Capitol Street, in the City of Charleston, in the County of Kanawha and the State of West Virginia. Said Corporation shall have no chief works.

C. The objects or purposes for which the Corporation is formed or exists shall be as follows:

1. To engage in manufacture, purchase, ownership and sale of goods, wares and merchandise of every kind and character, both at wholesale and retail.

2. To own, buy and lease real estate for the purposes of said business.

3. This Corporation shall have the power to acquire, by purchase or otherwise, any bonds, securities or shares of stock of any class of any other corporation, foreign or domestic, private, public or municipal, or of the Government of the United States of America or any agency thereof, or any state or political subdivision thereof, to be held and disposed of subject to the order of the Board of Directors.

4. To engage in and carry on any trade or business which may seem to the Corporation capable of being conveniently carried on in connection with the powers granted herein or calculated directly or indirectly to enhance the value of the Corporation's property or rights; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange or otherwise deal in real estate and in shares of capital stock of this or any other corporation, and to exercise all the rights, powers and privileges which natural persons might, could or would exercise with respect thereto; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any securities or evidences of debt created by this or any other corporation in the same manner and to the same extent as natural persons might, could, or would do; to borrow money, make and issue promissory notes, bonds, debentures and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise; and to promote, finance, aid and assist financially, or otherwise, any other corporation or association.

D. The total authorized capital stock of the Corporation shall be Eight Hundred Thousand Dollars (\$800,000.00), which shall be divided into Eighty Thousand (80,000) shares of common stock of the par value of Ten Dollars (\$10.00) each.

E. The capital of the Corporation will not be reduced by reason of these amendments to the Charter.

F. The existence of this Corporation is to be perpetual.

G. 1. Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between This Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of West Virginia may, on the application in a summary way of this

Corporation or of any creditor or stockholder thereof, or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the laws of the State of West Virginia, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, such compromise or arrangement and such reorganization shall, if sanctioned by the court to which such application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

2. No stockholders of this Corporation shall, because of their ownership of stock, have a pre-emptive or other right to purchase, subscribe for, or take any part of any stock or any part of the notes, debentures, bonds or other securities of this Corporation issued, optioned or sold by it after its incorporation. Any part of the capital stock and any part of the notes, debentures, bonds, or other securities convertible into or carrying options or warrants to purchase stock of this Corporation authorized by this certificate

of incorporation or by any amended certificate hereafter issued, may at any time be issued, optioned for sale, and sold or disposed of by this Corporation pursuant to resolution or order of its Board of Directors to such person or persons, and upon such terms, as may to such Board seem proper without first offering such stock or securities, or any part thereof, to existing stockholders.

3. This Corporation may impose such limitations and restrictions upon the sale or transfer of its capital stock and upon the certificates evidencing such stock as its Board of Directors may by appropriate bylaws provide, including, but without limiting the generality hereof, provisions requiring a stockholder desiring to sell or transfer stock held by him first to offer such stock to the Corporation, or to other stockholders, or to both, upon terms and conditions set forth in any bylaw or bylaws relating to such sale and transfer.

4. Any two or more stockholders of this Corporation may, by agreement in writing, create a voting trust and to such end vest in voting trustees the exclusive right to vote the shares of the stock of the parties to such agreement, subject and pursuant to the provisions of Section 73 of Article 1 of Chapter 31 of the Code of West Virginia of 1931, as amended.

### III

Charter of Surviving Corporation: On the effective date of this merger the Charter of Cox Store, as heretofore amended, and



as amended and revised by this Agreement, shall be the Charter of the Surviving Corporation until further amended as provided by law.

IV

Bylaws of Surviving Corporation: On the effective date of the merger the Bylaws of Cox Store, as heretofore amended, shall be the Bylaws of the Surviving Corporation until the same shall be altered, amended or repealed, or until new Bylaws shall be adopted, in accordance with the provisions thereof.

V

Directors and Officers of the Surviving Corporation: The Board of Directors of the Surviving Corporation shall initially consist of nine Directors, each of whom shall hold office until the annual meeting of the stockholders of the Surviving Corporation to be held in 1966 and until his successor shall have been duly elected and shall have qualified, or until his earlier death, resignation or removal. The names of such Directors shall be as follows:

Wilbur E. Cox	John C. Wolf
Howard R. Klostermeyer	E. R. Davis
R. B. Payne	A. S. Thomas, Jr.
H. C. Riley	John L. Thomas
E. E. Keadle	

The principal officers of the Surviving Corporation, each

of whom shall hold office until his successor shall have been duly elected or appointed and shall have qualified or until his earlier death, resignation and removal, shall be as follows:

President	Wilbur E. Cox
Vice President	H. C. Riley
Vice President	E. R. Davis
Vice President	John C. Wolf
Treasurer	E. E. Keadle
Secretary	E. E. Keadle

The Surviving Corporation may have such other officers as shall be provided for in its Bylaws.

If on the effective date of the merger a vacancy shall exist in the Board of Directors of the Surviving Corporation or in any of the offices above specified, such vacancy may thereafter be filled in the manner provided by law or in the Bylaws of the Surviving Corporation.

## VI

Capital Stock of Surviving Corporation: On the effective date of the merger the total amount of the authorized capital stock of the Surviving Corporation shall be Eighty Thousand (80,000) shares of common stock of a par value of Ten Dollars (\$10.00) each.

## VII

Conversion of Outstanding Securities on Merger: The manner and basis of converting the outstanding stock of Cox Store and Elkana into stock of the Surviving Corporation upon the effective date of the merger shall be as follows:

A. Common Stock of Cox Store: The Two Thousand Eight Hundred Eighteen and One Hundred Ninety-three Thousandths (2818.193) shares of the \$100 par value common stock of Cox Store outstanding on the effective date of the merger shall be converted into Fifty-nine Thousand Three Hundred Twenty-one (59,321) shares of \$10 par value common stock of the Surviving Corporation, to be distributed pro rata to the present holders of the common stock of Cox Store.

B. Common Stock of Elkana: The Forty (40) shares of no par common stock of Elkana shall be converted into Ten Thousand Six Hundred Seventy-nine (10,679) shares of the \$10 par value common stock of the Surviving Corporation, to be distributed pro rata to the present owners of the common stock of Elkana.

## VIII

Exchange of Certificates: On the effective date of the merger, each holder of a certificate or certificates theretofore representing outstanding common stock of Cox Store or Elkana shall be entitled upon surrender of such certificate or certificates to

the office or agency of the Surviving Corporation designated for that purpose to receive in exchange therefor a certificate or certificates representing shares of the \$10 par value common stock of the Surviving Corporation.

## IX

Effect of Merger: On the effective date of the merger Cox Store and Elkana shall cease to exist separately and Elkana shall be merged into Cox Store in accordance with the provisions of this Agreement and in accordance with the provisions of and with the effect provided in Section 63, Article 1, Chapter 31 of the West Virginia Code of 1931, as amended. As provided therein, the Surviving Corporation shall possess all the rights, privileges, powers, franchises, and trust and fiduciary duties, powers and obligations, as well of a public as a private nature, and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all and singular the rights, privileges, powers, franchises and trust and fiduciary rights, powers, duties and obligations of each of the Constituent Corporations; and all property, real, personal and mixed, and all debts due to either of the Constituent Corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations shall be vested in the Surviving Corporation; and all property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving

Corporation as they were of the respective Constituent Corporations; and the title to any real estate, whether vested by deed or otherwise, in either of the Constituent Corporations shall not revert or be in any way impaired by reason of the merger: Provided, however, that all the rights of creditors and all liens upon any property of either of the said Constituent Corporations shall be preserved unimpaired, and all debts, liabilities and duties of the respective Constituent Corporations shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by the Surviving Corporation.

X

Further Instruments: From time to time, as and when requested by the Surviving Corporation or by its successors or assigns, Elkana will execute and deliver or cause to be executed and delivered all such deeds and other instruments, and will take or cause to be taken such further or other action as the Surviving Corporation may deem necessary or desirable in order to vest in and confirm to the Surviving Corporation title to and possession of all the property, rights, privileges, powers and franchises of Elkana and otherwise carry out the intent and purpose of this Agreement.

XI

Abandonment of Merger: This Agreement shall be terminated

and the merger provided for herein abandoned, unless this Agreement be approved and adopted by the votes of the holders of the common stock of Cox Store and the common stock of Elkana at separate meetings of the stockholders of Cox Store on the one hand and the stockholders of Elkana on the other, in accordance with the requirements of the laws of the State of West Virginia, and that fact be certified hereon by the respective secretaries of each of the Constituent Corporations under their respective corporate seals, and this Agreement, so adopted and certified, be signed, acknowledged and filed, all as required by the provisions of Section 63, Article 1, Chapter 31, West Virginia Code of 1931, as amended.

This Agreement may be terminated and the merger provided for herein abandoned by a vote of the Board of Directors of either of the Constituent Corporations at any time prior to the filing of this instrument duly certified, executed and acknowledged, as aforesaid, in the office of the Secretary of State of West Virginia. The filing of this Agreement, duly certified, executed and acknowledged as aforesaid, in said office, shall be conclusive evidence that this Agreement has not been terminated or the merger provided for herein abandoned by action of the Board of Directors of either of the Constituent Corporations.

In the event of any such termination or abandonment, as in this numbered paragraph provided, this Agreement shall be void and have no effect and there shall be no liability on the part of the

Constituent Corporations or any director, officer or stockholder of such Constituent Corporations in respect thereto.

XII

Right of Amendment: The Surviving Corporation hereby reserves the right to amend, alter, change or repeal any provision contained in its charter, as from time to time amended, and any provision contained in this Agreement, in the manner now or hereafter prescribed by law or by such charter, as from time to time amended; and all rights and powers of whatsoever nature conferred in such charter, as from time to time amended, or herein, upon any stockholder, director, officer or any other person, are subject to this reservation.

XIII

Effective Date of Merger: The merger provided for herein shall become effective as of midnight, January 31, 1966.

XIV

Counterparts: For the convenience of the parties and to facilitate the filing or recording of this Agreement, any number of counterparts hereof may be executed, and each such executed counterpart shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, a majority of the Directors of A. W. Cox Department Store Co., and a majority of the Directors of The

Elkana Company have caused this Agreement to be signed under the corporate seals of their respective corporations, all as of the day and year first above-written.

E. E. Keedee

John C Wolf

R. B. Payne

John T. Thomas

Wilbur E. Cox

H. C. Riley

E. R. Davis

(CORPORATE SEAL)

ATTEST:

E. E. Keedee  
Secretary

Majority of Board of Directors of  
A. W. Cox Department Store Co.

J. A. Thomas  
J. A. Thomas

(CORPORATE SEAL)

ATTEST:

Wilbur E. Cox  
Secretary

Thomas R. Mortimer  
Majority of the Board of Directors  
of The Elkana Company



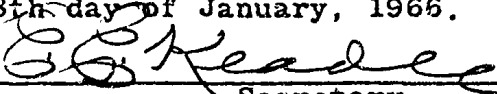
CERTIFICATE OF SECRETARY OF  
A. W. COX DEPARTMENT STORE CO.

I, E. E. KEADLE, Secretary of A. W. Cox Department Store Co., a corporation incorporated under the laws of the State of West Virginia, having its principal office and place of business in the City of Charleston, Kanawha County, West Virginia, hereby certify that at a special meeting of the holders of the capital stock of said corporation, separately called for the purpose of considering the foregoing Agreement of Merger and Plan of Merger and Consolidation, held at 222 Capitol Street, Charleston, West Virginia, on the 18th day of January, 1966, at which meeting one hundred per cent (100%) of the capital stock of said corporation issued and outstanding was present in person or represented by proxy, the foregoing Agreement of Merger and Plan of Merger and Consolidation was adopted by the unanimous vote of all the stockholders of said corporation representing all the shares of the capital stock of A. W. Cox Department Store Co., then issued and outstanding.

I further certify that such meeting was duly and legally called and notice thereof given in accordance with the provisions of the laws of the State of West Virginia, and that written notice of the time, place and object of such meeting was duly mailed to the last known post office address of each stockholder more than twenty (20) days prior to the date of such meeting and was published

once a week for four successive weeks in The Charleston Daily Mail, a newspaper of general circulation published in Kanawha County, West Virginia.

WITNESS my hand and the seal of A. W. Cox Department Store Co., of Charleston this 18th day of January, 1966.

  
Secretary

(CORPORATE SEAL)

CERTIFICATE OF SECRETARY OF  
THE ELKANA COMPANY

I, WILBUR E. COX, Secretary of The Elkana Company, a corporation incorporated under the laws of the State of West Virginia, having its principal office and place of business in the City of Charleston, Kanawha County, West Virginia, hereby certify that at a special meeting of the holders of the capital stock of said corporation, separately called for the purpose of considering the foregoing Agreement of Merger and Plan of Merger and Consolidation, held at 222 Capitol Street, Charleston, West Virginia, on the 18th day of January, 1966, at which meeting one hundred per cent (100%) of the capital stock of said corporation issued and outstanding was present in person or represented by proxy, the foregoing Agreement of Merger and Plan of Merger and Consolidation was adopted by the unanimous vote of all the stockholders of said corporation representing all the shares of the capital stock of The Elkana Corporation, then issued and outstanding.

I further certify that such meeting was duly and legally called and notice thereof given in accordance with the provisions of the laws of the State of West Virginia, and that written notice of the time, place and object of such meeting was duly mailed to the last known post office address of each stockholder more than twenty (20) days prior to the date of such meeting and was published once a week for four successive weeks in The Charleston Daily Mail, a newspaper of general circulation published in Kanawha County, West Virginia.

WITNESS my hand and the seal of The Elkana Company of Charleston this 18th day of January, 1966.

Wilbur E. Cox  
Secretary

(CORPORATE SEAL)

A. W. Cox Department Store Co., a corporation, has caused the foregoing Agreement of Merger and Plan of Merger and Consolidation, adopted and certified as above, to be signed by its President and Secretary under its corporate seal this 18th day of January, 1966.

A. W. COX DEPARTMENT STORE CO.,

By Wilbur E. Cox  
President

By ES Keader  
Secretary

(CORPORATE SEAL)

The Elkana Company has caused the foregoing Agreement of Merger and Plan of Merger and Consolidation, adopted and certified as above, to be signed by its President and Secretary under its corporate seal this 18th day of January, 1966.

THE ELKANA COMPANY

By Howard R. Montague  
President

By Wilbur E. Cox  
Secretary

(CORPORATE SEAL)

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, CHARLES B. STACY, a notary public of said county, do certify that WILBUR E. COX, who signed the writing hereto annexed, bearing date the 17th day of January, 1966, for A. W. COX DEPARTMENT STORE CO., a corporation, has this day in my said county, before me, acknowledged the said writing to be the act, deed and agreement of said corporation.

Given under my hand this 18 day of JANUARY, 1966.

My commission expires: NOVEMBER 25, 1975

Charles B. Stacy  
Notary Public in and for  
Kanawha County, West Virginia

10659

LAW OFFICES  
SPILMAN, THOMAS, BATTLE & KLOSTERMEYER  
(FORMERLY PRICE, SMITH & SPILMAN)  
KANAWHA BANKING & TRUST BUILDING  
CHARLESTON, WEST VIRGINIA 25321

ROBERT S. SPILMAN (1876-1948)  
FREDERICK L. THOMAS  
HAWTHORNE D. BATTLE  
HOWARD R. KLOSTERMEYER  
ROBERT S. SPILMAN, JR.  
W. VICTOR ROSS  
FREDERICK L. THOMAS, JR.  
CHARLES S. STACY  
JAMES H. DAVIS, 3RD  
WILLIAM C. PAYNE  
WILLIAM B. MAXWELL, 3RD  
R. PAGE HENLEY, JR.  
RICHARD W. CREWS

P. O. BOX 273  
TELEPHONE  
342-3104

March 1, 1966

SECRETARY OF STATE  
**RECEIVED**  
MAR 2 1966  
23 495-10.00  
Commonwealth of Kentucky

Thelma L. Stovall  
Secretary of State  
Commonwealth of Kentucky  
Frankfort, Kentucky

Dear Miss Stovall:

I wish to thank you for your letter  
of February 25, 1966.

Enclosed you will find a copy of the  
certificate of merger of The Elkana Company into  
A. W. Cox Department Store Co. which has been  
certified under the seal of the Secretary of State  
of West Virginia as of February 28, 1966. Enclosed  
also find our firm check to your order for \$10.00  
for recording this certificate.

I will thank you to send us evidence  
of the recordation of this instrument.

Very truly yours,

*Howard R. Klostermeyer*  
Howard R. Klostermeyer

HRK:qch  
Encls.