

**0First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0470.01 Thomas Morris x4218

SENATE BILL 19-086

SENATE SPONSORSHIP

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HOUSE SPONSORSHIP

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Senate Committees

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Appropriations

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A BILL FOR AN ACT

101 **CONCERNING UPDATES TO THE LAWS GOVERNING BUSINESS ENTITIES,**
102 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes the following changes to the "Colorado Business Corporation Act" (CBCA) and conforming changes to the "Colorado Corporations and Associations Act" (CCAA):

- ! Deletes definitions in the CCAA that are no longer necessary (**section 1**);
- ! Updates provisions in the CCAA to clarify conversions and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 18, 2019

SENATE
3rd Reading Unamended
March 14, 2019

SENATE
Amended 2nd Reading
March 13, 2019

- mergers of entities and exchanges of owners' interests in entities (**sections 2 through 18**);
- ! Updates provisions in the CCAA addressing the requirements for the name of an entity formed under Colorado law or qualified to do business in Colorado as a foreign entity (**sections 19 through 21**);
 - ! Updates provisions in the CCAA regarding court proceedings that may be filed by a dissolved Colorado entity for a determination of the amount and form of security to be provided for payment of claims that are contingent or unknown or that arose from events occurring after dissolution (**sections 22 through 24**);
 - ! Adds definitions to and updates definitions in the CBCA (**section 25**);
 - ! Reorganizes certain provisions that are optional to include in the articles of incorporation of a Colorado corporation so that they appear in a single location to avoid confusion (**section 28**);
 - ! Adds an optional forum selection provision similar to that found in other states and the "Model Business Corporation Act" (**section 29**);
 - ! Adds a provision for ratification of defective corporate actions similar to that found in other states and the "Model Business Corporation Act" (**section 31**);
 - ! Updates provisions for proxies and treatment for voting purposes of shares held by intermediaries and nominees (**sections 32 and 33**);
 - ! Updates provisions for the general standards of conduct for directors and officers and standards of liabilities for directors (**section 36**);
 - ! Updates provisions dealing with conflicting interest transactions and corporate opportunities (**section 37**);
 - ! Updates provisions dealing with indemnification of directors, officers, employees, fiduciaries, and agents, and advancement of expenses (**sections 39 through 47**);
 - ! Updates provisions dealing with corporate mergers, conversions, and exchanges by reference to the updated provisions in the CCAA (**sections 48 through 56**);
 - ! Repeals and reenacts, with amendments, former article 113 of title 7, Colorado Revised Statutes, relating to dissenters' rights and substitutes provisions to define the procedure to obtain appraisal rights in lieu of dissenters' rights (**section 57**); and
 - ! Updates the provisions providing for the grounds and procedures for seeking judicial dissolution and providing

for an election by one or more shareholders to purchase shares owned by the petitioning shareholders in lieu of proceeding with judicial dissolution (**sections 58 through 61**).

The bill also updates certain provisions of articles 55 and 56 of title 7, Colorado Revised Statutes, regarding various forms of cooperatives, as well as articles 41 (domestic associations organized as savings and loan associations) and 103 (state banks) of title 11, Colorado Revised Statutes, to be consistent with changes made in the CBCA (**sections 64 through 66, 69, and 70**).

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 7-90-102, **amend** the
3 introductory portion; and **repeal** (3.5) and (9.5) as follows:

4 **7-90-102. Definitions.** As used in this ~~title~~ TITLE 7, except as
5 otherwise defined for the purpose of any section, subpart, part, or article
6 of this ~~title~~ TITLE 7, or unless the context otherwise requires:

7 (3.5) ~~"Business development corporation" means a corporation~~
8 ~~incorporated under the "Colorado Business Development Corporation~~
9 ~~Act", article 48 of this title.~~

10 (9.5) ~~"Cooperative housing corporation" means a corporation~~
11 ~~formed pursuant to article 33.5 of title 38, C.R.S.~~

12 **SECTION 2.** In Colorado Revised Statutes, **amend** 7-90-201 as
13 follows:

14 **7-90-201. Conversion of an entity.** (1) Pursuant to a plan of
15 conversion THAT COMPLIES WITH SECTION 7-90-201.3 AND IS approved in
16 accordance with section 7-90-201.4:

17 (a) A domestic entity of one form may ~~be converted~~ CONVERT into
18 any other form of domestic entity.

19 (b) A domestic entity may ~~be converted~~ CONVERT into any form
20 of foreign entity recognized in the jurisdiction under the law of which the

1 entity will be considered to have been formed after the conversion.

2 (2) A foreign entity may ~~be converted~~ CONVERT into a domestic
3 entity if the conversion is not prohibited by the constituent documents or
4 organic statutes OF THE FOREIGN ENTITY and if the foreign entity complies
5 with all of the requirements, if any, of its constituent documents and
6 organic statutes in effecting the conversion.

7 **SECTION 3.** In Colorado Revised Statutes, 7-90-201.3, **amend**
8 (1) introductory portion and (1)(c) as follows:

9 **7-90-201.3. Plan of conversion.** (1) A plan of conversion ~~shall~~
10 MUST state:

11 (c) The terms and conditions of the conversion, including the
12 manner and basis of changing the owners' interests of ~~each~~ THE
13 converting entity into owners' interests or obligations of the resulting
14 entity or into money or other property in whole or in part.

15 **SECTION 4.** In Colorado Revised Statutes, **amend** 7-90-201.4
16 as follows:

17 **7-90-201.4. Approval of plan of conversion.** (1) In the case of
18 domestic entities described in this subsection (1), the plan of conversion
19 ~~shall~~ MUST be approved:

20 (a) In the case of a corporation, as provided in section
21 ~~7-111-101.5~~ 7-111-103;

22 (b) In the case of a nonprofit corporation, as provided in section
23 ~~7-131-101.5~~ 7-131-102;

24 (c) In the case of a cooperative formed under, or subject to, article
25 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602; and

26 (d) In the case of a cooperative formed under article 55 of this ~~title~~
27 TITLE 7, as provided in section 7-55-112.

1 (2) In the case of a domestic entity other than an entity described
2 in subsection (1) of this section, the plan of conversion ~~shall~~ MUST be
3 approved as follows:

4 (a) If the ~~organic statutes or~~ primary constituent documents
5 expressly provide for the approval of the PLAN OF conversion, ~~the terms~~
6 ~~and conditions of the conversion shall~~ IT MUST be approved in accordance
7 with those provisions.

8 (b) If ~~neither the primary constituent documents nor the organic~~
9 ~~statutes expressly provide for the approval of the plan of conversion~~
10 SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY, the plan of
11 conversion ~~shall~~ MUST be approved in accordance with the provisions of
12 the primary constituent documents that contain the most stringent terms
13 for THE approval of a PLAN OF merger.

14 (c) If ~~the primary constituent documents do not expressly provide~~
15 ~~for the approval of a merger~~ SUBSECTIONS (2)(a) AND (2)(b) OF THIS
16 SECTION DO NOT APPLY, the plan of conversion ~~shall~~ MUST be approved
17 in accordance with the provisions of the ~~entity's~~ PRIMARY CONSTITUENT
18 DOCUMENTS THAT CONTAIN THE MOST STRINGENT TERMS FOR THE
19 APPROVAL OF AN AMENDMENT TO THE PRIMARY CONSTITUENT
20 DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE PROVISIONS OF THE
21 organic statutes that contain the most stringent terms for the approval of
22 ~~a merger~~ AN AMENDMENT TO THE PRIMARY CONSTITUENT DOCUMENTS.

23 (d) If ~~neither the primary constituent documents nor the entity's~~
24 ~~organic statutes expressly provide for the approval of a merger, the plan~~
25 ~~of conversion shall be approved in accordance with the provisions for~~
26 ~~amendment of the primary constituent documents set forth in the organic~~
27 ~~statutes and the primary constituent documents.~~

1 (e) (d) If ~~neither the primary constituent documents nor the~~
2 ~~organic statutes expressly provide for the approval of a plan of~~
3 ~~conversion, for the approval of a merger, or for the approval of an~~
4 ~~amendment to the primary constituent documents~~ SUBSECTIONS (2)(a),
5 (2)(b), AND (2)(c) OF THIS SECTION DO NOT APPLY, the plan of conversion
6 ~~shall~~ MUST be approved by all of the owners of the converting entity.

7 (3) For purposes of this section, the provisions of the organic
8 statutes and constituent documents applicable to approval include
9 provisions relating to any preliminary approval by managers for
10 submission to the owners, notices, quorum, voting, and consent by
11 owners or third parties. References in this section to the most stringent
12 provisions of the primary constituent documents or organic statutes are
13 references to those provisions of ~~such~~ THE documents or statutes that
14 establish the highest voting requirements. ~~for approval of a merger.~~
15 ~~Nothing in this section shall be deemed to permit any primary constituent~~
16 ~~document to contain merger provisions that are proscribed by the entity's~~
17 ~~organic statutes.~~

18 (4) NOTHING IN THIS SECTION PERMITS A PRIMARY CONSTITUENT
19 DOCUMENT TO CONTAIN ANY PROVISION PROSCRIBED BY THE ORGANIC
20 STATUTES.

21 **SECTION 5.** In Colorado Revised Statutes, 7-90-201.7, **amend**
22 (2) introductory portion and (3)(a) introductory portion as follows:

23 **7-90-201.7. Statement of conversion - when conversion**
24 **effective.** (2) After the conversion of an entity is approved in accordance
25 with section ~~7-90-201~~ 7-90-201.4, if neither the resulting entity nor the
26 converting entity is or will be an entity that will have a constituent filed
27 document filed in the records of the secretary of state, either the resulting

1 entity or the converting entity may deliver to the secretary of state, for
2 filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a statement of
3 conversion stating:

4 (3) (a) After the conversion of an entity is approved in accordance
5 with section ~~7-90-201~~ 7-90-201.4, if the resulting entity will be an entity
6 for which a constituent filed document is to be filed in the records of the
7 secretary of state, the converting entity shall deliver to the secretary of
8 state, for filing pursuant to part 3 of this ~~article~~ ARTICLE 90, a combined
9 statement of conversion and the constituent filed document that complies
10 with the requirements of the organic statutes. In addition to complying
11 with the requirements of the organic statutes for the constituent filed
12 document, a combined statement of conversion and constituent filed
13 document ~~shall~~ MUST state:

14 **SECTION 6.** In Colorado Revised Statutes, 7-90-202, **amend** (1)
15 as follows:

16 **7-90-202. Effect of conversion - entity unchanged.** (1) ~~At the~~
17 ~~time the~~ WHEN A conversion ~~becomes effective~~ TAKES EFFECT, the
18 converting entity ~~shall be~~ IS converted into the resulting entity, and the
19 resulting entity ~~shall~~ IS thereafter ~~be~~ subject to all of the provisions of the
20 organic statutes.

21 **SECTION 7.** In Colorado Revised Statutes, 7-90-203, **amend** (1)
22 and (2) as follows:

23 **7-90-203. Merger of entities.** (1) One or more domestic entities
24 may merge into a domestic entity of a form the same as or different from
25 any of the merging entities pursuant to a plan of merger COMPLYING WITH
26 SECTION 7-90-203.3 AND approved pursuant to section 7-90-203.4.

27 (2) One or more domestic entities may merge into a foreign entity

1 of a form the same as or different from that of any of the merging entities,
2 or one or more foreign entities may merge into a domestic entity of a form
3 the same as or different from that of any of the merging entities, pursuant
4 to a plan of merger COMPLYING WITH SECTION 7-90-203.3 AND approved,
5 in the case of a domestic entity, pursuant to section 7-90-203.4, if:

6 (a) The merger is not prohibited by the constituent documents or
7 organic statutes of each foreign entity;

8 (b) ~~and~~ if Each foreign entity complies with all of the
9 requirements, if any, of its constituent documents and organic statutes in
10 effecting the merger; AND

11 (c) ANY FOREIGN ENTITY THAT IS THE SURVIVING ENTITY OF THE
12 MERGER COMPLIES WITH SECTION 7-90-204.5.

13 **SECTION 8.** In Colorado Revised Statutes, **add** 7-90-203.1 as
14 follows:

15 **7-90-203.1. Exchange of owner's interest.** (1) ONE OR MORE
16 DOMESTIC ENTITIES MAY ACQUIRE ALL OWNERS' INTERESTS OF ANY OTHER
17 ENTITY OR ALL OF ONE OR MORE CLASSES, SERIES, OR TYPES, IN EXCHANGE
18 FOR OWNERS' INTERESTS OR OTHER SECURITIES, OBLIGATIONS, RIGHTS TO
19 ACQUIRE OWNERS' INTERESTS, OR OTHER SECURITIES, CASH, PROPERTY, OR
20 ANY COMBINATION PURSUANT TO A PLAN OF EXCHANGE COMPLYING WITH
21 SECTION 7-90-203.3 AND APPROVED PURSUANT TO SECTION 7-90-203.4.

22 (2) A FOREIGN ENTITY MAY BE PARTY TO AN EXCHANGE PURSUANT
23 TO A PLAN OF EXCHANGE COMPLYING WITH SECTION 7-90-203.3 AND
24 APPROVED, IN THE CASE OF A DOMESTIC ENTITY, PURSUANT TO SECTION
25 7-90-203.4, IF:

26 (a) THE EXCHANGE IS NOT PROHIBITED BY THE CONSTITUENT
27 DOCUMENTS OR ORGANIC STATUTES OF THE FOREIGN ENTITY;

1 (b) THE FOREIGN ENTITY COMPLIES WITH ALL OF THE
2 REQUIREMENTS, IF ANY, OF ITS CONSTITUENT DOCUMENTS AND ORGANIC
3 STATUTES IN EFFECTING THE EXCHANGE; AND

4 (c) ANY FOREIGN ENTITY THAT IS THE ACQUIRING ENTITY IN THE
5 EXCHANGE COMPLIES WITH SECTION 7-90-204.5.

6 (3) THIS SECTION DOES NOT LIMIT THE POWER OF A DOMESTIC
7 ENTITY TO ACQUIRE THE OWNERS' INTERESTS OF ANY OTHER ENTITY IN A
8 TRANSACTION OTHER THAN AN EXCHANGE.

9 **SECTION 9.** In Colorado Revised Statutes, 7-90-203.3, **add** (2)
10 as follows:

11 **7-90-203.3. Plan of merger - plan of exchange.** (2) (a) A PLAN
12 OF EXCHANGE MUST STATE:

13 (I) THE ENTITY NAME OF EACH PARTY TO THE EXCHANGE;

14 (II) THE TERMS AND CONDITIONS OF THE EXCHANGE; AND

15 (III) THE MANNER AND BASIS OF EXCHANGING THE OWNERS'
16 INTERESTS TO BE ACQUIRED.

17 (b) THE PLAN OF EXCHANGE MAY STATE OTHER PROVISIONS
18 RELATING TO THE EXCHANGE.

19 **SECTION 10.** In Colorado Revised Statutes, **amend** 7-90-203.4
20 as follows:

21 **7-90-203.4. Approval of plan of merger or exchange.** (1) In the
22 case of domestic entities described in this subsection (1), the plan of
23 merger ~~shall~~ OR PLAN OF EXCHANGE MUST, IF REQUIRED, be approved:

24 (a) In the case of a corporation, as provided in section ~~7-111-101~~
25 7-111-103;

26 (b) In the case of a nonprofit corporation, as provided in section
27 ~~7-131-101~~ 7-131-102 FOR MERGER; EXCEPT THAT, IF THE TRANSACTION IS

1 AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY CONSTITUENT
2 DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN OF
3 EXCHANGE, THE TRANSACTION MUST BE APPROVED IN ACCORDANCE WITH
4 THOSE PROVISIONS;

5 (c) In the case of a cooperative formed under, or subject to, article
6 56 of this ~~title~~ TITLE 7, as provided in section 7-56-602 ~~and~~ FOR
7 APPROVAL OF A PLAN OF MERGER, CONVERSION, CONSOLIDATION, OR
8 SHARE OR EQUITY CAPITAL EXCHANGE;

9 (d) In the case of a cooperative formed under article 55 of this ~~title~~
10 TITLE 7, as provided in section 7-55-112 FOR MERGER; EXCEPT THAT, IF
11 THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE PRIMARY
12 CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE APPROVAL OF A
13 PLAN OF EXCHANGE, THE TRANSACTION MUST BE APPROVED IN
14 ACCORDANCE WITH THOSE PROVISIONS; AND

15 (e) IN THE CASE OF A COOPERATIVE FORMED UNDER ARTICLE 58 OF
16 THIS TITLE 7, AS PROVIDED IN SECTION 7-58-1606 FOR MERGER; EXCEPT
17 THAT, IF THE TRANSACTION IS AN OWNER'S INTEREST EXCHANGE AND THE
18 PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY PROVIDE FOR THE
19 APPROVAL OF A PLAN OF EXCHANGE, THE TRANSACTION MUST BE
20 APPROVED IN ACCORDANCE WITH THOSE PROVISIONS.

21 (2) In the case of a domestic entity other than an entity described
22 in subsection (1) of this section, the plan of merger ~~shall~~ OR PLAN OF
23 EXCHANGE MUST be approved AS FOLLOWS:

24 (a) IF THE PRIMARY CONSTITUENT DOCUMENTS EXPRESSLY
25 PROVIDE FOR THE APPROVAL OF THE PLAN OF MERGER OR PLAN OF
26 EXCHANGE, in accordance with the RESPECTIVE provisions of the primary
27 constituent documents; ~~dealing with mergers of the type, and with entities~~

1 ~~of the forms, described in the plan of merger;~~
2 (b) ~~If there are no such provisions, in accordance with the~~
3 ~~provisions of the primary constituent documents that contain the most~~
4 ~~stringent terms for approval of a merger;~~ DO NOT EXPRESSLY PROVIDE FOR
5 APPROVAL:
6 (I) OF A PLAN OF MERGER BUT DO PROVIDE FOR APPROVAL OF A
7 PLAN OF EXCHANGE, THEN A PLAN OF MERGER IS GOVERNED BY THE
8 APPROVAL REQUIREMENTS FOR A PLAN OF EXCHANGE; AND
9 (II) OF A PLAN OF EXCHANGE BUT DO PROVIDE FOR APPROVAL OF
10 A PLAN OF MERGER, THEN A PLAN OF EXCHANGE IS GOVERNED BY THE
11 APPROVAL REQUIREMENTS FOR A PLAN OF MERGER;
12 (c) ~~If there are no such provisions~~ SUBSECTIONS (2)(a) AND (2)(b)
13 OF THIS SECTION DO NOT APPLY BECAUSE THE PRIMARY CONSTITUENT
14 DOCUMENTS DO NOT EXPRESSLY PROVIDE FOR THE APPROVAL OF A PLAN
15 OF MERGER OR A PLAN OF EXCHANGE, in accordance with the provisions
16 of the entity's organic statutes ~~dealing with mergers of the type, and with~~
17 ~~entities of the forms, described in the plan of merger~~ THAT CONTAIN THE
18 MOST STRINGENT TERMS FOR APPROVAL OF THE OTHER TYPE OF
19 TRANSACTION IN THIS SECTION;
20 (d) ~~If there are no such provisions~~ SUBSECTIONS (2)(a), (2)(b),
21 AND (2)(c) OF THIS SECTION DO NOT APPLY, in accordance with the
22 provisions of the entity's organic statutes that contain the most stringent
23 terms for approval of ~~a merger~~ AN AMENDMENT TO THE PRIMARY
24 CONSTITUENT DOCUMENTS OR, IF NO SUCH PROVISIONS EXIST, THE
25 PROVISIONS OF THE ORGANIC STATUTES THAT CONTAIN THE MOST
26 STRINGENT TERMS FOR THE APPROVAL OF AN AMENDMENT TO THE
27 PRIMARY CONSTITUENT DOCUMENTS; OR

1 ~~(e) If neither the primary constituent documents nor the organic~~
2 ~~statutes expressly provide for the approval of the merger, in accordance~~
3 ~~with the provisions for amendment of the primary constituent documents~~
4 ~~set forth in the organic statutes and the primary constituent documents; or~~

5 ~~(f)~~(e) If neither the primary constituent documents nor the organic
6 ~~statutes expressly provide for a merger or for the approval of an~~
7 ~~amendment to the primary constituent documents~~ SUBSECTIONS (2)(a),
8 (2)(b), (2)(c), AND (2)(d) OF THIS SECTION DO NOT APPLY, by all of the
9 owners of the merging entity.

10 (3) For purposes of this section, the provisions of the ~~entity's~~
11 ~~organic statutes and primary~~ constituent documents applicable to approval
12 ~~of the plan of merger~~ include provisions relating to any preliminary
13 approval by managers for submission to the owners, notices, quorum,
14 voting, and consent by owners or third parties. References in this section
15 to the most stringent provisions of the primary constituent documents or
16 organic statutes are references to those provisions of ~~such~~ THE documents
17 or statutes that establish the highest voting requirements. ~~for approval of~~
18 ~~a merger.~~

19 (4) Nothing in this section shall be deemed to permit ~~any~~ A
20 primary constituent document to contain ~~merger provisions~~ ANY
21 PROVISION that ~~are~~ IS proscribed by the ~~entity's~~ organic statutes.

22 **SECTION 11.** In Colorado Revised Statutes, 7-90-203.7, **amend**
23 (1) introductory portion and (2) introductory portion as follows:

24 **7-90-203.7. Statement of merger - when merger effective.**

25 (1) After a merger is approved in accordance with section ~~7-90-203.4~~
26 7-90-203, if any merging entity is an entity for which a constituent filed
27 document has been filed by the secretary of state, the surviving entity

1 shall deliver to the secretary of state, for filing pursuant to part 3 of this
2 ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~ STATES:

3 (2) After a merger is approved in accordance with section
4 ~~7-90-203.4~~ 7-90-203, if no merging entity is an entity for which a
5 constituent filed document has been filed by the secretary of state, the
6 surviving entity may deliver to the secretary of state, for filing pursuant
7 to part 3 of this ~~article~~ ARTICLE 90, a statement of merger that ~~shall state~~
8 STATES:

9 **SECTION 12.** In Colorado Revised Statutes, **add with amended**
10 **and relocated provisions** 7-90-203.8 as follows:

11 **7-90-203.8. [Formerly 7-111-105 (1)] Statement of owner's**
12 **interest exchange.** (1) After a plan of ~~share~~ exchange is approved by the
13 ~~shareholders~~ PURSUANT TO SECTION 7-90-203.4, the acquiring ~~corporation~~
14 ENTITY shall deliver to the secretary of state, for filing pursuant to part 3
15 of THIS article 90, ~~of this title~~, a statement of ~~share~~ OWNER'S INTEREST
16 exchange stating:

17 (a) The entity name of each ~~corporation~~, ENTITY whose ~~shares~~
18 OWNERS' INTERESTS will be acquired, and the principal office address of
19 its principal office;

20 (b) The entity name of the acquiring ~~corporation~~, ENTITY and the
21 principal office address of its principal office; and

22 (c) A statement that the acquiring ~~corporation~~ ENTITY acquires
23 shares of the other ~~corporations~~ ENTITY OR ENTITIES.

24 ~~(d) and (e) (Deleted by amendment, L. 2004, p. 1503, § 275,~~
25 ~~effective July 1, 2004.)~~

26 **SECTION 13.** In Colorado Revised Statutes, 7-90-204, **amend**
27 (1) introductory portion and (1)(a) as follows:

1 **7-90-204. Effect of merger.** (1) When a merger is effective
2 TAKES EFFECT:

3 (a) Every merging entity merges into the surviving entity and the
4 separate existence of every merging entity ceases. All of the rights,
5 privileges, including specifically the attorney-client privilege, and powers
6 of each of the merging entities; all real, personal, and mixed property; and
7 all obligations due to each of the merging entities, as well as all other
8 things and causes of action of each of the merging entities, vest as a
9 matter of law in the surviving entity and are thereafter the rights,
10 privileges, powers, and property of, and obligations due to, the surviving
11 entity. Title to any property vested in any of the merging entities does not
12 revert and is not in any way impaired by reason of the merger; except that
13 all rights of creditors in and all liens upon any property of any of the
14 merging entities are preserved unimpaired in the same property, however
15 held. All obligations of the merging entities attach as a matter of law to
16 the surviving entity and may be fully enforced against the surviving
17 entity. A merger does not constitute a conveyance, transfer, ~~sale of assets,~~
18 or assignment. Nothing in this section affects the validity of contract
19 provisions or of reversions or other forms of title limitations that attach
20 conditions or consequences specifically to mergers.

21 **SECTION 14.** In Colorado Revised Statutes, **add with amended**
22 **and relocated provisions** 7-90-204.3 as follows:

23 **7-90-204.3. [Formerly 7-111-106 (2)] Effect of an exchange.**
24 When a ~~share~~ AN exchange takes effect, the ~~shares~~ OWNERS' INTERESTS
25 of each acquired ~~corporation~~ ENTITY are exchanged as provided in the
26 plan, and the former holders of the ~~shares~~ OWNERS' INTERESTS are entitled
27 only to the exchange rights provided in the ~~articles of share~~ STATEMENT

1 OF OWNER'S INTEREST exchange or to their rights under ~~article 113 of this~~
2 ~~title~~ THE ORGANIC STATUTES.

3 **SECTION 15.** In Colorado Revised Statutes, **amend** 7-90-204.5
4 as follows:

5 **7-90-204.5. Foreign entity resulting from conversion or**
6 **surviving merger.** (1) Upon ~~the~~ A conversion of a domestic entity into
7 a foreign entity, ~~or the~~ A merger of a domestic entity and a foreign entity
8 in which the foreign entity is the surviving entity, OR AN EXCHANGE
9 BETWEEN A DOMESTIC ENTITY AND A FOREIGN ENTITY IN WHICH THE
10 FOREIGN ENTITY IS THE ACQUIRING ENTITY, the foreign entity:

11 (a) Shall either:

12 (I) Appoint a registered agent if the foreign entity has no
13 registered agent and maintain a registered agent pursuant to part 7 of this
14 ~~article~~ ARTICLE 90, whether or not the foreign entity is otherwise required
15 to do so, to accept service in any proceeding to enforce any obligation or
16 rights of ~~dissenting owners of~~ SHAREHOLDERS SEEKING APPRAISAL RIGHTS
17 IN any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE
18 or in any proceeding based on a cause of action arising with respect to
19 any domestic entity party to the conversion, ~~or~~ merger, OR EXCHANGE; or

20 (II) Be deemed to have authorized service of process on it in
21 connection with such causes of action by mailing in accordance with
22 section 7-90-704 (2);

23 (b) Shall promptly pay to ~~the dissenting owners of~~ SHAREHOLDERS
24 SEEKING APPRAISAL RIGHTS IN each domestic entity party to the
25 conversion, ~~or~~ merger, OR EXCHANGE the amount, if any, to which they
26 are entitled under the organic statutes; and

27 (c) Shall comply with part 8 of this ~~article~~ ARTICLE 90 if it is to

1 transact business or conduct activities in this state.

2 **SECTION 16.** In Colorado Revised Statutes, **repeal** 7-90-205 as
3 follows:

4 **7-90-205. Scope of article - article not exclusive.** ~~The provisions~~
5 ~~of this article are not exclusive.~~

6 **SECTION 17.** In Colorado Revised Statutes, **add** 7-90-205.5 as
7 follows:

8 **7-90-205.5. Abandonment or amendment of plan of merger,**
9 **plan of conversion, or plan of exchange.** (1) AFTER A PLAN OF MERGER,
10 A PLAN OF CONVERSION, OR A PLAN OF EXCHANGE IS AUTHORIZED, AND AT
11 ANY TIME BEFORE THE MERGER, CONVERSION, OR EXCHANGE TAKES
12 EFFECT:

13 (a) THE TRANSACTION MAY BE ABANDONED, SUBJECT TO ANY
14 CONTRACTUAL RIGHTS, IN ACCORDANCE WITH THE PROCEDURE STATED IN
15 THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF EXCHANGE. IF
16 A MERGER, CONVERSION, OR EXCHANGE IS ABANDONED AFTER A PLAN OF
17 MERGER HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO
18 SECTION 7-90-203.7, A PLAN OF CONVERSION HAS BEEN FILED BY THE
19 SECRETARY OF STATE PURSUANT TO SECTION 7-90-201.7, OR A PLAN OF
20 EXCHANGE HAS BEEN FILED BY THE SECRETARY OF STATE PURSUANT TO
21 SECTION 7-90-203.8 STATING A DELAYED EFFECTIVE DATE, THE
22 TRANSACTION MAY BE PREVENTED FROM BECOMING EFFECTIVE BY
23 DELIVERING TO THE SECRETARY OF STATE, FOR FILING PURSUANT TO PART
24 3 OF ARTICLE 90 OF THIS TITLE 7, BEFORE THE DATE THE TRANSACTION
25 BECOMES EFFECTIVE PURSUANT TO SECTION 7-90-304, A STATEMENT OF
26 CHANGE THAT STATES THAT, BY APPROPRIATE ACTION, THE TRANSACTION
27 HAS BEEN ABANDONED.

1 (b) THE PLAN OF MERGER, PLAN OF CONVERSION, OR PLAN OF
2 EXCHANGE MAY BE AMENDED IN ACCORDANCE WITH THE PROCEDURE
3 STATED IN THE PLAN, BUT THE PLAN MAY NOT BE AMENDED TO CHANGE:

4 (I) THE AMOUNT OR KIND OF OWNERS' INTERESTS OR OTHER
5 SECURITIES, ELIGIBLE INTERESTS, OBLIGATIONS, RIGHTS TO ACQUIRE
6 OWNERS' INTERESTS, OTHER SECURITIES OR ELIGIBLE INTERESTS, CASH, OR
7 OTHER PROPERTY TO BE RECEIVED UNDER THE PLAN BY THE OWNERS OF
8 ELIGIBLE INTERESTS IN ANY PARTY TO THE MERGER, CONVERSION, OR
9 EXCHANGE;

10 (II) THE PRIMARY CONSTITUENT DOCUMENTS OF AN ENTITY THAT
11 IS PARTY TO THE MERGER, CONVERSION, OR EXCHANGE, EXCEPT FOR
12 CHANGES PERMITTED BY THE ORGANIC STATUTES OF THE ENTITY; OR

13 (III) ANY OF THE OTHER TERMS OR CONDITIONS OF THE PLAN IF
14 THE CHANGE WOULD ADVERSELY AFFECT THE OWNERS IN ANY MATERIAL
15 RESPECT.

16 **SECTION 18.** In Colorado Revised Statutes, **amend** 7-90-206 as
17 follows:

18 **7-90-206. Appraisal rights, prohibitions, restrictions, and**
19 **requirements.** (1) To the extent that any organic statute or the common
20 law expressly prohibits or restricts the right of any entity to convert into
21 ~~or merge with~~ any other form of entity OR MERGE WITH OR BE PARTY TO
22 AN EXCHANGE WITH ANY OTHER ENTITY, ~~grants dissenter's~~ APPRAISAL
23 rights with respect to ~~such~~ THE merger, ~~or~~ conversion, OR EXCHANGE, or
24 imposes ~~requirements~~ ANY REQUIREMENT on ~~such~~ THE conversion, ~~or~~
25 merger, OR EXCHANGE, any merger, ~~or~~ conversion, OR EXCHANGE of ~~such~~
26 THE entity under this ~~article shall be~~ PART 2 IS subject to ~~such~~ THE
27 restriction, ~~entitle~~ ENTITLES its owners to ~~such dissenter's~~ THE APPRAISAL

1 rights, and ~~be~~ IS subject to ~~such requirements~~ THE REQUIREMENT.

2 (2) If THE PRIMARY CONSTITUENT DOCUMENTS OR ORGANIC
3 STATUTES DO NOT PROVIDE an owner of a converting entity, ~~would be~~
4 ~~entitled under the organic statutes to dissenter's~~ MERGING ENTITY, OR
5 ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS OR DO NOT
6 EXPRESSLY DENY AN OWNER OF A CONVERTING ENTITY, MERGING ENTITY,
7 OR ENTITY PARTY TO AN EXCHANGE WITH APPRAISAL RIGHTS, BUT AN
8 OWNER WOULD BE ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY
9 CONSTITUENT DOCUMENTS TO APPRAISAL rights if the ~~converting~~ entity
10 were merged into an entity of the same form as the converting OR
11 ACQUIRING ENTITY, WERE PARTY TO AN EXCHANGE WITH AN ENTITY OF
12 THE SAME FORM AS THE CONVERTING OR SURVIVING ENTITY, OR WERE
13 CONVERTED INTO AN ENTITY OF THE SAME FORM AS THE ACQUIRING OR
14 SURVIVING entity, then ~~such~~ THE owner ~~shall be~~ IS entitled to ~~dissenter's~~
15 APPRAISAL rights with respect to the conversion, MERGER, OR EXCHANGE:

16 (a) On the same basis as the owner would be so entitled under the
17 organic statutes OR PRIMARY CONSTITUENT DOCUMENTS if the ~~converting~~
18 entity were being merged into an entity of the same form as the
19 converting OR ACQUIRING entity;

20 (b) IF NO PROVISIONS SPECIFIED IN SUBSECTION (2)(a) OF THIS
21 SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO
22 ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT
23 DOCUMENTS IF THE ENTITY WERE PARTY TO AN EXCHANGE WITH AN
24 ENTITY OF THE SAME FORM AS THE CONVERTING OR ACQUIRING ENTITY; OR

25 (c) IF NO PROVISIONS SPECIFIED IN SUBSECTIONS (2)(a) AND (2)(b)
26 OF THIS SECTION EXIST, ON THE SAME BASIS AS THE OWNER WOULD BE SO
27 ENTITLED UNDER THE ORGANIC STATUTES OR PRIMARY CONSTITUENT

1 DOCUMENTS IF THE ENTITY WERE BEING CONVERTED INTO AN ENTITY OF
2 THE SAME FORM AS THE SURVIVING OR ACQUIRING ENTITY.

3 (3) Unless otherwise provided in the plan of conversion, ~~or~~ plan
4 of merger, ~~if~~ OR PLAN OF EXCHANGE, AN OWNER OF an entity THAT is
5 converted into another form of entity or merged into ANY OTHER ENTITY,
6 OR WHOSE OWNER'S INTEREST IS EXCHANGED WITH another ~~form of~~ entity
7 PURSUANT TO AN OWNER'S INTEREST EXCHANGE WHO CONSENTS TO THE
8 CONVERSION, MERGER, OR EXCHANGE, OR, in a transaction in which
9 ~~dissenters'~~ APPRAISAL rights are applicable, ~~an owner of the converting or~~
10 ~~merged entity who consents to the conversion or merger or~~ who does not
11 consent to the conversion, ~~or~~ merger, OR EXCHANGE and who does not
12 exercise ~~dissenters'~~ APPRAISAL rights ~~shall become~~ BECOMES an owner of
13 the resulting or surviving entity and shall be deemed to be a party to, and
14 to be bound by, the constituent operating document of the resulting or
15 surviving entity.

16 **SECTION 19.** In Colorado Revised Statutes, 7-90-301, **amend**
17 (8) as follows:

18 **7-90-301. Filing requirements.** (8) The document ~~shall~~ MUST
19 state the true name or true names, and mailing address or mailing
20 addresses, of any one or more of the individuals who cause the document
21 to be delivered for filing, but the document need not state the true name
22 and MAILING address of more than one such individual.

23 **SECTION 20.** In Colorado Revised Statutes, 7-90-601, **amend**
24 (3)(g), (7)(a) introductory portion, and (7)(a)(I) as follows:

25 **7-90-601. Entity name.** (3) In addition to the requirements of
26 subsection (2) of this section:

27 (g) An entity name ~~need not be in English if written in English~~

1 ~~letters or arabic or roman numerals~~ MUST MEET THE REQUIREMENTS OF
2 SECTION 7-90-301 (5).

3 (7) (a) ~~No~~ A person shall NOT use the word "cooperative" or an
4 abbreviation or derivation of it as a part of its business or domestic entity
5 name or as a trade name, trademark, service mark, brand, or designation
6 except:

7 (I) An entity incorporated under or subject to article 55, ~~or~~ 56, OR
8 58 of this ~~title~~ TITLE 7, part 10 of article 16 of title 10, ~~C.R.S.~~, article 33.5
9 of title 38, ~~C.R.S.~~, or a similar law of another jurisdiction;

10 **SECTION 21.** In Colorado Revised Statutes, 7-90-604, **amend**
11 (2) and (3) as follows:

12 **7-90-604. Registered true name of a foreign entity.** (2) A
13 foreign entity may register a true name pursuant to this section by
14 delivering to the secretary of state, for filing pursuant to part 3 of this
15 ~~article~~ ARTICLE 90, a statement of registration of true name that complies
16 with the requirements of this subsection (2). When filed, the statement of
17 registration of true name registers the true name. The statement of
18 registration of true name ~~shall~~ MUST state:

19 (a) ~~its~~ THE FOREIGN ENTITY'S true name;

20 (b) The jurisdiction under the law of which ~~it~~ THE FOREIGN ENTITY
21 is formed;

22 (c) The form of the FOREIGN entity as that form is recognized by
23 the jurisdiction under the law of which the entity is formed; and

24 (d) The principal office address of ~~its~~ THE FOREIGN ENTITY'S
25 principal office.

26 (e) (~~Deleted by amendment, L. 2006, p. 875, § 60, effective July~~
27 ~~1, 2006.~~)

1 (3) A foreign entity that has in effect a registration of its true name
2 pursuant to this section may renew ~~such~~ THE registration by delivering to
3 the secretary of state, for filing pursuant to part 3 of this ~~article~~ ARTICLE
4 90, on or before December 31 of the year of registration, a statement of
5 renewal of registration of true name that complies with this subsection
6 (3). When filed, the statement of renewal of registration renews the
7 registration for the following year. The statement of renewal of
8 registration of true name ~~shall~~ MUST state:

9 (a) The FOREIGN entity's true name, the registration of which is to
10 be renewed;

11 (b) The form of entity and the jurisdiction under the law of which
12 ~~it~~ THE FOREIGN ENTITY is formed; and

13 ~~(c) (Deleted by amendment, L. 2009, (HB 09-1248), ch. 252, p.~~
14 ~~1133, § 15, effective December 1, 2009.)~~

15 ~~(d)~~ (c) The principal office address of the FOREIGN entity's
16 principal office.

17 **SECTION 22.** In Colorado Revised Statutes, 7-90-907 **repeal** (2)
18 as follows:

19 **7-90-907. Dissolution upon expiration of term.** (2) ~~A domestic~~
20 ~~entity shall automatically dissolve upon the expiration of the period of~~
21 ~~duration, if any, stated in its constituent filed document.~~

22 **SECTION 23.** In Colorado Revised Statutes, **amend** 7-90-910 as
23 follows:

24 **7-90-910. Effect of dissolution under section 7-90-908.** A
25 domestic entity that is dissolved pursuant to section ~~7-90-907~~ or 7-90-908
26 continues its existence but may not carry on any business except as is
27 appropriate to wind up and liquidate its business and affairs, and to give

1 notice to claimants, in accordance with the organic statutes.

2 **SECTION 24.** In Colorado Revised Statutes, **add** 7-90-914 and
3 7-90-915 as follows:

4 **7-90-914. Court proceedings.** (1) (a) A DISSOLVED DOMESTIC
5 ENTITY THAT HAS PUBLISHED A NOTICE UNDER SECTION 7-90-912 MAY
6 FILE AN APPLICATION WITH THE COURT FOR THE COUNTY IN THIS STATE IN
7 WHICH THE STREET ADDRESS OF THE DOMESTIC ENTITY'S PRINCIPAL OFFICE
8 OR THE STREET ADDRESS OF ITS REGISTERED AGENT IS LOCATED FOR A
9 DETERMINATION OF THE AMOUNT AND FORM OF SECURITY TO BE PROVIDED
10 FOR PAYMENT OF CLAIMS THAT:

11 (I) ARE CONTINGENT;

12 (II) HAVE NOT BEEN MADE KNOWN TO THE DISSOLVED DOMESTIC
13 ENTITY; OR

14 (III) ARISE FROM AN EVENT THAT HAD NOT OCCURRED AS OF THE
15 EFFECTIVE DATE OF DISSOLUTION BUT, BASED ON THE FACTS KNOWN TO
16 THE DISSOLVED DOMESTIC ENTITY, IS REASONABLY ANTICIPATED TO
17 OCCUR AFTER THE EFFECTIVE DATE OF DISSOLUTION.

18 (b) PROVISION NEED NOT BE MADE FOR ANY CLAIM THAT IS, OR IS
19 REASONABLY ANTICIPATED TO BE, BARRED UNDER SECTION 7-90-912 (3).

20 (2) WITHIN TEN DAYS AFTER THE FILING OF THE APPLICATION, THE
21 DISSOLVED DOMESTIC ENTITY SHALL GIVE NOTICE OF THE PROCEEDING TO
22 EACH CLAIMANT HOLDING A CONTINGENT CLAIM WHOSE CONTINGENT
23 CLAIM IS SHOWN ON THE RECORDS OF THE DISSOLVED DOMESTIC ENTITY.

24 (3) THE COURT MAY APPOINT A GUARDIAN AD LITEM TO
25 REPRESENT ALL CLAIMANTS WHOSE IDENTITIES ARE UNKNOWN IN ANY
26 PROCEEDING BROUGHT UNDER THIS SECTION. THE DISSOLVED ENTITY
27 SHALL PAY THE REASONABLE FEES AND EXPENSES OF THE GUARDIAN AD

1 LITEM, INCLUDING ALL REASONABLE EXPERT WITNESS FEES.

2 (4) PROVISION BY THE DISSOLVED ENTITY FOR SECURITY IN THE
3 AMOUNT AND THE FORM ORDERED BY THE COURT UNDER SUBSECTION (1)
4 OF THIS SECTION SATISFIES THE DISSOLVED ENTITY'S OBLIGATIONS WITH
5 RESPECT TO CLAIMS THAT ARE CONTINGENT, HAVE NOT BEEN MADE
6 KNOWN TO THE DISSOLVED ENTITY, OR ARISE FROM AN EVENT OCCURRING
7 AFTER THE EFFECTIVE DATE OF DISSOLUTION, AND THE CLAIMS MAY NOT
8 BE ENFORCED AGAINST AN OWNER WHO RECEIVED ASSETS IN LIQUIDATION.

9 **7-90-915. Manager duties.** (1) A MANAGER SHALL CAUSE THE
10 DISSOLVED DOMESTIC ENTITY TO DISCHARGE OR MAKE REASONABLE
11 PROVISION FOR THE PAYMENT OF CLAIMS AND MAKE DISTRIBUTIONS OF
12 ASSETS TO OWNERS AFTER PAYMENT OR PROVISION FOR CLAIMS.

13 (2) A MANAGER OF A DISSOLVED DOMESTIC ENTITY THAT HAS
14 DISPOSED OF CLAIMS UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914 IS
15 NOT LIABLE FOR BREACH OF SUBSECTION (1) OF THIS SECTION WITH
16 RESPECT TO CLAIMS AGAINST THE DISSOLVED DOMESTIC ENTITY THAT ARE
17 BARRED OR SATISFIED UNDER SECTION 7-90-911, 7-90-912, OR 7-90-914.

18 **SECTION 25.** In Colorado Revised Statutes, 7-101-401, **amend**
19 the introductory portion and (30); and **add** (5.5) and (28.6) as follows:

20 **7-101-401. General definitions.** As used in articles 101 to 117 of
21 this ~~title~~ TITLE 7, unless the context otherwise requires:

22 (5.5) "BENEFICIAL OWNER" MEANS A PERSON THAT OWNS THE
23 BENEFICIAL INTEREST IN SHARES. THE BENEFICIAL OWNER MAY BE A
24 SHAREHOLDER INCLUDED IN THE RECORDS OF THE CORPORATION OR A
25 PERSON ON WHOSE BEHALF SHARES ARE REGISTERED IN THE NAME OF AN
26 INTERMEDIARY, A NOMINEE, OR A VOTING TRUST OF WHICH THE PERSON IS
27 A BENEFICIARY.

1 (28.6) "RELATED PERSON" MEANS, WITH RESPECT TO AN
2 INDIVIDUAL:

3 (a) THE INDIVIDUAL'S SPOUSE;

4 (b) A CHILD, STEPCHILD, GRANDCHILD, PARENT, STEPPARENT,
5 GRANDPARENT, SIBLING, STEPSIBLING, HALF-SIBLING, AUNT, UNCLE, NIECE,
6 OR NEPHEW, OR SPOUSE OF ANY OF THEM, OF THE INDIVIDUAL OR OF THE
7 INDIVIDUAL'S SPOUSE;

8 (c) AN INDIVIDUAL LIVING IN THE SAME HOME AS THE INDIVIDUAL;

9 (d) AN ENTITY, OTHER THAN A CORPORATION OR AN ENTITY
10 CONTROLLED BY THE CORPORATION, CONTROLLED BY THE INDIVIDUAL, OR
11 ANY PERSON SPECIFIED IN THIS SUBSECTION (28.6);

12 (e) A DOMESTIC OR FOREIGN:

13 (I) BUSINESS OR NONPROFIT CORPORATION, OTHER THAN A
14 CORPORATION OR AN ENTITY CONTROLLED BY THE CORPORATION, OF
15 WHICH THE INDIVIDUAL IS A DIRECTOR;

16 (II) UNINCORPORATED ENTITY OF WHICH THE INDIVIDUAL IS A
17 GENERAL PARTNER OR A MEMBER OF THE GOVERNING BODY; OR

18 (III) INDIVIDUAL, TRUST, OR ESTATE FOR WHOM OR OF WHICH THE
19 INDIVIDUAL IS A TRUSTEE, GUARDIAN, PERSONAL REPRESENTATIVE, OR
20 SIMILAR FIDUCIARY; OR

21 (f) A PERSON THAT IS, OR AN ENTITY THAT IS CONTROLLED BY, AN
22 EMPLOYER OF THE INDIVIDUAL.

23 (30) "Shareholder" means either the person in whose name shares
24 are registered in the records of a corporation or the beneficial owner of
25 shares to the extent ~~recognized pursuant to section 7-107-204~~ OF THE
26 RIGHTS GRANTED BY A BENEFICIAL OWNERSHIP CERTIFICATE THAT MEETS
27 THE REQUIREMENTS OF SECTION 7-107-204 AND IS ON FILE WITH THE

1 CORPORATION.

2 **SECTION 26.** In Colorado Revised Statutes, 7-101-402, **amend**
3 (2); and **add** (9) as follows:

4 **7-101-402. Notice.** (2) Notice may be given in person; by
5 telephone, telegraph, teletype, electronically transmitted facsimile, or
6 other form of wire or wireless ~~communication~~ DELIVERY; or by mail or
7 private carrier.

8 (9) (a) A DOMESTIC CORPORATION HAS GIVEN WRITTEN NOTICE OR
9 ANY OTHER REPORT OR STATEMENT UNDER ARTICLES 101 TO 117 OF THIS
10 TITLE 7, THE ARTICLES OF INCORPORATION, OR THE BYLAWS TO ALL
11 SHAREHOLDERS WHO SHARE A COMMON ADDRESS IF:

12 (I) THE DOMESTIC CORPORATION DELIVERS ONE COPY OF THE
13 NOTICE, REPORT, OR STATEMENT TO THE COMMON ADDRESS;

14 (II) THE DOMESTIC CORPORATION ADDRESSES THE NOTICE,
15 REPORT, OR STATEMENT TO THOSE SHAREHOLDERS EITHER AS A GROUP OR
16 TO EACH OF THOSE SHAREHOLDERS INDIVIDUALLY OR TO THE
17 SHAREHOLDERS IN A FORM TO WHICH EACH OF THOSE SHAREHOLDERS HAS
18 CONSENTED; AND

19 (III) EACH OF THOSE SHAREHOLDERS CONSENTS TO DELIVERY OF
20 A SINGLE COPY OF THE NOTICE, REPORT, OR STATEMENT TO THE
21 SHAREHOLDERS' COMMON ADDRESS.

22 (b) THE CONSENT DESCRIBED IN SUBSECTIONS (9)(a)(II) AND
23 (9)(a)(III) OF THIS SECTION IS REVOCABLE BY A SHAREHOLDER WHO
24 DELIVERS WRITTEN NOTICE OF REVOCATION TO THE DOMESTIC
25 CORPORATION. IF THE WRITTEN NOTICE OF REVOCATION IS DELIVERED, THE
26 DOMESTIC CORPORATION SHALL BEGIN PROVIDING INDIVIDUAL NOTICES,
27 REPORTS, OR OTHER STATEMENTS TO THE REVOKING SHAREHOLDER NO

1 LATER THAN THIRTY DAYS AFTER DELIVERY OF THE WRITTEN NOTICE OF
2 REVOCATION.

3 (c) A SHAREHOLDER WHO FAILS TO OBJECT BY WRITTEN NOTICE TO
4 THE DOMESTIC CORPORATION WITHIN SIXTY DAYS AFTER WRITTEN NOTICE
5 BY THE CORPORATION OF ITS INTENTION TO DELIVER SINGLE COPIES OF
6 NOTICES, REPORTS, OR STATEMENTS TO SHAREHOLDERS WHO SHARE A
7 COMMON ADDRESS AS PERMITTED BY SUBSECTION (9)(a) OF THIS SECTION
8 IS DEEMED TO HAVE CONSENTED TO RECEIVING A SINGLE COPY AT THE
9 COMMON ADDRESS IF THE NOTICE OF INTENTION EXPLAINS THAT CONSENT
10 MAY BE REVOKED AND THE METHOD FOR REVOKING.

11 **SECTION 27.** In Colorado Revised Statutes, 7-101-504, **amend**
12 (3) as follows:

13 **7-101-504. Certain amendments and mergers - votes required**
14 **- appraisal rights.** (3) A shareholder of a corporation that is not a public
15 benefit corporation is entitled to exercise the right to ~~dissent~~ SEEK
16 APPRAISAL RIGHTS pursuant to article 113 of this ~~title~~ TITLE 7 if the
17 shareholder:

18 (a) Has neither CONSENTED IN WRITING PURSUANT TO SECTION
19 7-107-104 NOR voted in favor of an amendment, merger, or conversion
20 specified in this subsection (3); ~~nor consented thereto in writing pursuant~~
21 ~~to section 7-107-104 and~~

22 (b) Holds shares of ~~such~~ THE corporation immediately before the
23 effective time of:

24 (a) (I) An amendment to the corporation's articles of incorporation
25 to include a provision authorized by section 7-101-503 (1)(a);

26 (b) (II) A conversion into a domestic or foreign public benefit
27 corporation or similar entity; or

1 (e) (III) A merger that would result in the conversion of the
2 corporation's shares into, or exchange of the corporation's shares for, the
3 right to receive shares or other equity interests in a domestic or foreign
4 public benefit corporation or similar entity.

5 **SECTION 28.** In Colorado Revised Statutes, 7-102-102, **amend**
6 (2)(b)(V); and **add** (2)(d) and (2)(e) as follows:

7 **7-102-102. Articles of incorporation.** (2) The articles of
8 incorporation may, but need not, state:

9 (b) Provisions not inconsistent with law regarding:

10 (V) The imposition of personal liability on shareholders for the
11 debts of the corporation to a stated extent and upon stated conditions; ~~and~~

12 (d) A PROVISION ELIMINATING OR LIMITING THE LIABILITY OF A
13 DIRECTOR TO THE CORPORATION OR ITS SHAREHOLDERS FOR MONEY
14 DAMAGES FOR ANY ACTION TAKEN, OR ANY FAILURE TO TAKE ANY ACTION,
15 AS A DIRECTOR, EXCEPT LIABILITY FOR:

16 (I) THE AMOUNT OF A FINANCIAL BENEFIT RECEIVED BY A
17 DIRECTOR TO WHICH THE DIRECTOR IS NOT ENTITLED;

18 (II) AN INTENTIONAL INFLICTION OF HARM ON THE CORPORATION
19 OR THE SHAREHOLDERS;

20 (III) A VIOLATION OF SECTION 7-108-405; OR

21 (IV) AN INTENTIONAL VIOLATION OF CRIMINAL LAW; AND

22 (e) A PROVISION LIMITING OR ELIMINATING A DUTY OF A DIRECTOR
23 OR ANY OTHER PERSON TO OFFER THE CORPORATION THE RIGHT TO HAVE
24 OR PARTICIPATE IN ANY, OR ONE OR MORE CLASSES OR CATEGORIES OF,
25 BUSINESS OPPORTUNITIES, BEFORE THE PURSUIT OR TAKING OF THE
26 OPPORTUNITY BY THE DIRECTOR OR OTHER PERSON IF ANY APPLICATION
27 OF THE PROVISION TO AN OFFICER OR A RELATED PERSON OF THAT OFFICER:

1 (I) REQUIRES A DETERMINATION BY THE BOARD OF DIRECTORS BY
2 ACTION OF THE DISINTERESTED DIRECTORS TAKEN IN COMPLIANCE WITH
3 THE PROCEDURES SET FORTH IN SECTION 7-108-402 AFTER THE EFFECTIVE
4 DATE OF THE PROVISION APPLYING THE PROVISION TO A PARTICULAR
5 OFFICER OR ANY RELATED PERSON OF THAT OFFICER; AND

6 (II) MAY BE LIMITED BY THE AUTHORIZING ACTION OF THE BOARD.

7 **SECTION 29.** In Colorado Revised Statutes, **add** 7-102-108 as
8 follows:

9 **7-102-108. Forum selection - definition.** (1) THE ARTICLES OF
10 INCORPORATION OR THE BYLAWS MAY REQUIRE THAT ANY OR ALL
11 INTERNAL CORPORATE CLAIMS MUST BE BROUGHT EXCLUSIVELY IN ANY
12 SPECIFIED COURT OF THIS STATE AND, IF SO SPECIFIED, IN ANY ADDITIONAL
13 COURTS IN THIS STATE OR IN ANY OTHER JURISDICTION WITH WHICH THE
14 CORPORATION HAS A REASONABLE RELATIONSHIP.

15 (2) A PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS
16 SPECIFIED IN SUBSECTION (1) OF THIS SECTION DOES NOT CONFER
17 JURISDICTION ON ANY COURT OR OVER ANY PERSON OR CLAIM AND DOES
18 NOT APPLY IF NONE OF THE COURTS SPECIFIED BY THE PROVISION HAS THE
19 REQUISITE PERSONAL AND SUBJECT-MATTER JURISDICTION. IF A COURT
20 SPECIFIED IN A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION
21 DOES NOT HAVE THE REQUISITE PERSONAL AND SUBJECT-MATTER
22 JURISDICTION AND ANOTHER COURT OF THIS STATE DOES HAVE THAT
23 JURISDICTION, THE INTERNAL CORPORATE CLAIM MAY BE BROUGHT:

24 (a) IN THE OTHER COURT OF THIS STATE, NOTWITHSTANDING THAT
25 THE OTHER COURT IS NOT SPECIFIED IN THE PROVISION; AND

26 (b) IN ANY OTHER COURT SPECIFIED IN THE PROVISION THAT HAS
27 THE REQUISITE JURISDICTION.

1 (3) NO PROVISION OF THE ARTICLES OF INCORPORATION OR THE
2 BYLAWS MAY PROHIBIT BRINGING AN INTERNAL CORPORATE CLAIM IN THE
3 COURTS OF THIS STATE OR REQUIRE THE CLAIMS TO BE DETERMINED BY
4 ARBITRATION.

5 (4) "INTERNAL CORPORATE CLAIM" MEANS:

6 (a) ANY CLAIM THAT IS BASED UPON A VIOLATION OF A DUTY
7 UNDER THE LAWS OF THIS STATE BY A CURRENT OR FORMER DIRECTOR,
8 OFFICER, OR SHAREHOLDER IN THAT CAPACITY;

9 (b) A DERIVATIVE ACTION OR PROCEEDING BROUGHT ON BEHALF
10 OF THE CORPORATION;

11 (c) AN ACTION ASSERTING A CLAIM ARISING PURSUANT TO ANY
12 PROVISION OF ARTICLES 101 TO 117 OF THIS TITLE 7, THE ARTICLES OF
13 INCORPORATION, OR BYLAWS; OR

14 (d) AN ACTION ASSERTING A CLAIM GOVERNED BY THE INTERNAL
15 AFFAIRS DOCTRINE THAT IS NOT INCLUDED IN SUBSECTIONS (4)(a) TO
16 (4)(c) OF THIS SECTION.

17 **SECTION 30.** In Colorado Revised Statutes, 7-103-102, **amend**
18 (1)(p), (1)(q), and (1)(r); and **add** (1)(s) as follows:

19 **7-103-102. General powers.** (1) Unless otherwise provided in
20 the articles of incorporation, every corporation has perpetual duration and
21 succession in its domestic entity name and has the same powers as an
22 individual to do all things necessary or convenient to carry out its
23 business and affairs, including the power:

24 (p) To limit the liability of its directors as provided in section
25 ~~7-108-402 (1)~~ 7-102-102 (2)(d);

26 (q) To cease its corporate activities and dissolve; ~~and~~

27 (r) To impose restrictions on the transfer of its shares; AND

1 (s) TO RENOUNCE IN ITS ARTICLES OF INCORPORATION OR BY
2 ACTION OF ITS BOARD OF DIRECTORS ANY SPECIFIED CORPORATE
3 OPPORTUNITIES OR SPECIFIED CLASSES OR CATEGORIES OF CORPORATE
4 OPPORTUNITIES THAT MAY BE PRESENTED TO THE CORPORATION OR ONE
5 OR MORE OF ITS OFFICERS, DIRECTORS, OR SHAREHOLDERS AS PROVIDED
6 IN SECTION 7-102-102 (2)(e).

7 == == ==

8 **SECTION 31.** In Colorado Revised Statutes, 7-107-203, **amend**
9 (3) and (9) as follows:

10 **7-107-203. Proxies.** (3) An appointment of a proxy is effective
11 against the corporation when received by the corporation, including
12 receipt by the corporation of an appointment transmitted pursuant to
13 ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section. An
14 appointment is valid for THE TERM SPECIFIED IN THE APPOINTMENT FORM
15 AND, IF NO TERM IS SPECIFIED, IS VALID FOR eleven months unless a
16 ~~different period is expressly provided in the appointment form~~ IS
17 IRREVOCABLE UNDER SUBSECTION (5) OF THIS SECTION.

18 (9) UNLESS AN APPOINTMENT OTHERWISE PROVIDES, AN
19 APPOINTMENT MADE IRREVOCABLE UNDER SUBSECTION (5) OF THIS
20 SECTION CONTINUES IN EFFECT AFTER A TRANSFER OF THE SHARES AND A
21 TRANSFEREE TAKES THE SHARES SUBJECT TO THE APPOINTMENT; EXCEPT
22 THAT a transferee for value of shares subject to an irrevocable
23 appointment may revoke the appointment if:

24 (a) The transferee did not know of its existence when the
25 transferee acquired the shares; and

26 (b) The existence of the irrevocable appointment was not noted on
27 the certificate representing the shares or on the information statement for

1 shares without certificates.

2 **SECTION 32.** In Colorado Revised Statutes, **amend** 7-107-204
3 as follows:

4 **7-107-204. Shares held by intermediaries and nominees.** (1) A
5 ~~corporation~~ CORPORATION'S BOARD OF DIRECTORS may establish a
6 procedure by which ~~the~~ A beneficial owner of shares that are registered
7 ~~in the name of a nominee~~ is recognized by the corporation IN ITS RECORDS
8 as the shareholder. The extent, TERMS, CONDITIONS, AND LIMITATIONS of
9 this ~~recognition may~~ TREATMENT MUST be ~~determined~~ SPECIFIED in the
10 procedure ~~thus~~ SO established. TO THE EXTENT THAT THE BENEFICIAL
11 OWNER IS TREATED UNDER THE PROCEDURE AS HAVING RIGHTS OR
12 PRIVILEGES THAT THE SHAREHOLDER OTHERWISE WOULD HAVE, THE
13 SHAREHOLDER DOES NOT HAVE THOSE RIGHTS OR PRIVILEGES.

14 (2) The procedure described in subsection (1) of this section ~~may~~
15 ~~state~~ MUST SPECIFY:

16 (a) The types of INTERMEDIARIES OR nominees to which it applies;

17 (b) The rights or privileges that the corporation recognizes in a
18 beneficial owner, which may include rights or privileges other than
19 voting;

20 (c) The manner in which the procedure may be used by the
21 INTERMEDIARY OR nominee;

22 (d) The information that shall be provided by the INTERMEDIARY
23 OR nominee when the procedure is used;

24 (e) The period for which the INTERMEDIARY'S OR nominee's use
25 of the procedure is effective; ~~and~~

26 (f) REQUIREMENTS FOR NOTICE TO THE CORPORATION WITH
27 RESPECT TO THE ARRANGEMENT, INCLUDING ANY REQUIREMENTS FOR THE

1 DEPOSIT WITH THE CORPORATION OF THE BENEFICIAL OWNERSHIP
2 CERTIFICATE;

3 (g) THE FORM AND CONTENTS OF THE BENEFICIAL OWNERSHIP
4 CERTIFICATE; AND

5 (f) (h) Other aspects of the rights and duties thereby created.

6 **SECTION 33.** In Colorado Revised Statutes, **amend** 7-107-205
7 as follows:

8 **7-107-205. Corporation's acceptance of votes.** (1) If the name
9 signed on a vote, BALLOT, consent, waiver, proxy appointment, or proxy
10 appointment revocation corresponds to the name of a shareholder, the
11 corporation, if acting in good faith, is entitled to accept the vote, BALLOT,
12 consent, waiver, proxy appointment, or proxy appointment revocation and
13 to give it effect as the act of the shareholder.

14 (2) If the name signed on a vote, BALLOT, consent, waiver, proxy
15 appointment, or proxy appointment revocation does not correspond to the
16 name of a shareholder, the corporation, if acting in good faith, is
17 nevertheless entitled to accept the vote, BALLOT, consent, waiver, proxy
18 appointment, or proxy appointment revocation and to give it effect as the
19 act of the shareholder if:

20 (a) The shareholder is an entity and the name signed purports to
21 be that of an officer or agent of the entity;

22 (b) The name signed purports to be that of an administrator,
23 executor, guardian, or conservator representing the shareholder and, if the
24 corporation requests, evidence of fiduciary status acceptable to the
25 corporation has been presented with respect to the vote, BALLOT, consent,
26 waiver, proxy appointment, or proxy appointment revocation;

27 (c) The name signed purports to be that of a receiver or trustee in

1 bankruptcy of the shareholder and, if the corporation requests, evidence
2 of this status acceptable to the corporation has been presented with
3 respect to the vote, BALLOT, consent, waiver, proxy appointment, or proxy
4 appointment revocation;

5 (d) The name signed purports to be that of a pledgee, beneficial
6 owner, or attorney-in-fact of the shareholder and, if the corporation
7 requests, evidence acceptable to the corporation of the signatory's
8 authority to sign for the shareholder has been presented with respect to
9 the vote, BALLOT, consent, waiver, proxy appointment, or proxy
10 appointment revocation;

11 (e) Two or more persons are the shareholder as cotenants or
12 fiduciaries and the name signed purports to be the name of at least one of
13 the cotenants or fiduciaries and the person signing appears to be acting on
14 behalf of all the cotenants or fiduciaries; or

15 (f) The acceptance of the vote, BALLOT, consent, waiver, proxy
16 appointment, or proxy appointment revocation is otherwise proper under
17 rules established by the corporation that are not inconsistent with the
18 provisions of this subsection (2).

19 (3) The corporation is entitled to reject a vote, BALLOT, consent,
20 waiver, proxy appointment, or proxy appointment revocation if the
21 secretary or other officer or agent authorized to tabulate votes, acting in
22 good faith, has reasonable basis for doubt about the validity of the
23 signature on it or about the signatory's authority to sign for the
24 shareholder.

25 (4) NEITHER the corporation ~~and its officer or agent who~~ NOR THE
26 PERSON AUTHORIZED TO COUNT VOTES THAT accepts or rejects a vote,
27 BALLOT, consent, waiver, proxy appointment, or proxy appointment

1 revocation in good faith and in accordance with the standards of this
2 section ~~are not~~ IS liable in damages for the consequences of the
3 acceptance or rejection.

4 (5) Corporate action based on the acceptance or rejection of a
5 vote, BALLOT, consent, waiver, proxy appointment, or proxy appointment
6 revocation under this section is valid unless a court of competent
7 jurisdiction determines otherwise.

8 **SECTION 34.** In Colorado Revised Statutes, **repeal** 7-107-401
9 as follows:

10 **7-107-401. Definition of "shareholder".** ~~As used in this part 4,~~
11 ~~"shareholder" includes a beneficial owner whose shares are held in a~~
12 ~~voting trust or held by a nominee on the beneficial owner's behalf.~~

13 **SECTION 35.** In Colorado Revised Statutes, **amend with**
14 **relocated provisions** part 4 of article 108 of title 7 as follows:

15 PART 4

16 STANDARDS OF CONDUCT

17 **7-108-401. General standards of conduct for directors and**
18 **officers.** (1) Each director shall discharge the director's duties as a
19 director, including the director's duties as a member of a committee, and
20 each officer with discretionary authority shall discharge the officer's
21 duties under that authority:

22 (a) In good faith;

23 (b) ~~With the care; an ordinarily prudent person in a like position~~
24 ~~would exercise under similar circumstances;~~ and

25 (c) In a manner the director or officer reasonably believes to be in
26 the best interests of the corporation.

27 (2) In discharging duties UNDER THIS SECTION, a director or officer

1 is entitled to rely on information, opinions, reports, or statements,
2 including financial statements and other financial data, if prepared or
3 presented by:

4 (a) One or more officers or employees of the corporation whom
5 the director or officer reasonably believes to be reliable and competent ~~in~~
6 ~~the matters presented~~ WITH RESPECT TO THE INFORMATION, OPINIONS,
7 REPORTS, OR STATEMENTS;

8 (b) ONE OR MORE legal counsel, ~~a public accountant, or another~~
9 ~~person~~ ACCOUNTANTS, OR OTHER PERSONS RETAINED BY THE
10 CORPORATION as to matters INVOLVING EXPERTISE OR SKILLS the director
11 or officer reasonably believes are within ~~such~~ THE person's professional
12 or expert competence; ~~or~~

13 (c) In the case of a director, a committee of the board of directors
14 of which the director is not a member if the director reasonably believes
15 the committee merits confidence; OR

16 (d) IN THE CASE OF AN OFFICER, THE BOARD OF DIRECTORS OR ANY
17 COMMITTEE OF THE BOARD OF DIRECTORS.

18 (3) A director or officer ~~is not acting in good faith~~ MAY NOT RELY
19 ON INFORMATION, OPINION, REPORTS, OR STATEMENTS AS PERMITTED BY
20 SUBSECTION (2) OF THIS SECTION if the director or officer has knowledge
21 concerning the matter in question that makes THE reliance ~~otherwise~~
22 ~~permitted by subsection (2) of this section~~ unwarranted.

23 (4) ~~A director or officer is not liable as such to the corporation or~~
24 ~~its shareholders for any action the director or officer takes or omits to take~~
25 ~~as a director or officer, as the case may be, if, in connection with such~~
26 ~~action or omission, the director or officer performed the duties of the~~
27 ~~position in compliance with this section.~~

1 ~~(5)~~ (4) A director or officer of a corporation, in the performance
2 of duties in that capacity, ~~shall~~ DOES not have any fiduciary duty to any
3 creditor of the corporation arising only from the status as a creditor,
4 WHETHER THE CORPORATION IS SOLVENT OR INSOLVENT.

5 **7-108-402. Standards of liabilities for directors.** (1) A
6 DIRECTOR IS LIABLE, AS A DIRECTOR, TO THE CORPORATION OR TO ITS
7 SHAREHOLDERS FOR MONEY DAMAGES OR OTHER MONEY PAYMENT FOR
8 ANY ACT, OMISSION TO ACT, OR DECISION ONLY IF THE PARTY ASSERTING
9 LIABILITY ESTABLISHES IN A PROCEEDING THAT THE CHALLENGED ACT,
10 OMISSION, OR DECISION:

11 (a) WAS NOT IN GOOD FAITH;

12 (b) WAS ONE THAT THE DIRECTOR DID NOT RATIONALLY BELIEVE
13 TO BE IN THE BEST INTERESTS OF THE CORPORATION;

14 (c) WAS ONE AS TO WHICH THE DIRECTOR WAS AT LEAST GROSSLY
15 NEGLIGENT, UNLESS THE ARTICLES OF INCORPORATION CHANGE THE
16 STANDARD OF LIABILITY TO KNOWING MISCONDUCT, KNOWING VIOLATION
17 OF LAW, OR NEGLIGENCE;

18 (d) WAS ONE AS TO WHICH THE DIRECTOR FAILED TO MAKE OR
19 CAUSE TO BE MADE APPROPRIATE INQUIRY, WHEN PARTICULAR FACTS OR
20 CIRCUMSTANCES OF SIGNIFICANT CONCERN CAME TO THE ATTENTION OF
21 THE DIRECTOR THAT WOULD HAVE ALERTED A REASONABLY ATTENTIVE
22 DIRECTOR TO THE NEED FOR INQUIRY;

23 (e) CONSISTED OF OR RESULTED FROM A SUSTAINED OR
24 SYSTEMATIC FAILURE BY THE DIRECTOR TO EXERCISE OVERSIGHT OF THE
25 BUSINESS AND AFFAIRS OF THE CORPORATION;

26 (f) SUBJECT TO SECTION 7-108-501, WAS A BREACH OF THE
27 DIRECTOR'S DUTY OF LOYALTY TO THE CORPORATION, INCLUDING BY

1 DIRECTLY OR INDIRECTLY RECEIVING AN IMPROPER PERSONAL BENEFIT; OR

2 (g) CONSISTED OF OR RESULTED FROM A VOTE OR ASSENT
3 SPECIFIED IN SECTION 7-108-405.

4 (2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1) OF THIS
5 SECTION, THE PARTY SEEKING TO HOLD THE DIRECTOR LIABLE HAS:

6 (a) WITH RESPECT TO MONEY DAMAGES, THE BURDEN OF
7 ESTABLISHING THAT THE MONEY DAMAGES WERE:

8 (I) SUFFERED BY THE CORPORATION OR ITS SHAREHOLDERS; AND

9 (II) CAUSED BY THE DIRECTOR'S CHALLENGED CONDUCT;

10 (b) WITH RESPECT TO OTHER MONEY PAYMENT UNDER A LEGAL
11 REMEDY, SUCH AS COMPENSATION FOR THE UNAUTHORIZED USE OF
12 CORPORATE ASSETS, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR
13 TO ESTABLISH THAT THE MONEY PAYMENT SOUGHT IS APPROPRIATE IN THE
14 CIRCUMSTANCES; OR

15 (c) WITH RESPECT TO OTHER MONEY PAYMENT UNDER AN
16 EQUITABLE REMEDY, SUCH AS PROFIT RECOVERY BY OR DISGORGEMENT TO
17 THE CORPORATION, WHATEVER PERSUASION BURDEN MAY BE CALLED FOR
18 TO ESTABLISH THAT THE EQUITABLE REMEDY SOUGHT IS APPROPRIATE IN
19 THE CIRCUMSTANCES.

20 (3) A DIRECTOR LIABLE UNDER THIS SECTION FOR MONEY
21 DAMAGES OR FOR OTHER MONEY PAYMENT MAY OFFSET AGAINST THE
22 LIABILITY ANY GAIN TO THE CORPORATION THAT THE DIRECTOR
23 ESTABLISHES AROSE OUT OF THE SAME TRANSACTION, UNLESS THE OFFSET
24 IS AGAINST PUBLIC POLICY.

25 **7-108-403. [Formerly 7-108-402] Limitation of certain**
26 **liabilities of directors and officers.** ~~(1) If so provided in the articles of~~
27 ~~incorporation, the corporation shall eliminate or limit the personal~~

1 liability of a director to the corporation or to its shareholders for monetary
2 damages for breach of fiduciary duty as a director; except that any such
3 provision shall not eliminate or limit the liability of a director to the
4 corporation or to its shareholders for monetary damages for any breach
5 of the director's duty of loyalty to the corporation or to its shareholders,
6 acts or omissions not in good faith or which involve intentional
7 misconduct or a knowing violation of law, acts specified in section
8 7-108-403, or any transaction from which the director directly or
9 indirectly derived an improper personal benefit. No such provision shall
10 eliminate or limit the liability of a director to the corporation or to its
11 shareholders for monetary damages for any act or omission occurring
12 before the date when such provision becomes effective.

13 (2) ~~No~~ A director or officer shall be IS NOT personally liable for
14 any injury to person or property arising out of a tort committed by an
15 employee unless such THE director or officer was personally involved in
16 the situation giving rise to the litigation or unless such THE director or
17 officer committed a criminal offense in connection with such THE
18 situation. The protection afforded in this subsection (2) shall SECTION
19 DOES not restrict other common-law protections and rights that a director
20 or officer may have. This subsection (2) shall not restrict the corporation's
21 right to eliminate or limit the personal liability of a director to the
22 corporation or to its shareholders for monetary damages for breach of
23 fiduciary duty as a director as provided in subsection (1) of this section.

24 **7-108-404. Limitation of certain remedies - definition.** (1) AN
25 ACTION BY THE CORPORATION OR BY THE BOARD OF DIRECTORS IS NOT
26 VOID OR VOIDABLE, AND SHALL NOT BE ENJOINED OR SET ASIDE IN A
27 PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE

1 CORPORATION, BECAUSE ONE OR MORE PRECLUDED DIRECTORS WAS
2 PRESENT AT OR PARTICIPATED IN THE MEETING OF THE BOARD OF
3 DIRECTORS AT WHICH THE ACTION WAS AUTHORIZED, APPROVED, OR
4 RATIFIED, OR EXECUTED A CONSENT FOR THE ACTION IN THE MANNER
5 PROVIDED IN SECTION 7-108-202, IF THE ACTION WAS AUTHORIZED,
6 APPROVED, OR RATIFIED:

7 (a) AT A MEETING, BY THE AFFIRMATIVE VOTE OF THE NUMBER OF
8 DIRECTORS PRESENT AT THE MEETING THAT WOULD BE SUFFICIENT TO
9 TAKE ACTION AT THE MEETING UNDER ARTICLES 101 TO 117 OF THIS TITLE
10 7 OR THE BYLAWS; EXCEPT THAT, IN DETERMINING HOW MANY VOTES
11 WOULD BE SUFFICIENT, THE VOTE OF A PRECLUDED DIRECTOR IS NOT
12 COUNTED FOR PURPOSES OF AUTHORIZING THE ACTION BUT THE DIRECTOR
13 IS CONSIDERED PRESENT FOR PURPOSES OF DETERMINING A QUORUM; OR

14 (b) WITHOUT A MEETING BY WRITTEN CONSENT PURSUANT TO
15 SECTION 7-108-202 AND EXECUTED BY ALL OF THE DIRECTORS, IF THE
16 NUMBER OF DIRECTORS, NOT INCLUDING ANY PRECLUDED DIRECTOR,
17 CONSTITUTES NOT LESS THAN A MAJORITY OF ALL OF THE DIRECTORS OR
18 SUCH GREATER NUMBER OF DIRECTORS AS IS REQUIRED BY ARTICLES 101
19 TO 117 OF THIS TITLE 7 OR THE BYLAWS.

20 (2) IN THIS SECTION, "PRECLUDED DIRECTOR" MEANS A DIRECTOR
21 WHO VIOLATED ONE OR MORE OF THE STANDARDS OF LIABILITY SET FORTH
22 IN SECTION 7-108-402 (1) WITH RESPECT TO AN ACTION DESCRIBED IN
23 SUBSECTION (1) OF THIS SECTION.

24 **7-108-405. [Formerly 7-108-403] Liability of directors for**
25 **unlawful distributions.** (1) A director who votes for or assents to a
26 distribution made in violation of section 7-106-401 or the articles of
27 incorporation is personally liable to the corporation for the amount of the

1 distribution that exceeds what could have been distributed without
2 violating ~~said~~ section 7-106-401 or the articles of incorporation if it is
3 established that the director did not perform the director's duties in
4 compliance with section 7-108-401. In any proceeding commenced under
5 this section, a director ~~shall have~~ HAS all of the defenses ordinarily
6 available to a director.

7 (2) A director held liable under subsection (1) of this section for
8 an unlawful distribution is entitled to contribution:

9 (a) From every other director who could be held liable under
10 subsection (1) of this section for the unlawful distribution; and

11 (b) From each shareholder who accepted the distribution knowing
12 the distribution was made in violation of section 7-106-401 or the articles
13 of incorporation, the amount of the contribution from ~~such~~ THE
14 shareholder being the amount of the distribution to that shareholder that
15 exceeds what could have been distributed to that shareholder without
16 violating ~~said~~ section 7-106-401 or the articles of incorporation.

17 **SECTION 36.** In Colorado Revised Statutes, **amend** 7-108-501
18 as follows:

19 **7-108-501. Conflicting interest transaction.** (1) (a) As used in
20 this section, "conflicting interest transaction" means, WITH RESPECT TO A
21 DIRECTOR OF THE CORPORATION, any of the following:

22 (I) A loan or other assistance by a corporation to a director of the
23 corporation or to an entity in which ~~a~~ THE director ~~of the corporation~~ is a
24 director or officer or has a financial interest THAT IS KNOWN TO, AND
25 MATERIAL TO, THE DIRECTOR;

26 (II) A guaranty by a corporation of an obligation of ~~a~~ THE director
27 ~~of the corporation~~ or of an obligation of an entity in which ~~a~~ THE director

1 ~~of the corporation~~ is a director or officer or has a financial interest ~~or~~
2 THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR;

3 (III) A contract or transaction between ~~a~~ THE corporation and ~~a~~
4 THE director ~~of the corporation~~ or between the corporation and an entity
5 in which ~~a~~ THE director ~~of the corporation~~ is a director or officer or has
6 a financial interest THAT IS KNOWN TO, AND MATERIAL TO, THE DIRECTOR;
7 OR

8 (IV) THE DIRECTOR'S TAKING A CORPORATE OPPORTUNITY,
9 EXCEPT TO THE EXTENT PERMITTED PURSUANT TO A PROVISION OF THE
10 ARTICLES OF INCORPORATION ADOPTED UNDER SECTION 7-102-102 (2)(d).

11 (b) "Conflicting interest transaction" ~~shall~~ DOES not include any
12 transaction between:

13 (I) A corporation and another entity ~~that~~ IF THE OTHER ENTITY
14 owns, directly or indirectly, all of the outstanding shares of the
15 corporation; or

16 (II) THE CORPORATION AND ANOTHER ENTITY IF THE CORPORATION
17 OWNS, DIRECTLY OR INDIRECTLY, all of the outstanding shares or other
18 equity interests of ~~which are owned, directly or indirectly, by the~~
19 ~~corporation~~ THE OTHER ENTITY.

20 (2) ~~No~~ A conflicting interest transaction ~~shall be~~ IS NOT void or
21 voidable, ~~or~~ SHALL NOT be enjoined OR set aside, ~~or~~ AND DOES NOT give
22 rise to an award of damages or other sanctions in a proceeding by a
23 shareholder or by or in the right of the corporation, solely because ~~the~~ IT
24 IS A conflicting interest transaction ~~involves a director of the corporation~~
25 ~~or an entity in which a director of the corporation is a director or officer~~
26 ~~or has a financial interest or solely~~ OR because the director is present at
27 or participates in the meeting of the corporation's board of directors or of

1 the committee of the board of directors ~~which~~ THAT authorizes, approves,
2 or ratifies the conflicting interest transaction or ~~solely~~ because the
3 director's vote is counted for ~~such~~ THAT purpose if:

4 (a) The material facts as to the director's relationship or interest
5 and as to the conflicting interest transaction are disclosed or are known
6 to the board of directors or the committee, and the board of directors or
7 committee in good faith authorizes, approves, or ratifies the conflicting
8 interest transaction by the affirmative vote of a majority of the
9 disinterested directors, even though the disinterested directors are less
10 than a quorum; or

11 (b) The material facts as to the director's relationship or interest
12 and as to the conflicting interest transaction are disclosed or are known
13 to the shareholders entitled to vote ~~thereon~~, ON THE CONFLICTING
14 INTEREST TRANSACTION, and:

15 (I) The conflicting interest transaction is specifically authorized,
16 approved, or ratified ~~in good faith~~ by a vote of the DISINTERESTED
17 shareholders IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING,
18 APPROVING, OR RATIFYING THE CONFLICTING INTEREST TRANSACTION
19 EXCEED THE VOTES CAST IN OPPOSITION; or

20 (II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON
21 THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE
22 VOTING GROUPS, THE CONFLICTING INTEREST TRANSACTION IS
23 SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF EACH
24 VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING GROUP IN
25 FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE CONFLICTING
26 INTEREST TRANSACTION EXCEED THE VOTES CAST WITHIN THE VOTING
27 GROUP IN OPPOSITION; OR

1 (c) The conflicting interest transaction is fair as to the corporation.

2 (3) A DIRECTOR'S TAKING ADVANTAGE, DIRECTLY OR INDIRECTLY,
3 OF A CORPORATE OPPORTUNITY SHALL NOT BE ENJOINED OR SET ASIDE AND
4 DOES NOT GIVE RISE TO AN AWARD OF DAMAGES OR OTHER SANCTIONS IN
5 A PROCEEDING BY A SHAREHOLDER OR BY OR IN THE RIGHT OF THE
6 CORPORATION, BECAUSE THE DIRECTOR TOOK SUCH ADVANTAGE, IF:

7 (a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
8 INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR
9 ARE KNOWN TO THE BOARD OF DIRECTORS OR THE COMMITTEE, AND THE
10 BOARD OF DIRECTORS OR COMMITTEE AUTHORIZES, APPROVES, OR
11 RATIFIES THE TAKING OF THE CORPORATE OPPORTUNITY BY THE
12 AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS,
13 EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM;
14 OR

15 (b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
16 INTEREST AND AS TO THE CORPORATE OPPORTUNITY ARE DISCLOSED TO OR
17 ARE KNOWN TO THE SHAREHOLDERS ENTITLED TO VOTE ON THE
18 CORPORATE OPPORTUNITY, AND EITHER:

19 (I) THE TAKING OF THE CORPORATE OPPORTUNITY IS SPECIFICALLY
20 AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF THE DISINTERESTED
21 SHAREHOLDERS IN WHICH THE VOTES CAST IN FAVOR OF AUTHORIZING,
22 APPROVING, OR RATIFYING THE TAKING OF THE CORPORATE OPPORTUNITY
23 EXCEED THE VOTES CAST IN OPPOSITION; OR

24 (II) IF THE ARTICLES OF INCORPORATION PROVIDE FOR VOTING ON
25 THE MATTER BY THE DISINTERESTED SHAREHOLDERS IN TWO OR MORE
26 VOTING GROUPS, THE TAKING OF THE CORPORATE OPPORTUNITY IS
27 SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED BY A VOTE OF EACH

1 SUCH VOTING GROUP IN WHICH THE VOTES CAST WITHIN THE VOTING
2 GROUP IN FAVOR OF AUTHORIZING, APPROVING, OR RATIFYING THE TAKING
3 OF THE CORPORATE OPPORTUNITY EXCEED THE VOTES CAST WITHIN THE
4 VOTING GROUP IN OPPOSITION.

5 ~~(3)~~ (4) Common or interested directors may be counted in
6 determining the presence of a quorum at a meeting of the board of
7 directors or of a committee ~~which~~ THAT authorizes, approves, or ratifies
8 ~~the~~ A conflicting interest transaction OR THE TAKING OF A CORPORATE
9 OPPORTUNITY.

10 ~~(4) (a) Neither a board of directors nor a committee thereof shall~~
11 ~~authorize a loan, by the corporation to a director of the corporation or to~~
12 ~~an entity in which a director of the corporation is a director or officer or~~
13 ~~has a financial interest, or a guaranty, by the corporation of an obligation~~
14 ~~of a director of the corporation or of an obligation of an entity in which~~
15 ~~a director of the corporation is a director or officer or has a financial~~
16 ~~interest, pursuant to paragraph (a) of subsection (2) of this section, until~~
17 ~~at least ten days after written notice of the proposed authorization of the~~
18 ~~loan or guaranty has been given to the shareholders who would be entitled~~
19 ~~to vote thereon if the issue of the loan or guaranty were submitted to a~~
20 ~~vote of the shareholders.~~

21 ~~(b) (I) Notwithstanding any provision of paragraph (a) of this~~
22 ~~subsection (4) to the contrary, a board of directors or a subsidiary of the~~
23 ~~corporation shall not authorize the corporation or subsidiary of the~~
24 ~~corporation to extend or maintain credit, to arrange for the extension of~~
25 ~~credit, or to renew an extension of credit in the form of a personal loan to~~
26 ~~or for a director of the corporation pursuant to paragraph (a) of subsection~~
27 ~~(2) of this section. For the purposes of this paragraph (b), a corporation~~

1 ~~or entity is limited to an issuer as defined in section 2 of the federal~~
2 ~~"Sarbanes-Oxley Act of 2002", 15 U.S.C. sec. 7201.~~

3 ~~(H) The provisions of this paragraph (b) shall not apply to:~~

4 ~~(A) An extension of credit or guaranty maintained by a~~
5 ~~corporation or entity on August 6, 2003, so long as there is no material~~
6 ~~modification made to the extension of credit or guaranty or the extension~~
7 ~~of credit or guaranty is not renewed;~~

8 ~~(B) An extension of credit or guaranty for a home improvement~~
9 ~~loan or manufactured home loan under section 5 of the federal "Home~~
10 ~~Owner's Loan Act", 12 U.S.C. sec. 1464;~~

11 ~~(C) An extension of credit or guaranty for a consumer credit loan~~
12 ~~as defined in the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

13 ~~(D) An extension of credit under an open end credit plan pursuant~~
14 ~~to section 103 of the federal "Truth in Lending Act", 15 U.S.C. sec. 1602;~~

15 ~~(E) An extension of credit from a charge card pursuant to the~~
16 ~~federal "Truth in Lending Act", 15 U.S.C. sec. 1637 (c)(4)(e);~~

17 ~~(F) An extension of credit by a broker or dealer that buys, trades,~~
18 ~~or carries securities permitted under rules of the board of governors of the~~
19 ~~federal reserve system to an employee to buy, trade, or carry securities;~~
20 ~~except that such extension of credit shall not include an extension of~~
21 ~~credit that would be used to purchase stock of the corporation or entity~~
22 ~~employing such employee; or~~

23 ~~(G) An extension of credit that is subject to 12 CFR 215 or 12~~
24 ~~CFR 223, as amended, or any rule promulgated by the division of~~
25 ~~banking.~~

26 ~~(H) An extension of credit pursuant to subparagraph (H) of this~~
27 ~~paragraph (b) shall be issued in terms no more favorable than terms~~

1 ~~offered to a member of the public for an extension of credit generally~~
2 ~~made available to a member of the public, and made in the ordinary~~
3 ~~course of business.~~

4 ~~(IV) Subparagraphs (I) to (III) of this paragraph (b) are repealed~~
5 ~~as of the effective date of any federal law that would permit any activity~~
6 ~~described in this paragraph (b).~~

7 (5) UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF
8 INCORPORATION, A MAJORITY OF THE VOTES OF DISINTERESTED
9 SHAREHOLDERS ENTITLED TO BE CAST ON THE MATTER OF AUTHORIZING,
10 APPROVING, OR RATIFYING A CONFLICTING INTEREST TRANSACTION
11 PURSUANT TO SUBSECTION (2)(b) OF THIS SECTION OR A TAKING OF A
12 CORPORATE OPPORTUNITY PURSUANT TO SUBSECTION (3)(b) OF THIS
13 SECTION CONSTITUTES A QUORUM OF THAT VOTING GROUP FOR ACTION ON
14 THAT MATTER, BUT A QUORUM MUST NOT CONSIST OF FEWER THAN
15 ONE-THIRD OF THE VOTES OF DISINTERESTED SHAREHOLDERS ENTITLED TO
16 BE CAST ON THE MATTER BY THE VOTING GROUP.

17 **SECTION 37.** In Colorado Revised Statutes, 7-109-101, **amend**
18 the introductory portion, (2), and (7) as follows:

19 **7-109-101. Definitions.** As used in this ~~article~~ ARTICLE 109:

20 (2) "Director" means an individual who is or was a director of a
21 corporation or an individual who, while a director of a corporation, is or
22 was serving at the corporation's request as a director, an officer, an agent,
23 an associate, an employee, a fiduciary, a manager, a member, a partner,
24 a promoter, or a trustee of, or ~~to hold any similar position~~ IN ANY OTHER
25 CAPACITY with, another ~~domestic or foreign entity~~ PERSON or of an
26 employee benefit plan. A director is considered to be serving an employee
27 benefit plan at the corporation's request if the director's duties to the

1 corporation also impose duties on, or otherwise involve services by, the
2 director to the plan or to participants in or beneficiaries of the plan.
3 "Director" includes, unless the context requires otherwise, the estate or
4 personal representative of a deceased director.

5 (7) "Proceeding" means any threatened, pending, or completed
6 action, suit, or proceeding, whether civil, criminal, administrative,
7 ARBITRATIVE, or investigative and whether formal or informal.

8 **SECTION 38.** In Colorado Revised Statutes, 7-109-102, **amend**
9 (1), (3), and (4)(a) as follows:

10 **7-109-102. Authority to indemnify directors.** (1) Except as
11 provided in subsection (4) of this section, a corporation may indemnify
12 ~~a person~~ AN INDIVIDUAL made a party to a proceeding, because the ~~person~~
13 INDIVIDUAL is or was a director, against liability incurred in the
14 proceeding if:

15 (a) The ~~person's~~ INDIVIDUAL'S conduct was in good faith; and

16 (b) The ~~person~~ INDIVIDUAL reasonably believed:

17 (I) In the case of conduct in an official capacity with the
18 corporation, that ~~such~~ THE conduct was in the corporation's best interests;
19 and

20 (II) In all other cases, that ~~such~~ THE conduct was at least not
21 opposed to the corporation's best interests; and

22 (c) In the case of any criminal proceeding, the ~~person~~ INDIVIDUAL
23 had no reasonable cause to believe the ~~person's~~ INDIVIDUAL'S conduct was
24 unlawful.

25 (3) The termination of a proceeding by judgment, order,
26 settlement, conviction, or upon a plea of nolo contendere or its equivalent
27 ~~is~~ DOES not, of itself, ~~determinative~~ CREATE A PRESUMPTION that the

1 director did not meet the RELEVANT standard of conduct described in this
2 section.

3 (4) A corporation may not indemnify a director under this section:

4 (a) In connection with a proceeding by or in the right of the
5 corporation in which the director was adjudged liable to the corporation
6 EXCEPT FOR REASONABLE EXPENSES INCURRED IN CONNECTION WITH THE
7 PROCEEDING IF IT IS DETERMINED THAT THE DIRECTOR HAS MET THE
8 RELEVANT STANDARD OF CONDUCT UNDER SUBSECTION (1) OF THIS
9 SECTION; or

10 **SECTION 39.** In Colorado Revised Statutes, **amend** 7-109-103
11 as follows:

12 **7-109-103. Mandatory indemnification of directors.** Unless
13 limited by its articles of incorporation, a corporation shall indemnify a
14 ~~person~~ AN INDIVIDUAL who was wholly successful, on the merits or
15 otherwise, in the defense of any proceeding to which the ~~person~~
16 INDIVIDUAL was a party because the ~~person~~ INDIVIDUAL is or was a
17 director, against reasonable expenses incurred by the ~~person~~ INDIVIDUAL
18 in connection with the proceeding.

19 **SECTION 40.** In Colorado Revised Statutes, **amend** 7-109-104
20 as follows:

21 **7-109-104. Advance of expenses to directors.** (1) A corporation
22 may, BEFORE FINAL DISPOSITION OF A PROCEEDING, pay for or reimburse
23 the reasonable expenses incurred by a ~~director~~ AN INDIVIDUAL who is a
24 party to a proceeding ~~in advance of final disposition of the proceeding~~
25 BECAUSE THAT PERSON IS A DIRECTOR if:

26 (a) The director ~~furnishes~~ DELIVERS to the corporation a written
27 affirmation of the director's good faith belief that:

1 (I) The director has met the RELEVANT standard of conduct
2 described in section 7-109-102; OR

3 (II) THE PROCEEDING INVOLVES CONDUCT FOR WHICH LIABILITY
4 HAS BEEN ELIMINATED UNDER A PROVISION IN THE ARTICLES OF
5 INCORPORATION AS AUTHORIZED BY SECTION 7-102-102 (2)(d); AND

6 (b) The director ~~furnishes~~ DELIVERS to the corporation a written
7 undertaking, executed personally or on the director's behalf, to repay ~~the~~
8 ~~advance~~ ANY FUNDS ADVANCED if THE DIRECTOR IS NOT ENTITLED TO
9 MANDATORY INDEMNIFICATION UNDER SECTION 7-109-103 AND it is
10 ultimately determined UNDER SECTION 7-109-105 OR 7-109-106 that the
11 director ~~did~~ HAS not ~~meet~~ MET the RELEVANT standard of conduct
12 DESCRIBED IN SECTION 7-109-102. ~~and~~

13 ~~(c) A determination is made that the facts then known to those~~
14 ~~making the determination would not preclude indemnification under this~~
15 ~~article.~~

16 (2) The undertaking required by ~~paragraph (b) of subsection (1)~~
17 SUBSECTION (1)(b) of this section ~~shall be~~ IS an unlimited general
18 obligation of the director but need not be secured and may be accepted
19 without reference to financial ability to make repayment.

20 (3) ~~Determinations and~~ Authorizations of payments under this
21 section shall be made in the manner specified in section 7-109-106.

22 **SECTION 41.** In Colorado Revised Statutes, **amend** 7-109-105
23 as follows:

24 **7-109-105. Court-ordered indemnification - advance of**
25 **expenses.** (1) Unless otherwise provided in the articles of incorporation,
26 a director who is or was a party to a proceeding may apply for
27 indemnification OR AN ADVANCE OF EXPENSES to the court conducting the

1 proceeding or to another court of competent jurisdiction. ~~On~~ AFTER
2 receipt of an application ~~the court~~, AND after giving any notice the court
3 considers necessary, THE COURT may order indemnification OR AN
4 ADVANCE OF EXPENSES in the following manner:

5 (a) If it determines that the director is entitled to mandatory
6 indemnification under section 7-109-103, the court shall order
7 indemnification, in which case the court shall also order the corporation
8 to pay the director's reasonable expenses incurred to obtain court-ordered
9 indemnification.

10 (b) IF IT DETERMINES THAT THE DIRECTOR IS ENTITLED TO
11 INDEMNIFICATION OR AN ADVANCE OF EXPENSES UNDER SECTION
12 7-109-109 (1), THE COURT SHALL ORDER INDEMNIFICATION OR AN
13 ADVANCE OF EXPENSES, AS APPLICABLE, IN WHICH CASE THE COURT SHALL
14 ALSO ORDER THE CORPORATION TO PAY THE DIRECTOR'S REASONABLE
15 EXPENSES INCURRED TO OBTAIN COURT-ORDERED INDEMNIFICATION OR AN
16 ADVANCE OF EXPENSES.

17 ~~(b)~~ (c) If it determines that the director is fairly and reasonably
18 entitled to indemnification OR AN ADVANCE OF EXPENSES in view of all
19 the relevant circumstances, whether or not the director met the standard
20 of conduct set forth in section 7-109-102 (1), FAILED TO COMPLY WITH
21 SECTION 7-109-104, or was adjudged liable in the circumstances
22 described in section 7-109-102 (4), the court may order such
23 indemnification OR AN ADVANCE OF EXPENSES as the court deems proper;
24 except that the indemnification with respect to any proceeding in which
25 liability ~~shall have~~ HAS been adjudged in the circumstances described in
26 section 7-109-102 (4) is limited to reasonable expenses incurred in
27 connection with the proceeding and reasonable expenses incurred to

1 obtain court-ordered indemnification.

2 **SECTION 42.** In Colorado Revised Statutes, **amend** 7-109-106
3 as follows:

4 **7-109-106. Determination and authorization of**
5 **indemnification of directors.** (1) A corporation may not indemnify a
6 director under section 7-109-102 unless authorized in the specific case
7 after a determination has been made that indemnification of the director
8 is permissible in the circumstances because the director has met the
9 standard of conduct set forth in section 7-109-102. A corporation shall
10 not advance expenses to a director under section 7-109-104 unless
11 authorized in the specific case after the written affirmation and
12 undertaking required by section 7-109-104 (1)(a) and (1)(b) are received.
13 ~~and the determination required by section 7-109-104 (1)(c) has been~~
14 ~~made.~~

15 (2) The determinations required by subsection (1) of this section
16 ~~shall~~ MUST be made:

17 (a) ~~IF THERE ARE TWO OR MORE DISINTERESTED DIRECTORS, by the~~
18 ~~board of directors by a majority vote of those present at a meeting at~~
19 ~~which a quorum is present, and only those directors not parties to the~~
20 ~~proceeding shall be counted in satisfying the quorum; or ALL THE~~
21 ~~DISINTERESTED DIRECTORS, A MAJORITY OF WHOM CONSTITUTE A QUORUM~~
22 ~~FOR THIS PURPOSE, OR BY A MAJORITY VOTE OF A COMMITTEE OF THE~~
23 ~~BOARD OF DIRECTORS APPOINTED BY SUCH A VOTE, WHICH COMMITTEE~~
24 ~~CONSISTS OF TWO OR MORE DISINTERESTED DIRECTORS;~~

25 (b) ~~If a quorum cannot be obtained, by a majority vote of a~~
26 ~~committee of the board of directors designated by the board of directors,~~
27 ~~which committee shall consist of two or more directors not parties to the~~

1 ~~proceeding; except that directors who are parties to the proceeding may~~
2 ~~participate in the designation of directors for the committee. BY~~
3 INDEPENDENT LEGAL COUNSEL SELECTED IN THE MANNER SPECIFIED IN
4 SUBSECTION (2)(a) OF THIS SECTION OR, IF THERE ARE FEWER THAN TWO
5 DISINTERESTED DIRECTORS, BY INDEPENDENT LEGAL COUNSEL SELECTED
6 BY A MAJORITY VOTE OF THE FULL BOARD OF DIRECTORS; OR

7 (c) BY THE SHAREHOLDERS, BUT SHARES OWNED BY OR VOTED
8 UNDER THE CONTROL OF A DIRECTOR WHO AT THE TIME IS NOT A
9 DISINTERESTED DIRECTOR MAY NOT BE VOTED ON THE DETERMINATION.

10 (3) ~~If a quorum cannot be obtained as contemplated in paragraph~~
11 ~~(a) of subsection (2) of this section, and a committee cannot be~~
12 ~~established under paragraph (b) of subsection (2) of this section, or, even~~
13 ~~if a quorum is obtained or a committee is designated, if a majority of the~~
14 ~~directors constituting such quorum or such committee so directs, the~~
15 ~~determination required to be made by subsection (1) of this section shall~~
16 ~~be made:~~

17 (a) ~~By independent legal counsel selected by a vote of the board~~
18 ~~of directors or the committee in the manner specified in paragraph (a) or~~
19 ~~(b) of subsection (2) of this section or, if a quorum of the full board~~
20 ~~cannot be obtained and a committee cannot be established, by~~
21 ~~independent legal counsel selected by a majority vote of the full board of~~
22 ~~directors; or~~

23 (b) ~~By the shareholders.~~

24 (4) (3) Authorization of indemnification and AN advance of
25 expenses shall MUST be made in the same manner as the determination
26 that indemnification or AN advance of expenses is permissible; except
27 that, if the determination that indemnification or AN advance of expenses

1 is permissible is made by independent legal counsel, authorization of
2 indemnification and AN advance of expenses ~~shall~~ MUST be made by the
3 body that selected ~~such~~ THE counsel.

4 **SECTION 43.** In Colorado Revised Statutes, **amend** 7-109-107
5 as follows:

6 **7-109-107. Indemnification of officers, employees, fiduciaries,**
7 **and agents.** (1) ~~Unless otherwise provided in the articles of~~
8 ~~incorporation:~~

9 (a) An officer is entitled to mandatory indemnification OR AN
10 ADVANCE OF EXPENSES under section 7-109-103, and is entitled to apply
11 for court-ordered indemnification OR AN ADVANCE OF EXPENSES under
12 section 7-109-105, in each case to the same extent as a director.

13 (b) (2) A corporation may indemnify and advance expenses to an
14 officer, employee, fiduciary, or agent of the corporation to the same
15 extent as to a director. ~~and~~

16 (c) (3) A corporation may also indemnify and advance expenses
17 to an officer, employee, fiduciary, or agent who is not a director to a
18 ~~greater~~ SUCH FURTHER extent ~~if not inconsistent with public policy, and~~
19 ~~if~~ AS MAY BE provided for by its ARTICLES OF INCORPORATION, bylaws,
20 general or specific action of its board of directors or shareholders, or
21 contract. THIS SUBSECTION (3) APPLIES TO AN OFFICER WHO IS ALSO A
22 DIRECTOR IF THE BASIS ON WHICH THE OFFICER IS MADE A PARTY TO THE
23 PROCEEDING IS AN ACT OR OMISSION SOLELY AS AN OFFICER.

24 **SECTION 44.** In Colorado Revised Statutes, **amend** 7-109-108
25 as follows:

26 **7-109-108. Insurance.** A corporation may purchase and maintain
27 insurance on behalf of a person who is or was a director, officer,

1 employee, fiduciary, or agent of the corporation, or who, while a director,
2 officer, employee, fiduciary, or agent of the corporation, is or was serving
3 at the request of the corporation as a director, officer, ~~partner, trustee~~
4 AGENT, ASSOCIATE, employee, fiduciary, ~~or agent of another domestic or~~
5 ~~foreign entity or of~~ MANAGER, MEMBER, PARTNER, PROMOTER, OR
6 TRUSTEE OF, OR IN ANY OTHER CAPACITY WITH, ANOTHER PERSON OR an
7 employee benefit plan, against liability asserted against or incurred by the
8 person in that capacity or arising from the person's status as a director,
9 officer, employee, fiduciary, or agent, whether or not the corporation
10 would have power to indemnify the person against the same liability
11 under section 7-109-102, 7-109-103, or 7-109-107. Any such insurance
12 may be procured from any insurance company designated by the board of
13 directors, whether ~~such~~ THE insurance company is formed under the law
14 of this state or any other jurisdiction of the United States or elsewhere,
15 including any insurance company in which the corporation has an equity
16 or any other interest through stock ownership or otherwise.

17 **SECTION 45.** In Colorado Revised Statutes, **repeal and reenact,**
18 **with amendments,** 7-109-109 as follows:

19 **7-109-109. Variation by corporate action.** (1) A CORPORATION
20 MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION OR BYLAWS OR
21 IN A RESOLUTION ADOPTED OR A CONTRACT APPROVED BY ITS BOARD OF
22 DIRECTORS OR SHAREHOLDERS, OBLIGATE ITSELF IN ADVANCE OF THE ACT
23 OR OMISSION GIVING RISE TO A PROCEEDING TO PROVIDE INDEMNIFICATION
24 IN ACCORDANCE WITH SECTION 7-109-102 OR ADVANCE FUNDS TO PAY FOR
25 OR REIMBURSE EXPENSES IN ACCORDANCE WITH SECTION 7-109-104. SUCH
26 AN OBLIGATORY PROVISION:

27 (a) SATISFIES THE REQUIREMENTS FOR AUTHORIZATION, BUT NOT

1 DETERMINATION, REFERRED TO IN SECTION 7-109-106.

2 (b) THAT OBLIGATES THE CORPORATION TO PROVIDE
3 INDEMNIFICATION TO THE FULLEST EXTENT PERMITTED BY LAW OBLIGATES
4 THE CORPORATION TO ADVANCE FUNDS TO PAY FOR OR REIMBURSE
5 EXPENSES IN ACCORDANCE WITH SECTION 7-109-104 TO THE FULLEST
6 EXTENT PERMITTED BY LAW, UNLESS THE PROVISION SPECIFICALLY
7 PROVIDES OTHERWISE.

8 (2) A RIGHT OF INDEMNIFICATION OR TO ADVANCES OF EXPENSES
9 CREATED BY THIS ARTICLE 109 OR UNDER SUBSECTION (1) OF THIS SECTION
10 AND IN EFFECT AT THE TIME OF AN ACT OR OMISSION MUST NOT BE
11 ELIMINATED OR IMPAIRED WITH RESPECT TO THE ACT OR OMISSION BY AN
12 AMENDMENT OF THE ARTICLES OF INCORPORATION OR BYLAWS OR A
13 RESOLUTION OF THE BOARD OF DIRECTORS OR SHAREHOLDERS, ADOPTED
14 AFTER THE OCCURRENCE OF THE ACT OR OMISSION, UNLESS, IN THE CASE
15 OF A RIGHT CREATED UNDER SUBSECTION (1) OF THIS SECTION, THE
16 PROVISION CREATING THE RIGHT AND IN EFFECT AT THE TIME OF THE ACT
17 OR OMISSION EXPLICITLY AUTHORIZES THE ELIMINATION OR IMPAIRMENT
18 AFTER THE ACT OR OMISSION HAS OCCURRED.

19 (3) A PROVISION SPECIFIED IN SUBSECTION (1) OF THIS SECTION
20 DOES NOT OBLIGATE THE CORPORATION TO INDEMNIFY OR ADVANCE
21 EXPENSES TO A DIRECTOR OF A PREDECESSOR OF THE CORPORATION
22 PERTAINING TO CONDUCT WITH RESPECT TO THE PREDECESSOR, UNLESS
23 OTHERWISE SPECIFICALLY PROVIDED. A PROVISION FOR INDEMNIFICATION
24 OR AN ADVANCE OF EXPENSES IN THE ARTICLES OF INCORPORATION,
25 BYLAWS, OR A RESOLUTION OF THE BOARD OF DIRECTORS OR
26 SHAREHOLDERS OF A PREDECESSOR OF THE CORPORATION IN A MERGER OR
27 IN A CONTRACT TO WHICH THE PREDECESSOR IS A PARTY, EXISTING AT THE

1 TIME THE MERGER TAKES EFFECT, IS GOVERNED BY SECTION 7-90-204 (1).

2 (4) SUBJECT TO SUBSECTION (2) OF THIS SECTION, A CORPORATION
3 MAY, BY A PROVISION IN ITS ARTICLES OF INCORPORATION, LIMIT ANY OF
4 THE RIGHTS TO INDEMNIFICATION OR AN ADVANCE OF EXPENSES CREATED
5 BY OR PURSUANT TO THIS ARTICLE 109.

6 (5) SECTIONS 7-109-101 TO 7-109-108 DO NOT LIMIT A
7 CORPORATION'S POWER TO PAY OR REIMBURSE EXPENSES INCURRED BY A
8 DIRECTOR IN CONNECTION WITH AN APPEARANCE AS A WITNESS IN A
9 PROCEEDING AT A TIME WHEN THE DIRECTOR HAS NOT BEEN MADE A
10 NAMED DEFENDANT OR RESPONDENT IN THE PROCEEDING.

11 **SECTION 46.** In Colorado Revised Statutes, **add** 7-109-111 as
12 follows:

13 **7-109-111. Exclusivity.** A CORPORATION MAY PROVIDE
14 INDEMNIFICATION OR AN ADVANCE OF EXPENSES TO A DIRECTOR OR AN
15 OFFICER ONLY AS PERMITTED BY THIS ARTICLE 109.

16 **SECTION 47.** In Colorado Revised Statutes, **amend** 7-111-101
17 as follows:

18 **7-111-101. Merger of domestic corporation.** ~~(†) One or more~~
19 ~~domestic corporations may merge into another domestic~~ WITH ANY OTHER
20 ~~entity if the board of directors of each domestic corporation that is a party~~
21 ~~to the merger and each other entity that is a party to the merger adopts a~~
22 ~~plan of merger complying with section 7-90-203.3 and the shareholders~~
23 ~~of each such corporation, if required by section 7-111-103, approve the~~
24 ~~plan of merger~~ PURSUANT TO SECTION 7-90-203.

25 ~~(2) and (3) (Deleted by amendment, L. 2007, p. 245, § 43,~~
26 ~~effective May 29, 2007.)~~

27 **SECTION 48.** In Colorado Revised Statutes, **amend** 7-111-101.5

1 as follows:

2 **7-111-101.5. Conversion of domestic corporation.** A domestic
3 corporation may convert into any form of entity ~~permitted by~~ PURSUANT
4 TO section 7-90-201. ~~if the board of directors of the corporation adopts a~~
5 ~~plan of conversion that complies with section 7-90-201.3 and the~~
6 ~~shareholders of the corporation, if required by section 7-111-103, approve~~
7 ~~the plan of conversion.~~

8 **SECTION 49.** In Colorado Revised Statutes, **amend** 7-111-102
9 as follows:

10 **7-111-102. Owner's interest exchange involving domestic**
11 **corporation.** ~~(1) A domestic corporation may acquire all of the~~
12 ~~outstanding shares of one or more classes or series of one or more~~
13 ~~domestic corporations if the board of directors of each corporation adopts~~
14 ~~a plan of share exchange and the shareholders of each corporation~~
15 ~~approve the plan of share exchange~~ BE PARTY TO AN EXCHANGE OF
16 OWNERS' INTERESTS WITH ANY OTHER ENTITY PURSUANT TO SECTION
17 7-90-203.1.

18 ~~(2) The plan of share exchange required by subsection (1) of this~~
19 ~~section shall state:~~

20 ~~(a) The domestic entity name of each corporation whose shares~~
21 ~~will be acquired and the name of the acquiring corporation;~~

22 ~~(b) The terms and conditions of the share exchange;~~

23 ~~(c) The manner and basis of exchanging the shares to be acquired~~
24 ~~for shares, obligations, or other securities of the acquiring or any other~~
25 ~~corporation or for money or other property in whole or part.~~

26 ~~(3) The plan of share exchange may state other provisions relating~~
27 ~~to the share exchange.~~

1 ~~(4) This section does not limit the power of a corporation to~~
2 ~~acquire all or part of the shares of one or more classes or series of another~~
3 ~~corporation through a voluntary exchange of shares or otherwise.~~

4 **SECTION 50.** In Colorado Revised Statutes, **amend** 7-111-103
5 as follows:

6 **7-111-103. Action on plan - merger, conversion, or exchange.**

7 (1) After adopting a plan of conversion complying with section
8 7-90-201.3, a plan of merger complying with section 7-90-203.3, or a
9 plan of ~~share~~ exchange complying with section ~~7-111-102~~ 7-90-203.3, the
10 board of directors of the converting corporation, the board of directors of
11 each corporation party to the merger, ~~and~~ OR the board of directors of
12 each corporation ~~whose shares will be acquired in the share~~ PARTY TO THE
13 exchange, shall submit the plan of conversion, plan of merger, OR PLAN
14 OF EXCHANGE TO ITS SHAREHOLDERS FOR APPROVAL, except as provided
15 in subsection (7) of this section or in section 7-111-104. ~~or the plan of~~
16 ~~share exchange to its shareholders for approval.~~

17 (2) For a plan of conversion, a plan of merger, or a plan of ~~share~~
18 exchange to be approved by the shareholders:

19 (a) The board of directors ~~shall~~ MUST recommend the plan of
20 conversion, plan of merger, or plan of ~~share~~ exchange to the shareholders
21 unless the board of directors determines that, because of conflict of
22 interest or other special circumstances, it should make no
23 recommendation and communicates the basis for its determination to the
24 shareholders with the plan; and

25 (b) The shareholders entitled to vote on the plan of conversion,
26 plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST approve the plan as
27 provided in subsection (5) of this section.

1 (3) The board of directors may condition the effectiveness of the
2 plan of conversion, plan of merger, or plan of ~~share~~ exchange on any
3 basis.

4 (4) The corporation shall give notice, in accordance with section
5 7-107-105, to each shareholder entitled to vote on the plan of conversion,
6 plan of merger, or plan of ~~share~~ exchange, of the shareholders' meeting
7 at which the plan will be voted upon. The notice ~~shall~~ MUST state that the
8 purpose, or one of the purposes, of the meeting is to consider the plan of
9 conversion, plan of merger, or plan of ~~share~~ exchange, and the notice
10 ~~shall~~ MUST contain or be accompanied by a copy of the plan or a summary
11 ~~thereof~~ OF THE PLAN.

12 (5) Unless articles 101 to 117 of this ~~title~~ TITLE 7, including the
13 provisions of section 7-117-101 (8), the articles of incorporation, bylaws
14 adopted by the shareholders, or the board of directors acting pursuant to
15 subsection (3) of this section require a greater vote, the plan of
16 conversion, plan of merger, or plan of ~~share~~ exchange ~~shall~~ MUST be
17 approved by each voting group entitled to vote separately on the plan by
18 a majority of all the votes entitled to be cast on the plan by that voting
19 group.

20 (6) Separate voting by voting groups is required:

21 (a) On a plan of merger or a plan of conversion if the plan
22 contains a provision that, if contained in an amendment to the articles of
23 incorporation, would require action by one or more separate voting
24 groups on the amendment under section 7-110-104;

25 (b) On a plan of ~~share~~ exchange by each class or series of shares
26 included in the ~~share~~ exchange, with each class or series constituting a
27 separate voting group.

1 (7) Action by the shareholders of the surviving corporation on a
2 plan of merger OR BY THE SHAREHOLDERS OF THE ACQUIRING
3 CORPORATION IN A PLAN OF EXCHANGE is not required if:

4 (a) The articles of incorporation of the surviving OR ACQUIRING
5 corporation will not differ, except for amendments enumerated in section
6 7-110-102, from its articles of incorporation before the ~~merger~~
7 TRANSACTION;

8 (b) Each shareholder of the surviving OR ACQUIRING corporation
9 whose shares were outstanding immediately before the ~~merger~~
10 TRANSACTION will hold the same number of shares, with identical
11 designations, preferences, limitations, and relative rights, immediately
12 after the ~~merger~~ TRANSACTION;

13 (c) The number of voting shares outstanding immediately after the
14 ~~merger~~ TRANSACTION, plus the number of voting shares issuable as a
15 result of the ~~merger~~ TRANSACTION either by the conversion of securities
16 issued pursuant to the ~~merger~~ TRANSACTION or by the exercise of rights
17 and warrants issued pursuant to the ~~merger~~ TRANSACTION, will not exceed
18 by more than twenty percent the total number of voting shares of the
19 surviving OR ACQUIRING corporation outstanding immediately before the
20 ~~merger~~ TRANSACTION; and

21 (d) The number of participating shares outstanding immediately
22 after the ~~merger~~ TRANSACTION, plus the number of participating shares
23 issuable as a result of the ~~merger~~ TRANSACTION either by the conversion
24 of securities issued pursuant to the ~~merger~~ TRANSACTION or by the
25 exercise of rights and warrants issued pursuant to the ~~merger~~
26 TRANSACTION, will not exceed by more than twenty percent the total
27 number of participating shares outstanding immediately before the ~~merger~~

1 TRANSACTION.

2 (8) As used in subsection (7) of this section:

3 (a) "Participating shares" means shares that entitle their holders
4 to participate without limitation in distributions.

5 (b) "Voting shares" means shares that entitle their holders to vote
6 unconditionally in elections of directors.

7 ~~(9) After a plan of merger, a plan of conversion, or a plan of share~~
8 ~~exchange is authorized, and at any time before the merger, conversion, or~~
9 ~~share exchange becomes effective, the merger, conversion, or share~~
10 ~~exchange may be abandoned, subject to any contractual rights, without~~
11 ~~further shareholder action, in accordance with the procedure stated in the~~
12 ~~plan of merger, conversion, or share exchange or, if none is stated, in the~~
13 ~~manner determined by the board of directors. If a merger, conversion, or~~
14 ~~share exchange is abandoned after a statement of merger has been filed~~
15 ~~by the secretary of state pursuant to section 7-90-203.7, a statement of~~
16 ~~conversion has been filed by the secretary of state pursuant to section~~
17 ~~7-90-201.7, or a plan of share exchange has been filed by the secretary of~~
18 ~~state pursuant to section 7-111-105 stating a delayed effective date, the~~
19 ~~merger, conversion, or share exchange may be prevented from becoming~~
20 ~~effective by delivering to the secretary of state, for filing pursuant to part~~
21 ~~3 of article 90 of this title, before the date the merger or share exchange~~
22 ~~becomes effective pursuant to section 7-90-304, a statement of change~~
23 ~~that states that, by appropriate corporate action, the merger, conversion,~~
24 ~~or share exchange has been abandoned.~~

25 **SECTION 51.** In Colorado Revised Statutes, **repeal** 7-111-104.5
26 as follows:

27 **7-111-104.5. Statement of merger or conversion.** ~~(1) After a~~

1 plan of merger is approved, the surviving corporation shall deliver to the
2 secretary of state, for filing pursuant to part 3 of article 90 of this title, a
3 statement of merger pursuant to section 7-90-203.7. If the plan of merger
4 provides for amendments to the articles of incorporation of the surviving
5 corporation, articles of amendment effecting the amendments shall be
6 delivered to the secretary of state for filing pursuant to part 3 of article 90
7 of this title:

8 (2) ~~After a plan of conversion is approved, the converting~~
9 ~~corporation shall deliver to the secretary of state, for filing pursuant to~~
10 ~~part 3 of article 90 of this title, a statement of conversion pursuant to~~
11 ~~section 7-90-201.7.~~

12 **SECTION 52.** In Colorado Revised Statutes, **repeal** 7-111-105
13 as follows:

14 **7-111-105. Statement of share exchange.** (1) ~~After a plan of~~
15 ~~share exchange is approved by the shareholders, the acquiring corporation~~
16 ~~shall deliver to the secretary of state, for filing pursuant to part 3 of article~~
17 ~~90 of this title, a statement of share exchange stating:~~

18 (a) ~~The entity name of each corporation whose shares will be~~
19 ~~acquired, and the principal office address of its principal office;~~

20 (b) ~~The entity name of the acquiring corporation, and the principal~~
21 ~~office address of its principal office; and~~

22 (c) ~~A statement that the acquiring corporation acquires shares of~~
23 ~~the other corporations.~~

24 (d) and (e) ~~(Deleted by amendment, L. 2004, p. 1503, § 275,~~
25 ~~effective July 1, 2004.)~~

26 (2) and (3) ~~(Deleted by amendment, L. 2003, p. 2324, § 258,~~
27 ~~effective July 1, 2004.)~~

1 **SECTION 53.** In Colorado Revised Statutes, **repeal** 7-111-106
2 as follows:

3 **7-111-106. Effect of merger, conversion, or share exchange.**

4 ~~(1) The effect of a merger shall be as provided in section 7-90-204.~~

5 ~~(1.5) The effect of a conversion shall be as provided in section~~
6 ~~7-90-202.~~

7 ~~(2) When a share exchange takes effect, the shares of each~~
8 ~~acquired corporation are exchanged as provided in the plan, and the~~
9 ~~former holders of the shares are entitled only to the exchange rights~~
10 ~~provided in the articles of share exchange or to their rights under article~~
11 ~~113 of this title.~~

12 **SECTION 54.** In Colorado Revised Statutes, 7-111-106.5,
13 **amend** (1)(c) as follows:

14 **7-111-106.5. Merger with foreign entity.** (1) One or more
15 domestic corporations may merge with one or more foreign entities if:

16 (c) Each domestic corporation complies with the applicable
17 provisions of sections 7-111-101 to 7-111-104 and, if it is the surviving
18 corporation of the merger, with section ~~7-111-104.5~~ 7-90-203.7.

19 **SECTION 55.** In Colorado Revised Statutes, **repeal** 7-111-107
20 as follows:

21 **7-111-107. Share exchange with foreign corporation.** ~~(1) One~~
22 ~~or more domestic corporations may enter into a share exchange with one~~
23 ~~or more foreign corporations if:~~

24 ~~(a) (Deleted by amendment, L. 2007, p. 248, § 49, effective May~~
25 ~~29, 2007.)~~

26 ~~(b) In a share exchange, the corporation whose shares will be~~
27 ~~acquired is a domestic corporation, whether or not a share exchange is~~

1 ~~permitted by the law of the jurisdiction under the law of which the~~
2 ~~acquiring corporation is incorporated;~~

3 ~~(c) The foreign corporation complies with section 7-111-105 if it~~
4 ~~is the acquiring corporation of the share exchange; and~~

5 ~~(d) Each domestic corporation complies with the applicable~~
6 ~~provisions of sections 7-111-101 to 7-111-104 and, if it is the acquiring~~
7 ~~corporation of the share exchange, with section 7-111-105.~~

8 ~~(1.5) (Deleted by amendment, L. 2007, p. 248, § 49, effective May~~
9 ~~29, 2007.)~~

10 ~~(2) Upon the share exchange taking effect, the acquiring foreign~~
11 ~~corporation of a share exchange:~~

12 ~~(a) Shall either:~~

13 ~~(I) Appoint a registered agent if the foreign corporation has no~~
14 ~~registered agent and maintain a registered agent pursuant to part 7 of~~
15 ~~article 90 of this title, whether or not the foreign corporation is otherwise~~
16 ~~subject to that part, to accept service in any proceeding to enforce any~~
17 ~~obligation or rights of dissenting shareholders of each domestic~~
18 ~~corporation party to the share exchange; or~~

19 ~~(II) Be deemed to have authorized service of process on it in~~
20 ~~connection with any such proceeding by mailing in accordance with~~
21 ~~section 7-90-704 (2);~~

22 ~~(b) Shall promptly pay to the dissenting shareholders of each~~
23 ~~domestic corporation party to the share exchange the amount, if any, to~~
24 ~~which they are entitled under article 113 of this title; and~~

25 ~~(c) Shall comply with part 8 of article 90 of this title if it is to~~
26 ~~transact business or conduct activities in this state.~~

27 ~~(3) (Deleted by amendment, L. 2004, p. 1505, § 277, effective~~

1 July 1, 2004.)

2 (4) ~~Subsection (2) of this section does not prescribe the only~~
3 ~~means, or necessarily the required means, of serving an acquiring foreign~~
4 ~~corporation of a share exchange.~~

5 (5) ~~This section does not limit the power of a foreign corporation~~
6 ~~to acquire all or part of the shares of one or more classes or series of a~~
7 ~~domestic corporation through a voluntary exchange of shares or~~
8 ~~otherwise.~~

9 **SECTION 56.** In Colorado Revised Statutes, **repeal and reenact,**
10 **with amendments,** article 113 of title 7 as follows:

11 **ARTICLE 113**

12 **Appraisal Rights**

13 **PART 1**

14 **RIGHT TO APPRAISAL AND PAYMENT FOR SHARES**

15 **7-113-101. Definitions.** AS USED IN THIS ARTICLE 113, UNLESS
16 THE CONTEXT OTHERWISE REQUIRES:

17 (1) "AFFILIATE" MEANS A PERSON THAT DIRECTLY OR INDIRECTLY,
18 THROUGH ONE OR MORE INTERMEDIARIES, CONTROLS, IS CONTROLLED BY,
19 OR IS UNDER COMMON CONTROL WITH ANOTHER PERSON OR IS A SENIOR
20 EXECUTIVE OF THE OTHER PERSON. FOR PURPOSES OF SECTION 7-113-102
21 (2)(d), A PERSON IS DEEMED TO BE AN AFFILIATE OF ITS SENIOR
22 EXECUTIVES.

23 (2) "CORPORATION" MEANS THE ISSUER OF THE SHARES HELD BY
24 A SHAREHOLDER DEMANDING APPRAISAL AND, FOR MATTERS COVERED IN
25 SECTIONS 7-113-203 TO 7-113-302 AND 7-113-401, INCLUDES THE
26 SURVIVING ENTITY IN A MERGER.

27 (3) "FAIR VALUE" MEANS THE VALUE OF THE CORPORATION'S

1 SHARES DETERMINED:

2 (a) IMMEDIATELY BEFORE THE EFFECTUATION OF THE CORPORATE
3 ACTION TO WHICH THE SHAREHOLDER OBJECTS;

4 (b) USING CUSTOMARY AND CURRENT VALUATION CONCEPTS AND
5 TECHNIQUES GENERALLY EMPLOYED FOR SIMILAR BUSINESSES IN THE
6 CONTEXT OF THE TRANSACTION REQUIRING APPRAISAL; AND

7 (c) WITHOUT DISCOUNTING FOR LACK OF MARKETABILITY OR
8 MINORITY STATUS EXCEPT, IF APPROPRIATE, FOR AMENDMENTS TO THE
9 ARTICLES PURSUANT TO SECTION 7-113-102 (1)(e).

10 (4) "INTEREST" MEANS INTEREST, FROM THE EFFECTIVE DATE OF
11 THE CORPORATE ACTION UNTIL THE DATE OF PAYMENT, AT THE LEGAL
12 RATE AS SPECIFIED IN SECTION 5-12-101.

13 (5) "INTERESTED TRANSACTION" MEANS A CORPORATE ACTION
14 DESCRIBED IN SECTION 7-113-102 (1), OTHER THAN A MERGER PURSUANT
15 TO SECTION 7-111-104, INVOLVING AN INTERESTED PERSON IN WHICH ANY
16 OF THE SHARES OR ASSETS OF THE CORPORATION ARE BEING ACQUIRED OR
17 CONVERTED. AS USED ONLY IN THIS SUBSECTION (5):

18 (a) (I) "BENEFICIAL OWNER" MEANS ANY PERSON THAT, DIRECTLY
19 OR INDIRECTLY, THROUGH ANY CONTRACT, ARRANGEMENT, OR
20 UNDERSTANDING, OTHER THAN A REVOCABLE PROXY, HAS OR SHARES THE
21 POWER TO VOTE, OR TO DIRECT THE VOTING OF, SHARES; EXCEPT THAT A
22 MEMBER OF A NATIONAL SECURITIES EXCHANGE IS NOT DEEMED TO BE A
23 BENEFICIAL OWNER OF SECURITIES HELD DIRECTLY OR INDIRECTLY BY IT
24 ON BEHALF OF ANOTHER PERSON SOLELY BECAUSE THE MEMBER IS THE
25 RECORD HOLDER OF THE SECURITIES IF THE MEMBER IS PRECLUDED BY THE
26 RULES OF THE EXCHANGE FROM VOTING WITHOUT INSTRUCTION ON
27 CONTESTED MATTERS OR MATTERS THAT MAY AFFECT SUBSTANTIALLY

1 THE RIGHTS OR PRIVILEGES OF THE HOLDERS OF THE SECURITIES TO BE
2 VOTED.

3 (II) WHEN TWO OR MORE PERSONS AGREE TO ACT TOGETHER FOR
4 THE PURPOSE OF VOTING THEIR SHARES OF THE CORPORATION, EACH
5 MEMBER OF THE GROUP FORMED BY THE AGREEMENT IS DEEMED TO HAVE
6 ACQUIRED BENEFICIAL OWNERSHIP, AS OF THE DATE OF THE AGREEMENT,
7 OF ALL VOTING SHARES OF THE CORPORATION BENEFICIALLY OWNED BY
8 ANY MEMBER OF THE GROUP.

9 (b) "EXCLUDED SHARES" MEANS SHARES ACQUIRED PURSUANT TO
10 AN OFFER FOR ALL SHARES HAVING VOTING POWER IF THE OFFER WAS
11 MADE WITHIN ONE YEAR BEFORE THE CORPORATE ACTION FOR
12 CONSIDERATION OF THE SAME KIND AND OF A VALUE EQUAL TO OR LESS
13 THAN THAT PAID IN CONNECTION WITH THE CORPORATE ACTION.

14 (c) "INTERESTED PERSON" MEANS A PERSON, OR AN AFFILIATE OF
15 A PERSON, THAT, AT ANY TIME DURING THE ONE-YEAR PERIOD
16 IMMEDIATELY PRECEDING APPROVAL BY THE BOARD OF DIRECTORS OF THE
17 CORPORATE ACTION:

18 (I) WAS THE BENEFICIAL OWNER OF TWENTY PERCENT OR MORE OF
19 THE VOTING POWER OF THE CORPORATION, OTHER THAN AS OWNER OF
20 EXCLUDED SHARES;

21 (II) HAD THE POWER, CONTRACTUALLY OR OTHERWISE, OTHER
22 THAN AS OWNER OF EXCLUDED SHARES, TO CAUSE THE APPOINTMENT OR
23 ELECTION OF TWENTY-FIVE PERCENT OR MORE OF THE DIRECTORS TO THE
24 BOARD OF DIRECTORS OF THE CORPORATION; OR

25 (III) WAS A SENIOR EXECUTIVE OR DIRECTOR OF THE
26 CORPORATION OR A SENIOR EXECUTIVE OF ANY AFFILIATE OF THE
27 CORPORATION AND WILL RECEIVE, AS A RESULT OF THE CORPORATE

1 ACTION, A FINANCIAL BENEFIT NOT GENERALLY AVAILABLE TO OTHER
2 SHAREHOLDERS AS SUCH, OTHER THAN:

3 (A) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR
4 BENEFITS ESTABLISHED SEPARATELY, AND NOT AS PART OF, OR IN
5 CONTEMPLATION OF THE CORPORATE ACTION; OR

6 (B) EMPLOYMENT, CONSULTING, RETIREMENT, OR SIMILAR
7 BENEFITS ESTABLISHED IN CONTEMPLATION OF, OR AS PART OF, THE
8 CORPORATE ACTION THAT ARE NOT MORE FAVORABLE THAN THOSE
9 EXISTING BEFORE THE CORPORATE ACTION OR, IF MORE FAVORABLE, THAT
10 HAVE BEEN APPROVED ON BEHALF OF THE CORPORATION IN THE SAME
11 MANNER AS IS PROVIDED IN SECTION 7-108-501; OR

12 (C) IN THE CASE OF A DIRECTOR OF THE CORPORATION WHO WILL,
13 IN THE CORPORATE ACTION, BECOME A DIRECTOR OF THE ACQUIRING
14 ENTITY IN THE CORPORATE ACTION OR ONE OF ITS AFFILIATES, RIGHTS AND
15 BENEFITS AS A DIRECTOR THAT ARE PROVIDED ON THE SAME BASIS AS
16 THOSE AFFORDED BY THE ACQUIRING ENTITY GENERALLY TO OTHER
17 DIRECTORS OF THE ENTITY OR AFFILIATE.

18 (6) "PREFERRED SHARES" MEANS A CLASS OR SERIES OF SHARES
19 WHOSE HOLDERS HAVE PREFERENCE OVER ANY OTHER CLASS OR SERIES
20 WITH RESPECT TO DISTRIBUTIONS.

21 (7) "SENIOR EXECUTIVE" MEANS THE CHIEF EXECUTIVE OFFICER,
22 CHIEF OPERATING OFFICER, CHIEF FINANCIAL OFFICER, AND ANYONE IN
23 CHARGE OF A PRINCIPAL BUSINESS UNIT OR FUNCTION.

24 **7-113-102. Right to appraisal.** (1) A SHAREHOLDER IS ENTITLED
25 TO APPRAISAL RIGHTS AND TO OBTAIN PAYMENT OF THE FAIR VALUE OF
26 THAT SHAREHOLDER'S SHARES IN THE EVENT OF ANY OF THE FOLLOWING
27 CORPORATE ACTIONS:

1 (a) CONSUMMATION OF A MERGER TO WHICH THE CORPORATION IS
2 A PARTY IF:

3 (I) SHAREHOLDER APPROVAL IS REQUIRED FOR THE MERGER BY
4 SECTION 7-111-103 AND THE SHAREHOLDER IS ENTITLED TO VOTE ON THE
5 MERGER; EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO A
6 SHAREHOLDER OF THE CORPORATION WITH RESPECT TO SHARES OF ANY
7 CLASS OR SERIES THAT REMAIN OUTSTANDING AFTER CONSUMMATION OF
8 THE MERGER; OR

9 (II) THE CORPORATION IS A SUBSIDIARY THAT IS MERGED WITH ITS
10 PARENT CORPORATION UNDER SECTION 7-111-104;

11 (b) CONSUMMATION OF A SHARE EXCHANGE TO WHICH THE
12 CORPORATION IS A PARTY AS THE CORPORATION WHOSE SHARES WILL BE
13 ACQUIRED IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE EXCHANGE;
14 EXCEPT THAT APPRAISAL RIGHTS ARE NOT AVAILABLE TO ANY
15 SHAREHOLDER OF THE CORPORATION WITH RESPECT TO ANY CLASS OR
16 SERIES OF SHARES OF THE CORPORATION THAT IS NOT EXCHANGED;

17 (c) CONSUMMATION OF A DISPOSITION OF ASSETS PURSUANT TO
18 SECTION 7-112-102 (1) IF THE SHAREHOLDER IS ENTITLED TO VOTE ON THE
19 DISPOSITION;

20 (d) CONSUMMATION OF A DISPOSITION OF ASSETS OF AN ENTITY
21 CONTROLLED BY THE CORPORATION PURSUANT TO SECTION 7-112-102 (2)
22 IF THE SHAREHOLDERS OF THE CORPORATION WERE ENTITLED TO VOTE ON
23 THE CONSENT OF THE CORPORATION TO THE DISPOSITION;

24 (e) AN AMENDMENT TO THE ARTICLES OF INCORPORATION WITH
25 RESPECT TO A CLASS OR SERIES OF SHARES THAT REDUCES THE NUMBER OF
26 SHARES OF A CLASS OR SERIES OWNED BY THE SHAREHOLDER TO A
27 FRACTION OF A SHARE IF THE CORPORATION HAS THE OBLIGATION OR

1 RIGHT TO REPURCHASE THE FRACTIONAL SHARE SO CREATED;

2 (f) ANY OTHER AMENDMENT TO THE ARTICLES OF INCORPORATION,
3 MERGER, SHARE EXCHANGE, OR DISPOSITION OF ASSETS TO THE EXTENT
4 PROVIDED BY THE ARTICLES OF INCORPORATION, BYLAWS, OR RESOLUTION
5 OF THE BOARD OF DIRECTORS;

6 (g) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO
7 NONPROFIT STATUS PURSUANT TO SECTION 7-90-201; OR

8 (h) CONSUMMATION OF A CONVERSION OF THE CORPORATION TO
9 AN UNINCORPORATED ENTITY PURSUANT TO SECTION 7-90-206 (2) IF THE
10 SHAREHOLDER IS ENTITLED TO VOTE ON THE CONVERSION.

11 (2) NOTWITHSTANDING SUBSECTION (1) OF THIS SECTION, THE
12 AVAILABILITY OF APPRAISAL RIGHTS UNDER SUBSECTIONS (1)(a), (1)(b),
13 (1)(c), (1)(d), (1)(e), AND (1)(h) OF THIS SECTION ARE LIMITED IN
14 ACCORDANCE WITH THE FOLLOWING PROVISIONS:

15 (a) APPRAISAL RIGHTS ARE NOT AVAILABLE FOR THE HOLDERS OF
16 SHARES OF ANY CLASS OR SERIES OF SHARES THAT IS:

17 (I) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18
18 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. 77r
19 (b)(1)(A) AND 77r (b)(1)(B); OR

20 (II) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED
21 MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION
22 DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE
23 CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND
24 PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT
25 OF THE SHARES; OR

26 (III) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT
27 COMPANY REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE

1 COMMISSION UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940",
2 15 U.S.C. SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE
3 OPTION OF THE HOLDER AT NET ASSET VALUE.

4 (b) THE APPLICABILITY OF SUBSECTION (2)(a) OF THIS SECTION IS
5 DETERMINED AS OF:

6 (I) THE RECORD DATE FIXED TO DETERMINE THE SHAREHOLDERS
7 ENTITLED TO RECEIVE NOTICE OF, AND TO VOTE AT, THE MEETING OF
8 SHAREHOLDERS TO ACT UPON THE CORPORATE ACTION REQUIRING
9 APPRAISAL RIGHTS; OR

10 (II) THE DAY BEFORE THE EFFECTIVE DATE OF THE CORPORATE
11 ACTION IF THERE IS NO MEETING OF SHAREHOLDERS.

12 (c) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND
13 APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS
14 SECTION FOR THE HOLDERS OF ANY CLASS OR SERIES OF SHARES THAT IS
15 REQUIRED BY THE TERMS OF THE CORPORATE ACTION REQUIRING
16 APPRAISAL RIGHTS TO ACCEPT FOR THE SHARES ANYTHING OTHER THAN:

17 (I) CASH; OR

18 (II) SHARES OF ANY CLASS OR ANY SERIES OF SHARES OF ANY
19 CORPORATION, OR ANY OTHER PROPRIETARY INTEREST OF ANY OTHER
20 ENTITY, THAT SATISFY THE STANDARDS SET FORTH IN SUBSECTION (2)(a)
21 OF THIS SECTION AT THE TIME THE CORPORATE ACTION BECOMES
22 EFFECTIVE.

23 (d) SUBSECTION (2)(a) OF THIS SECTION DOES NOT APPLY AND
24 APPRAISAL RIGHTS ARE AVAILABLE PURSUANT TO SUBSECTION (1) OF THIS
25 SECTION FOR THE HOLDERS OF ANY CLASS OR SERIES OF SHARES WHERE
26 THE CORPORATE ACTION IS AN INTERESTED TRANSACTION.

27 (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,

1 THE ARTICLES OF INCORPORATION AS ORIGINALLY FILED OR AS AMENDED
2 MAY LIMIT OR ELIMINATE APPRAISAL RIGHTS FOR ANY CLASS OR SERIES OF
3 PREFERRED SHARES; EXCEPT THAT AN AMENDMENT TO THE ARTICLES OF
4 INCORPORATION DOES NOT APPLY TO ANY CORPORATE ACTION THAT
5 BECOMES EFFECTIVE WITHIN ONE YEAR AFTER THE EFFECTIVE DATE OF THE
6 AMENDMENT IF:

7 (a) THAT ACTION WOULD OTHERWISE AFFORD APPRAISAL RIGHTS;
8 AND

9 (b) THE AMENDMENT LIMITS OR ELIMINATES APPRAISAL RIGHTS
10 FOR SHARES THAT:

11 (I) ARE OUTSTANDING IMMEDIATELY BEFORE THE EFFECTIVE DATE
12 OF THE AMENDMENT; OR

13 (II) THE CORPORATION IS OR MAY BE REQUIRED TO ISSUE OR SELL
14 AFTER THE EFFECTIVE DATE OF THE AMENDMENT PURSUANT TO ANY
15 CONVERSION, EXCHANGE, OR OTHER RIGHT EXISTING IMMEDIATELY
16 BEFORE THE EFFECTIVE DATE OF THE AMENDMENT.

17 **7-113-103. Assertion of rights by nominees and beneficial**
18 **owners.** (1) A SHAREHOLDER MAY ASSERT APPRAISAL RIGHTS AS TO
19 FEWER THAN ALL THE SHARES REGISTERED IN THE SHAREHOLDER'S NAME
20 BUT OWNED BY A BENEFICIAL OWNER OTHER THAN THE SHAREHOLDER
21 ONLY IF THE SHAREHOLDER OBJECTS WITH RESPECT TO ALL SHARES OF THE
22 CLASS OR SERIES OWNED BY THE BENEFICIAL OWNER AND NOTIFIES THE
23 CORPORATION IN WRITING OF THE NAME AND ADDRESS AND FEDERAL
24 TAXPAYER IDENTIFICATION NUMBER, IF ANY, OF EACH BENEFICIAL OWNER
25 ON WHOSE BEHALF APPRAISAL RIGHTS ARE BEING ASSERTED. THE RIGHTS
26 OF A SHAREHOLDER WHO ASSERTS APPRAISAL RIGHTS UNDER THIS
27 SUBSECTION (1) FOR ONLY PART OF THE SHARES HELD OF RECORD IN THE

1 SHAREHOLDER'S NAME ARE DETERMINED AS IF THE SHARES AS TO WHICH
2 THE SHAREHOLDER OBJECTS AND THE SHAREHOLDER'S OTHER SHARES
3 WERE REGISTERED IN THE NAMES OF DIFFERENT SHAREHOLDERS.

4 (2) A BENEFICIAL OWNER MAY ASSERT APPRAISAL RIGHTS AS TO
5 SHARES OF ANY CLASS OR SERIES HELD ON BEHALF OF THE BENEFICIAL
6 OWNER ONLY IF THE BENEFICIAL OWNER:

7 (a) SUBMITS TO THE CORPORATION THE SHAREHOLDER'S WRITTEN
8 CONSENT TO THE ASSERTION OF THE RIGHTS NO LATER THAN THE DATE
9 SPECIFIED IN SECTION 7-113-203 (2)(b)(II); AND

10 (b) DOES SO WITH RESPECT TO ALL SHARES OF THE CLASS OR
11 SERIES THAT ARE OWNED BY THE BENEFICIAL OWNER.

12 (3) THE CORPORATION MAY REQUIRE THAT, WHEN A SHAREHOLDER
13 OBJECTS WITH RESPECT TO THE SHARES OF ANY CLASS OR SERIES HELD BY
14 ANY ONE OR MORE BENEFICIAL OWNERS, EACH SUCH BENEFICIAL OWNER
15 MUST CERTIFY TO THE CORPORATION THAT THE BENEFICIAL OWNER AND
16 THE SHAREHOLDER OR SHAREHOLDERS OF ALL SHARES OF THAT CLASS OR
17 SERIES OWNED BY THE BENEFICIAL OWNER HAVE ASSERTED, OR WILL
18 TIMELY ASSERT, THE BENEFICIAL OWNER'S APPRAISAL RIGHTS AS TO ALL
19 SHARES AS TO WHICH THERE IS NO LIMITATION ON THE ABILITY TO
20 EXERCISE APPRAISAL RIGHTS. ANY SUCH REQUIREMENT MUST BE STATED
21 IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-202.

22 PART 2

23 PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

24 **7-113-201. Notice of appraisal rights.** (1) WHERE ANY
25 CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS TO BE
26 SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, THE MEETING
27 NOTICE MUST STATE THAT THE CORPORATION HAS CONCLUDED THAT THE

1 SHAREHOLDERS ARE, ARE NOT, OR MAY BE ENTITLED TO ASSERT
2 APPRAISAL RIGHTS UNDER THIS ARTICLE 113. IF THE CORPORATION
3 CONCLUDES THAT APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, A COPY
4 OF THIS ARTICLE 113 MUST ACCOMPANY THE MEETING NOTICE SENT TO
5 THOSE SHAREHOLDERS ENTITLED TO EXERCISE APPRAISAL RIGHTS.

6 (2) IN A MERGER PURSUANT TO SECTION 7-111-104, THE PARENT
7 CORPORATION SHALL NOTIFY IN WRITING ALL SHAREHOLDERS OF THE
8 SUBSIDIARY THAT ARE ENTITLED TO ASSERT APPRAISAL RIGHTS THAT THE
9 CORPORATE ACTION BECAME EFFECTIVE. THE NOTICE SHALL BE SENT
10 WITHIN TEN DAYS AFTER THE CORPORATE ACTION BECAME EFFECTIVE AND
11 MUST INCLUDE THE MATERIALS DESCRIBED IN SECTION 7-113-203.

12 (3) WHERE ANY CORPORATE ACTION SPECIFIED IN SECTION
13 7-113-102 (1) IS TO BE APPROVED BY WRITTEN CONSENT OF THE
14 SHAREHOLDERS PURSUANT TO SECTION 7-107-104:

15 (a) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR
16 MAY BE AVAILABLE SHALL BE GIVEN TO EACH SHAREHOLDER FROM WHOM
17 A CONSENT IS SOLICITED AT THE TIME CONSENT OF THE SHAREHOLDER IS
18 FIRST SOLICITED AND, IF THE CORPORATION HAS CONCLUDED THAT
19 APPRAISAL RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY
20 A COPY OF THIS ARTICLE 113; AND

21 (b) WRITTEN NOTICE THAT APPRAISAL RIGHTS ARE, ARE NOT, OR
22 MAY BE AVAILABLE SHALL BE DELIVERED, TOGETHER WITH THE NOTICE TO
23 NONCONSENTING AND NONVOTING SHAREHOLDERS REQUIRED BY SECTION
24 7-107-104 (5.5); MAY INCLUDE THE MATERIALS DESCRIBED IN SECTION
25 7-113-203; AND, IF THE CORPORATION HAS CONCLUDED THAT APPRAISAL
26 RIGHTS ARE OR MAY BE AVAILABLE, MUST BE ACCOMPANIED BY A COPY OF
27 THIS ARTICLE 113.

1 (4) WHERE CORPORATE ACTION DESCRIBED IN SECTION 7-113-102
2 (1) IS PROPOSED OR A MERGER PURSUANT TO SECTION 7-111-104 IS
3 EFFECTED, THE NOTICE REQUIRED BY SUBSECTION (1) OR (3) OF THIS
4 SECTION IF THE CORPORATION CONCLUDES THAT APPRAISAL RIGHTS ARE
5 OR MAY BE AVAILABLE AND BY SUBSECTION (2) OF THIS SECTION MUST BE
6 ACCOMPANIED BY:

7 (a) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION
8 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES THAT MAY BE
9 SUBJECT TO APPRAISAL, WHICH STATEMENTS MUST BE AS OF A DATE
10 ENDING NOT MORE THAN SIXTEEN MONTHS BEFORE THE DATE OF THE
11 NOTICE AND MUST COMPLY WITH SECTION 7-116-105; EXCEPT THAT, IF THE
12 ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE, THE
13 CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL
14 INFORMATION; AND

15 (b) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS
16 OF THE CORPORATION, IF ANY.

17 (5) THE RIGHT TO RECEIVE THE INFORMATION DESCRIBED IN
18 SUBSECTION (4) OF THIS SECTION MAY BE WAIVED IN WRITING BY A
19 SHAREHOLDER BEFORE OR AFTER THE CORPORATE ACTION.

20 **7-113-202. Notice of intent to demand payment.** (1) IF A
21 PROPOSED CORPORATE ACTION SPECIFIED IN SECTION 7-113-102 (1) IS
22 SUBMITTED TO A VOTE AT A SHAREHOLDERS' MEETING, A SHAREHOLDER
23 THAT WISHES TO ASSERT APPRAISAL RIGHTS WITH RESPECT TO ANY CLASS
24 OR SERIES OF SHARES:

25 (a) MUST DELIVER TO THE CORPORATION, BEFORE THE VOTE IS
26 TAKEN, WRITTEN NOTICE OF THE SHAREHOLDER'S INTENT TO DEMAND
27 PAYMENT IF THE PROPOSED CORPORATE ACTION IS EFFECTUATED; AND

1 (b) MUST NOT VOTE, OR CAUSE OR PERMIT TO BE VOTED, ANY
2 SHARES OF THE CLASS OR SERIES IN FAVOR OF THE PROPOSED CORPORATE
3 ACTION.

4 (2) IF A PROPOSED CORPORATE ACTION SPECIFIED IN SECTION
5 7-113-102 (1) IS TO BE APPROVED BY LESS THAN UNANIMOUS WRITTEN
6 CONSENT, A SHAREHOLDER THAT WISHES TO ASSERT APPRAISAL RIGHTS
7 WITH RESPECT TO ANY CLASS OR SERIES OF SHARES MUST NOT EXECUTE A
8 CONSENT IN FAVOR OF THE PROPOSED CORPORATE ACTION WITH RESPECT
9 TO THAT CLASS OR SERIES OF SHARES.

10 (3) A SHAREHOLDER THAT FAILS TO SATISFY THE REQUIREMENTS
11 OF SUBSECTION (1) OR (2) OF THIS SECTION IS NOT ENTITLED TO DEMAND
12 PAYMENT UNDER THIS ARTICLE 113.

13 **7-113-203. Appraisal notice and form.** (1) IF A PROPOSED
14 CORPORATE ACTION REQUIRING APPRAISAL RIGHTS UNDER SECTION
15 7-113-102 (1) BECOMES EFFECTIVE, THE CORPORATION SHALL DELIVER A
16 WRITTEN APPRAISAL NOTICE AND FORM TO ALL SHAREHOLDERS THAT MAY
17 BE ENTITLED TO ASSERT APPRAISAL RIGHTS.

18 (2) THE APPRAISAL NOTICE REQUIRED BY SUBSECTION (1) OF THIS
19 SECTION SHALL BE SENT NO EARLIER THAN THE DATE THE CORPORATE
20 ACTION SPECIFIED IN SECTION 7-113-102 (1) BECAME EFFECTIVE, AND NO
21 LATER THAN TEN DAYS AFTER THAT DATE, AND MUST:

22 (a) INCLUDE A FORM THAT:

23 (I) SPECIFIES THE FIRST DATE OF ANY ANNOUNCEMENT TO
24 SHAREHOLDERS, MADE BEFORE THE DATE THE CORPORATE ACTION
25 BECAME EFFECTIVE, OF THE PRINCIPAL TERMS OF THE PROPOSED
26 CORPORATE ACTION;

27 (II) IF THE ANNOUNCEMENT WAS MADE, REQUIRES THE

1 SHAREHOLDER ASSERTING APPRAISAL RIGHTS TO CERTIFY WHETHER
2 BENEFICIAL OWNERSHIP OF THOSE SHARES FOR WHICH APPRAISAL RIGHTS
3 ARE ASSERTED WAS ACQUIRED BEFORE THAT DATE; AND

4 (III) REQUIRES THE SHAREHOLDER ASSERTING APPRAISAL RIGHTS
5 TO CERTIFY THAT THE SHAREHOLDER DID NOT VOTE FOR OR CONSENT TO
6 THE TRANSACTION;

7 (b) STATE:

8 (I) WHERE THE FORM MUST BE SENT, WHERE CERTIFICATES FOR
9 CERTIFICATED SHARES MUST BE DEPOSITED, AND THE DATE BY WHICH
10 THOSE CERTIFICATES MUST BE DEPOSITED, WHICH DATE MUST NOT BE
11 EARLIER THAN THE DATE FOR RECEIVING THE REQUIRED FORM UNDER
12 SUBSECTION (2)(b)(II) OF THIS SECTION;

13 (II) A DATE BY WHICH THE CORPORATION MUST RECEIVE THE
14 FORM, WHICH DATE MUST NOT BE FEWER THAN FORTY NOR MORE THAN
15 SIXTY DAYS AFTER THE DATE THE APPRAISAL NOTICE AND FORM ARE
16 REQUIRED TO BE SENT PURSUANT TO THE INTRODUCTORY PORTION TO
17 SUBSECTION (2) OF THIS SECTION, AND STATE THAT THE SHAREHOLDER
18 WAIVES THE RIGHT TO DEMAND APPRAISAL WITH RESPECT TO THE SHARES
19 UNLESS THE FORM IS RECEIVED BY THE CORPORATION BY THE SPECIFIED
20 DATE;

21 (III) THE CORPORATION'S ESTIMATE OF THE FAIR VALUE OF THE
22 SHARES;

23 (IV) THAT, IF REQUESTED IN WRITING, THE CORPORATION WILL
24 PROVIDE TO THE SHAREHOLDER SO REQUESTING, WITHIN TEN DAYS AFTER
25 THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF THIS SECTION, A
26 STATEMENT OF THE NUMBER OF SHAREHOLDERS THAT RETURN THE FORMS
27 BY THE SPECIFIED DATE AND THE TOTAL NUMBER OF SHARES OWNED BY

1 THEM; AND

2 (V) THE DATE BY WHICH THE NOTICE TO WITHDRAW UNDER
3 SECTION 7-113-204 MUST BE RECEIVED, WHICH DATE MUST BE WITHIN
4 TWENTY DAYS AFTER THE DATE SPECIFIED IN SUBSECTION (2)(b)(II) OF
5 THIS SECTION; AND

6 (c) BE ACCOMPANIED BY A COPY OF THIS ARTICLE 113.

7 **7-113-204. Perfection of rights - right to withdraw.** (1) A
8 SHAREHOLDER THAT RECEIVES NOTICE PURSUANT TO SECTION 7-113-203
9 AND THAT WISHES TO EXERCISE APPRAISAL RIGHTS MUST SIGN AND
10 RETURN THE FORM SENT BY THE CORPORATION AND, IN THE CASE OF
11 CERTIFICATED SHARES, DEPOSIT THE SHAREHOLDER'S CERTIFICATES IN
12 ACCORDANCE WITH THE TERMS OF THE NOTICE BY THE DATE REFERRED TO
13 IN THE NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(II). IN
14 ADDITION, IF APPLICABLE, THE SHAREHOLDER MUST CERTIFY ON THE FORM
15 WHETHER THE BENEFICIAL OWNER OF THE SHARES ACQUIRED BENEFICIAL
16 OWNERSHIP OF THE SHARES BEFORE THE DATE REQUIRED TO BE SET FORTH
17 IN THE NOTICE PURSUANT TO SECTION 7-113-203 (2)(a). IF A
18 SHAREHOLDER FAILS TO MAKE THIS CERTIFICATION, THE CORPORATION
19 MAY ELECT TO TREAT THE SHAREHOLDER'S SHARES AS AFTER-ACQUIRED
20 SHARES UNDER SECTION 7-113-206. ONCE A SHAREHOLDER DEPOSITS
21 THAT SHAREHOLDER'S CERTIFICATES OR, IN THE CASE OF UNCERTIFICATED
22 SHARES, RETURNS THE SIGNED FORMS, THAT SHAREHOLDER LOSES ALL
23 RIGHTS AS A SHAREHOLDER UNLESS THE SHAREHOLDER WITHDRAWS
24 PURSUANT TO SUBSECTION (2) OF THIS SECTION.

25 (2) A SHAREHOLDER WHO HAS COMPLIED WITH SUBSECTION (1) OF
26 THIS SECTION MAY NEVERTHELESS DECLINE TO EXERCISE APPRAISAL
27 RIGHTS AND WITHDRAW FROM THE APPRAISAL PROCESS BY SO NOTIFYING

1 THE CORPORATION IN WRITING BY THE DATE SET FORTH IN THE APPRAISAL
2 NOTICE GIVEN PURSUANT TO SECTION 7-113-203 (2)(b)(V). A
3 SHAREHOLDER THAT FAILS TO SO WITHDRAW FROM THE APPRAISAL
4 PROCESS MAY NOT THEREAFTER WITHDRAW WITHOUT THE CORPORATION'S
5 WRITTEN CONSENT.

6 (3) A SHAREHOLDER THAT DOES NOT SIGN AND RETURN THE FORM
7 AND, IN THE CASE OF CERTIFIED SHARES, DEPOSIT THAT SHAREHOLDER'S
8 SHARE CERTIFICATES WHERE REQUIRED, EACH BY THE DATE SET FORTH IN
9 THE NOTICE DESCRIBED IN SECTION 7-113-203 (2), IS NOT ENTITLED TO
10 PAYMENT UNDER THIS ARTICLE 113.

11 **7-113-205. Payment.** (1) EXCEPT AS PROVIDED IN SECTION
12 7-113-206, WITHIN THIRTY DAYS AFTER THE DATE SPECIFIED IN SECTION
13 7-113-203 (2)(b)(II), THE CORPORATION SHALL PAY IN CASH TO THOSE
14 SHAREHOLDERS WHO COMPLIED WITH SECTION 7-113-204 (1) THE AMOUNT
15 THE CORPORATION ESTIMATES TO BE THE FAIR VALUE OF THEIR SHARES,
16 PLUS INTEREST.

17 (2) THE PAYMENT TO EACH SHAREHOLDER PURSUANT TO
18 SUBSECTION (1) OF THIS SECTION MUST BE ACCOMPANIED BY:

19 (a) (I) THE ANNUAL FINANCIAL STATEMENTS SPECIFIED IN SECTION
20 7-116-105 OF THE CORPORATION THAT ISSUED THE SHARES TO BE
21 APPRAISED, WHICH STATEMENT MUST BE AS OF A DATE ENDING NOT MORE
22 THAN SIXTEEN MONTHS BEFORE THE DATE OF PAYMENT; EXCEPT THAT, IF
23 THE ANNUAL FINANCIAL STATEMENTS ARE NOT REASONABLY AVAILABLE,
24 THE CORPORATION SHALL PROVIDE REASONABLY EQUIVALENT FINANCIAL
25 INFORMATION; AND

26 (II) THE LATEST AVAILABLE QUARTERLY FINANCIAL STATEMENTS
27 OF THE CORPORATION, IF ANY;

1 (b) A STATEMENT OF THE CORPORATION'S ESTIMATE OF THE FAIR
2 VALUE OF THE SHARES, WHICH ESTIMATE MUST EQUAL OR EXCEED THE
3 CORPORATION'S ESTIMATE GIVEN PURSUANT TO SECTION 7-113-203
4 (2)(b)(III); AND

5 (c) A STATEMENT THAT SHAREHOLDERS DESCRIBED IN SUBSECTION
6 (1) OF THIS SECTION HAVE THE RIGHT TO DEMAND FURTHER PAYMENT
7 UNDER SECTION 7-113-207 AND THAT IF ANY SUCH SHAREHOLDER DOES
8 NOT DO SO WITHIN THE PERIOD SPECIFIED IN SECTION 7-113-207 (2), THE
9 SHAREHOLDER SHALL BE DEEMED TO HAVE ACCEPTED THE PAYMENT IN
10 FULL SATISFACTION OF THE CORPORATION'S OBLIGATIONS UNDER THIS
11 ARTICLE 113.

12 **7-113-206. After-acquired shares.** (1) THE CORPORATION MAY
13 ELECT TO WITHHOLD PAYMENT OTHERWISE REQUIRED BY SECTION
14 7-113-205 FROM ANY SHAREHOLDER THAT WAS REQUIRED TO CERTIFY,
15 BUT DID NOT CERTIFY, THAT BENEFICIAL OWNERSHIP OF ALL OF THE
16 SHAREHOLDER'S SHARES FOR WHICH APPRAISAL RIGHTS ARE ASSERTED
17 WAS ACQUIRED BEFORE THE DATE SET FORTH IN THE APPRAISAL NOTICES
18 SENT PURSUANT TO SECTION 7-113-203 (2)(a).

19 (2) IF THE CORPORATION ELECTED TO WITHHOLD PAYMENT UNDER
20 SUBSECTION (1) OF THIS SECTION, IT MUST, WITHIN THIRTY DAYS AFTER
21 THE DATE SPECIFIED IN SECTION 7-113-203 (2)(b)(II), NOTIFY ALL
22 SHAREHOLDERS THAT ARE DESCRIBED IN SUBSECTION (1) OF THIS SECTION:

23 (a) OF THE INFORMATION REQUIRED BY SECTION 7-113-205 (2)(a);

24 (b) OF THE CORPORATION'S ESTIMATE OF FAIR VALUE PURSUANT
25 TO SECTION 7-113-205 (2)(b);

26 (c) THAT THEY MAY ACCEPT THE CORPORATION'S ESTIMATE OF
27 FAIR VALUE, PLUS INTEREST, IN FULL SATISFACTION OF THEIR DEMANDS OR

1 DEMAND APPRAISAL UNDER SECTION 7-113-207;

2 (d) THAT THOSE SHAREHOLDERS THAT WISH TO ACCEPT THE OFFER
3 MUST NOTIFY THE CORPORATION OF THEIR ACCEPTANCE OF THE
4 CORPORATION'S OFFER WITHIN THIRTY DAYS AFTER RECEIVING THE OFFER;
5 AND

6 (e) THAT THOSE SHAREHOLDERS WHO DO NOT SATISFY THE
7 REQUIREMENTS FOR DEMANDING APPRAISAL UNDER SECTION 7-113-207
8 SHALL BE DEEMED TO HAVE ACCEPTED THE CORPORATION'S OFFER.

9 (3) WITHIN TEN DAYS AFTER RECEIVING THE SHAREHOLDER'S
10 ACCEPTANCE PURSUANT TO SUBSECTION (2)(d) OF THIS SECTION, THE
11 CORPORATION SHALL PAY IN CASH THE AMOUNT IT OFFERED UNDER
12 SECTION 7-113-206 (2)(b) TO EACH SHAREHOLDER THAT AGREED TO
13 ACCEPT THE CORPORATION'S OFFER IN FULL SATISFACTION OF THE
14 SHAREHOLDER'S DEMAND.

15 (4) WITHIN FORTY DAYS AFTER SENDING THE NOTICE DESCRIBED
16 IN SUBSECTION (2) OF THIS SECTION, THE CORPORATION SHALL PAY IN
17 CASH THE AMOUNT IT OFFERED TO PAY UNDER SUBSECTION (2)(b) OF THIS
18 SECTION TO EACH SHAREHOLDER DESCRIBED IN SUBSECTION (3) OF THIS
19 SECTION.

20 **7-113-207. Procedure if shareholder is dissatisfied with**
21 **payment or offer.** (1) A SHAREHOLDER THAT IS PAID PURSUANT TO
22 SECTION 7-113-205 AND IS DISSATISFIED WITH THE AMOUNT OF THE
23 PAYMENT MUST NOTIFY THE CORPORATION IN WRITING OF THAT
24 SHAREHOLDER'S ESTIMATE OF THE FAIR VALUE OF THE SHARES AND
25 DEMAND PAYMENT OF THAT ESTIMATE, PLUS INTEREST, LESS ANY
26 PAYMENT MADE UNDER SECTION 7-113-205. A SHAREHOLDER THAT IS
27 OFFERED PAYMENT UNDER SECTION 7-113-206 AND IS DISSATISFIED WITH

1 THAT OFFER MUST REJECT THE OFFER AND DEMAND PAYMENT OF THE
2 SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE OF THE SHARES,
3 PLUS INTEREST.

4 (2) A SHAREHOLDER THAT FAILS TO NOTIFY THE CORPORATION IN
5 WRITING OF THAT SHAREHOLDER'S DEMAND TO BE PAID THE
6 SHAREHOLDER'S STATED ESTIMATE OF THE FAIR VALUE PLUS INTEREST
7 UNDER SUBSECTION (1) OF THIS SECTION WITHIN THIRTY DAYS AFTER
8 RECEIVING THE CORPORATION'S PAYMENT OR OFFER OF PAYMENT UNDER
9 SECTION 7-113-205 OR 7-113-206, RESPECTIVELY, WAIVES THE RIGHT TO
10 DEMAND PAYMENT UNDER THIS SECTION AND IS ENTITLED ONLY TO THE
11 PAYMENT MADE OR OFFERED PURSUANT TO THOSE RESPECTIVE SECTIONS.

12 PART 3

13 JUDICIAL APPRAISAL OF SHARES

14 **7-113-301. Court action.** (1) IF A DEMAND FOR PAYMENT UNDER
15 SECTION 7-113-207 REMAINS UNRESOLVED, THE CORPORATION SHALL
16 COMMENCE A PROCEEDING WITHIN SIXTY DAYS AFTER RECEIVING THE
17 PAYMENT DEMAND AND PETITION THE COURT TO DETERMINE THE FAIR
18 VALUE OF THE SHARES AND ACCRUED INTEREST. IF THE CORPORATION
19 DOES NOT COMMENCE THE PROCEEDING WITHIN THE SIXTY-DAY PERIOD,
20 IT SHALL PAY IN CASH TO EACH SHAREHOLDER THE AMOUNT THE
21 SHAREHOLDER DEMANDED PURSUANT TO SECTION 7-113-207 PLUS
22 INTEREST.

23 (2) THE CORPORATION SHALL COMMENCE THE PROCEEDING
24 DESCRIBED IN SUBSECTION (1) OF THIS SECTION IN:

25 (a) THE DISTRICT COURT FOR THE COUNTY IN THIS STATE IN WHICH
26 THE STREET ADDRESS OF THE CORPORATION'S PRINCIPAL OFFICE IS
27 LOCATED;

1 (b) THE DISTRICT COURT FOR THE COUNTY IN WHICH THE STREET
2 ADDRESS OF ITS REGISTERED AGENT IS LOCATED IF THE CORPORATION HAS
3 NO PRINCIPAL OFFICE IN THIS STATE; OR

4 (c) THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER
5 IF THE CORPORATION HAS NO REGISTERED AGENT; EXCEPT THAT IF THE
6 CORPORATION IS A FOREIGN CORPORATION WITHOUT A REGISTERED
7 AGENT, THE CORPORATION SHALL COMMENCE THE PROCEEDING IN THE
8 COUNTY IN THIS STATE WHERE THE PRINCIPAL OFFICE OR REGISTERED
9 OFFICE OF THE DOMESTIC CORPORATION THAT MERGED WITH THE FOREIGN
10 CORPORATION WAS LOCATED AT THE TIME OF THE MERGER.

11 (3) (a) THE CORPORATION SHALL:

12 (I) MAKE ALL SHAREHOLDERS WHOSE DEMANDS REMAIN
13 UNRESOLVED, WHETHER OR NOT RESIDENTS OF THIS STATE, PARTIES TO
14 THE PROCEEDING AS IN AN ACTION AGAINST THEIR SHARES; AND

15 (II) SERVE ALL PARTIES WITH A COPY OF THE PETITION.

16 (b) SERVICE ON EACH SHAREHOLDER DEMANDING APPRAISAL
17 RIGHTS MUST BE BY REGISTERED OR CERTIFIED MAIL TO THE ADDRESS
18 STATED IN THE SHAREHOLDER'S PAYMENT DEMAND OR, IF NO SUCH
19 ADDRESS IS STATED IN THE PAYMENT DEMAND, TO THE ADDRESS SHOWN
20 ON THE CORPORATION'S CURRENT RECORD OF SHAREHOLDERS FOR THE
21 SHAREHOLDER HOLDING THE SHARES AS TO WHICH APPRAISAL RIGHTS ARE
22 DEMANDED, OR AS PROVIDED BY LAW.

23 (4) THE JURISDICTION OF THE COURT IN WHICH THE PROCEEDING
24 IS COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS PLENARY AND
25 EXCLUSIVE. THE COURT MAY APPOINT ONE OR MORE PERSONS AS
26 APPRAISERS TO RECEIVE EVIDENCE AND RECOMMEND A DECISION ON THE
27 QUESTION OF FAIR VALUE. THE APPRAISERS HAVE THE POWERS DESCRIBED

1 IN THE ORDER APPOINTING THEM OR IN ANY AMENDMENT TO THE ORDER.
2 THE SHAREHOLDERS DEMANDING APPRAISAL RIGHTS ARE ENTITLED TO THE
3 SAME DISCOVERY RIGHTS AS PARTIES IN OTHER CIVIL PROCEEDINGS. THERE
4 IS NO RIGHT TO A JURY TRIAL.

5 (5) EACH SHAREHOLDER MADE A PARTY TO THE PROCEEDING
6 COMMENCED UNDER SUBSECTION (2) OF THIS SECTION IS ENTITLED TO
7 JUDGMENT:

8 (a) FOR THE AMOUNT, IF ANY, BY WHICH THE COURT FINDS THE
9 FAIR VALUE OF THE SHAREHOLDER'S SHARES, PLUS INTEREST, EXCEEDS
10 THE AMOUNT PAID BY THE CORPORATION FOR THE SHARES; OR

11 (b) FOR THE FAIR VALUE, PLUS INTEREST, OF THE SHAREHOLDER'S
12 SHARES FOR WHICH THE CORPORATION ELECTED TO WITHHOLD PAYMENT
13 UNDER SECTION 7-113-206.

14 **7-113-302. Court costs and expenses.** (1) THE COURT IN AN
15 APPRAISAL PROCEEDING COMMENCED UNDER SECTION 7-113-301 SHALL
16 DETERMINE ALL COSTS OF THE PROCEEDING, INCLUDING THE REASONABLE
17 COMPENSATION AND EXPENSES OF APPRAISERS APPOINTED BY THE COURT.
18 THE COURT SHALL ASSESS THE COSTS AGAINST THE CORPORATION; EXCEPT
19 THAT THE COURT MAY ASSESS COSTS AGAINST ALL OR SOME OF THE
20 SHAREHOLDERS DEMANDING APPRAISAL, IN AMOUNTS THE COURT FINDS
21 EQUITABLE, TO THE EXTENT THE COURT FINDS THE SHAREHOLDERS ACTED
22 ARBITRARILY, VEXATIOUSLY, OR NOT IN GOOD FAITH WITH RESPECT TO
23 THE RIGHTS PROVIDED BY THIS ARTICLE 113.

24 (2) THE COURT IN AN APPRAISAL PROCEEDING MAY ALSO ASSESS
25 THE FEES AND EXPENSES OF THE RESPECTIVE PARTIES, IN AMOUNTS THE
26 COURT FINDS EQUITABLE:

27 (a) AGAINST THE CORPORATION AND IN FAVOR OF ANY OR ALL

1 SHAREHOLDERS DEMANDING APPRAISAL IF THE COURT FINDS THE
2 CORPORATION DID NOT SUBSTANTIALLY COMPLY WITH SECTION
3 7-113-201, 7-113-203, 7-113-205, OR 7-113-206; OR

4 (b) AGAINST EITHER THE CORPORATION OR ONE OR MORE
5 SHAREHOLDERS DEMANDING APPRAISAL, IN FAVOR OF ANY OTHER PARTY,
6 IF THE COURT FINDS THAT THE PARTY AGAINST WHOM THE FEES AND
7 EXPENSES ARE ASSESSED ACTED ARBITRARILY, VEXATIOUSLY, OR NOT IN
8 GOOD FAITH WITH RESPECT TO THE RIGHTS PROVIDED BY THIS ARTICLE
9 113.

10 (3) IF THE COURT IN AN APPRAISAL PROCEEDING FINDS THAT THE
11 EXPENSES INCURRED BY ANY SHAREHOLDER WERE OF SUBSTANTIAL
12 BENEFIT TO OTHER SHAREHOLDERS SIMILARLY SITUATED AND THAT THE
13 EXPENSES SHOULD NOT BE ASSESSED AGAINST THE CORPORATION, THE
14 COURT MAY DIRECT THAT THE EXPENSES BE PAID OUT OF THE AMOUNTS
15 AWARDED TO THE SHAREHOLDERS WHO WERE BENEFITED.

16 (4) TO THE EXTENT THE CORPORATION FAILS TO MAKE A REQUIRED
17 PAYMENT PURSUANT TO SECTION 7-113-205, 7-113-206, OR 7-113-207,
18 THE SHAREHOLDER MAY SUE DIRECTLY FOR THE AMOUNT OWED AND, TO
19 THE EXTENT SUCCESSFUL, IS ENTITLED TO RECOVER FROM THE
20 CORPORATION ALL EXPENSES OF THE SUIT, INCLUDING REASONABLE
21 ATTORNEY FEES.

22 PART 4

23 OTHER REMEDIES

24 **7-113-401. Other remedies limited.** (1) THE LEGALITY OF A
25 PROPOSED OR COMPLETED CORPORATE ACTION DESCRIBED IN SECTION
26 7-113-102(1) MAY NOT BE CONTESTED, NOR MAY THE CORPORATE ACTION
27 BE ENJOINED, SET ASIDE, OR RESCINDED, IN A LEGAL OR EQUITABLE

1 PROCEEDING BY A SHAREHOLDER AFTER THE SHAREHOLDERS HAVE
2 APPROVED THE CORPORATE ACTION.

3 (2) SUBSECTION (1) OF THIS SECTION DOES NOT APPLY TO A
4 CORPORATE ACTION THAT:

5 (a) WAS NOT AUTHORIZED AND APPROVED IN ACCORDANCE WITH
6 THE APPLICABLE PROVISIONS OF:

7 (I) ARTICLE 109, 110, 111, OR 112 OF THIS TITLE 7;

8 (II) THE ARTICLES OF INCORPORATION OR BYLAWS; OR

9 (III) THE RESOLUTION OF THE BOARD OF DIRECTORS AUTHORIZING
10 THE CORPORATE ACTION;

11 (b) WAS PROCURED AS A RESULT OF FRAUD, A MATERIAL
12 MISREPRESENTATION, OR AN OMISSION OF A MATERIAL FACT NECESSARY
13 TO MAKE STATEMENTS MADE, IN LIGHT OF THE CIRCUMSTANCES IN WHICH
14 THEY WERE MADE, NOT MISLEADING;

15 (c) IS AN INTERESTED TRANSACTION, UNLESS IT HAS BEEN
16 RECOMMENDED BY THE BOARD OF DIRECTORS IN THE SAME MANNER AS IS
17 PROVIDED IN SECTION 7-108-501 AND HAS BEEN APPROVED BY THE
18 SHAREHOLDERS, IN THE SAME MANNER AS IS PROVIDED IN SECTION
19 7-108-501, AS IF THE INTERESTED TRANSACTION WERE A DIRECTOR'S
20 CONFLICTING INTEREST TRANSACTION; OR

21 (d) WAS APPROVED BY LESS THAN UNANIMOUS CONSENT OF THE
22 VOTING SHAREHOLDERS PURSUANT TO SECTION 7-107-104 IF:

23 (I) THE CHALLENGE TO THE CORPORATE ACTION IS BROUGHT BY A
24 SHAREHOLDER THAT DID NOT CONSENT AND AS TO WHOM NOTICE OF THE
25 APPROVAL OF THE CORPORATE ACTION WAS NOT EFFECTIVE AT LEAST TEN
26 DAYS BEFORE THE CORPORATE ACTION WAS EFFECTED; AND

27 (II) THE PROCEEDING CHALLENGING THE CORPORATE ACTION IS

1 COMMENCED WITHIN TEN DAYS AFTER NOTICE OF THE APPROVAL OF THE
2 CORPORATE ACTION IS EFFECTIVE AS TO THE SHAREHOLDER BRINGING THE
3 PROCEEDING.

4 **SECTION 57.** In Colorado Revised Statutes, 7-114-301, **amend**
5 (2)(c), (2)(d), and (4)(a); and **add** (2)(e) and (5) as follows:

6 **7-114-301. Grounds for judicial dissolution.** (2) A corporation
7 may be dissolved in a proceeding by a shareholder if it is established that:

8 (c) The shareholders are deadlocked in voting power and have
9 failed, for a period that includes at least two consecutive annual meeting
10 dates, to elect successors to directors whose terms have expired or would
11 have expired upon the election of their successors; ~~or~~

12 (d) The corporate assets are being misapplied or wasted; OR

13 (e) THE CORPORATION HAS ABANDONED ITS BUSINESS AND HAS
14 FAILED WITHIN A REASONABLE TIME TO LIQUIDATE AND DISTRIBUTE ITS
15 ASSETS AND DISSOLVE.

16 (4) (a) If a corporation has been dissolved by voluntary action
17 taken under part 1 of this ~~article~~ ARTICLE 114:

18 (I) The corporation may bring a proceeding to wind up and
19 liquidate its business and affairs under judicial supervision in accordance
20 with section ~~7-114-105~~ 7-114-302; and

21 (II) The attorney general, a shareholder, or a creditor, as the case
22 may be, may bring a proceeding to wind up and liquidate the business and
23 affairs of the corporation under judicial supervision in accordance with
24 section ~~7-114-105~~ 7-114-302, upon establishing the grounds set forth for
25 ~~such~~ THAT person, respectively, in subsections (1) to (3) of this section.

26 (5) SUBSECTIONS (2)(a) TO (2)(e) OF THIS SECTION DO NOT APPLY
27 IN THE CASE OF A CORPORATION THAT, ON THE DATE OF THE FILING OF THE

1 PROCEEDING, HAS A CLASS OR SERIES OF SHARES THAT IS:

2 (a) A COVERED SECURITY UNDER SECTION 18 (b)(1)(A) OR 18
3 (b)(1)(B) OF THE FEDERAL "SECURITIES ACT OF 1933", 15 U.S.C. SEC. 77r
4 (b)(1)(A) AND 77r (b)(1)(B);

5 (b) NOT A COVERED SECURITY BUT IS TRADED IN AN ORGANIZED
6 MARKET AND HAS A MARKET VALUE OF AT LEAST TWENTY MILLION
7 DOLLARS, EXCLUSIVE OF THE VALUE OF THE SHARES HELD BY THE
8 CORPORATION'S SUBSIDIARIES, SENIOR EXECUTIVES, DIRECTORS, AND
9 PERSONS KNOWN TO THE CORPORATION OWNING MORE THAN TEN PERCENT
10 OF THE SHARES; OR

11 (c) ISSUED BY AN OPEN-END MANAGEMENT INVESTMENT COMPANY
12 REGISTERED WITH THE FEDERAL SECURITIES AND EXCHANGE COMMISSION
13 UNDER THE FEDERAL "INVESTMENT COMPANY ACT OF 1940", 15 U.S.C.
14 SEC. 80a-1 ET SEQ., AND THAT MAY BE REDEEMED AT THE OPTION OF THE
15 HOLDER AT NET ASSET VALUE.

16 **SECTION 58.** In Colorado Revised Statutes, 7-114-302, **add** (4)
17 as follows:

18 **7-114-302. Procedure for judicial dissolution.** (4) WITHIN TEN
19 DAYS AFTER THE COMMENCEMENT OF A PROCEEDING TO DISSOLVE A
20 CORPORATION UNDER SECTION 7-114-301 (2), THE CORPORATION SHALL
21 SEND TO ALL SHAREHOLDERS, OTHER THAN THE PETITIONER, A NOTICE
22 STATING THAT THE SHAREHOLDERS ARE ENTITLED TO AVOID THE
23 DISSOLUTION OF THE CORPORATION BY ELECTING TO PURCHASE THE
24 PETITIONER'S SHARES UNDER SECTION 7-114-305 AND ACCOMPANIED BY
25 A COPY OF SECTION 7-114-305.

26 **SECTION 59.** In Colorado Revised Statutes, 7-114-303, **amend**
27 (1) as follows:

1 **7-114-303. Receivership or custodianship.** (1) UNLESS AN
2 ELECTION TO PURCHASE HAS BEEN FILED UNDER SECTION 7-114-305, a
3 court in a judicial proceeding to dissolve a corporation may appoint one
4 or more receivers to wind up and liquidate, or one or more custodians to
5 manage, the business and affairs of the corporation. The court shall hold
6 a hearing, after giving notice to all parties to the proceeding and any
7 interested persons designated by the court, before appointing a receiver
8 or custodian. The court appointing a receiver or custodian has ~~exclusive~~
9 jurisdiction over the corporation and all of its property, wherever located.

10 **SECTION 60.** In Colorado Revised Statutes, **add** 7-114-305 as
11 follows:

12 **7-114-305. Election to purchase in lieu of dissolution.** (1) IN A
13 PROCEEDING UNDER SECTION 7-114-301 (2) TO DISSOLVE A CORPORATION,
14 UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF INCORPORATION OR
15 BYLAWS OF THE CORPORATION, THE CORPORATION MAY ELECT OR, IF IT
16 FAILS TO ELECT, ONE OR MORE SHAREHOLDERS MAY ELECT, TO PURCHASE
17 ALL SHARES OWNED BY THE PETITIONING SHAREHOLDER AT THE FAIR
18 VALUE OF THE SHARES. AN ELECTION PURSUANT TO THIS SECTION IS
19 IRREVOCABLE UNLESS THE COURT DETERMINES THAT IT IS EQUITABLE TO
20 SET ASIDE OR MODIFY THE ELECTION.

21 (2) (a) AN ELECTION TO PURCHASE PURSUANT TO THIS SECTION
22 MAY BE FILED WITH THE COURT AT ANY TIME WITHIN NINETY DAYS AFTER
23 THE FILING OF THE PETITION UNDER SECTION 7-114-301 (2) OR AT SUCH
24 LATER TIME AS THE COURT IN ITS DISCRETION MAY ALLOW. IF THE
25 ELECTION TO PURCHASE IS FILED BY ONE OR MORE SHAREHOLDERS, THE
26 CORPORATION SHALL, WITHIN TEN DAYS AFTER THE FILING, GIVE WRITTEN
27 NOTICE TO ALL SHAREHOLDERS OTHER THAN THE PETITIONER. THE NOTICE

1 MUST STATE THE NAME AND NUMBER OF SHARES OWNED BY THE
2 PETITIONER AND THE NAME AND NUMBER OF SHARES OWNED BY EACH
3 ELECTING SHAREHOLDER AND MUST ADVISE THE RECIPIENTS OF THEIR
4 RIGHT TO JOIN IN THE ELECTION TO PURCHASE SHARES IN ACCORDANCE
5 WITH THIS SECTION.

6 (b) SHAREHOLDERS THAT WISH TO PARTICIPATE MUST FILE NOTICE
7 OF THEIR INTENTION TO JOIN IN THE PURCHASE NO LATER THAN THIRTY
8 DAYS AFTER THE EFFECTIVE DATE OF THE NOTICE TO THEM. ALL
9 SHAREHOLDERS WHO HAVE FILED AN ELECTION OR NOTICE OF THEIR
10 INTENTION TO PARTICIPATE IN THE ELECTION TO PURCHASE BECOME
11 PARTIES TO THE PROCEEDING AND PARTICIPATE IN THE PURCHASE IN
12 PROPORTION TO THEIR OWNERSHIP OF SHARES AS OF THE DATE THE FIRST
13 ELECTION WAS FILED UNLESS THEY OTHERWISE AGREE OR THE COURT
14 OTHERWISE DIRECTS.

15 (c) AFTER AN ELECTION HAS BEEN FILED BY THE CORPORATION OR
16 ONE OR MORE SHAREHOLDERS, THE PROCEEDING UNDER SECTION
17 7-114-302 (2) MAY NOT BE DISCONTINUED OR SETTLED, NOR MAY THE
18 PETITIONING SHAREHOLDER SELL OR OTHERWISE DISPOSE OF THE
19 SHAREHOLDER'S SHARES, UNLESS THE COURT DETERMINES THAT IT WOULD
20 BE EQUITABLE TO THE CORPORATION AND THE SHAREHOLDERS, OTHER
21 THAN THE PETITIONER, TO PERMIT THE DISCONTINUANCE, SETTLEMENT,
22 SALE, OR OTHER DISPOSITION.

23 (3) IF, WITHIN SIXTY DAYS AFTER THE FILING OF THE FIRST
24 ELECTION, THE PARTIES REACH AGREEMENT AS TO THE FAIR VALUE AND
25 TERMS OF PURCHASE OF THE PETITIONER'S SHARES, THE COURT SHALL
26 ENTER AN ORDER DIRECTING THE PURCHASE OF THE PETITIONER'S SHARES
27 UPON THE TERMS AND CONDITIONS AGREED TO BY THE PARTIES.

1 (4) IF THE PARTIES ARE UNABLE TO REACH AN AGREEMENT AS
2 PROVIDED FOR IN SUBSECTION (3) OF THIS SECTION, THE COURT, UPON
3 APPLICATION OF ANY PARTY, SHALL STAY THE PROCEEDINGS HELD
4 PURSUANT TO SECTION 7-114-302 AND DETERMINE THE FAIR VALUE OF
5 THE PETITIONER'S SHARES AS OF THE DAY BEFORE THE DATE ON WHICH THE
6 PETITION UNDER SECTION 7-114-302 WAS FILED OR AS OF SUCH OTHER
7 DATE AS THE COURT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

8 (5) (a) UPON DETERMINING THE FAIR VALUE OF THE SHARES, THE
9 COURT SHALL ENTER AN ORDER DIRECTING THE PURCHASE UPON SUCH
10 TERMS AND CONDITIONS AS THE COURT DEEMS APPROPRIATE, WHICH MAY
11 INCLUDE PAYMENT OF THE PURCHASE PRICE IN INSTALLMENTS WHERE
12 NECESSARY IN THE INTERESTS OF EQUITY, PROVISION FOR SECURITY TO
13 ASSURE PAYMENT OF THE PURCHASE PRICE AND ANY ADDITIONAL
14 EXPENSES AS MAY HAVE BEEN AWARDED, AND, IF THE SHARES ARE TO BE
15 PURCHASED BY SHAREHOLDERS, THE ALLOCATION OF SHARES AMONG THE
16 SHAREHOLDERS. IN ALLOCATING THE PETITIONER'S SHARES AMONG
17 HOLDERS OF DIFFERENT CLASSES OF SHARES, THE COURT SHALL ATTEMPT
18 TO PRESERVE THE EXISTING DISTRIBUTION OF VOTING RIGHTS AMONG
19 HOLDERS OF DIFFERENT CLASSES INsofar AS PRACTICABLE AND MAY
20 DIRECT THAT HOLDERS OF A SPECIFIC CLASS OR CLASSES NOT PARTICIPATE
21 IN THE PURCHASE.

22 (b) INTEREST MAY BE ALLOWED AT THE RATE AND FROM THE DATE
23 DETERMINED BY THE COURT TO BE EQUITABLE, BUT IF THE COURT FINDS
24 THAT THE REFUSAL OF THE PETITIONING SHAREHOLDER TO ACCEPT AN
25 OFFER OF PAYMENT WAS ARBITRARY OR OTHERWISE NOT IN GOOD FAITH,
26 NO INTEREST SHALL BE ALLOWED.

27 (c) IF THE COURT FINDS THAT THE PETITIONING SHAREHOLDER HAD

1 PROBABLE GROUNDS FOR RELIEF UNDER SECTION 7-114-301 (2)(b) OR
2 (2)(d), IT MAY AWARD EXPENSES TO THE PETITIONING SHAREHOLDER.

3 (6) UPON ENTRY OF AN ORDER UNDER SUBSECTION (3) OR (5) OF
4 THIS SECTION, THE COURT SHALL DISMISS THE PETITION TO DISSOLVE THE
5 CORPORATION UNDER SECTION 7-114-302 AND THE PETITIONING
6 SHAREHOLDER NO LONGER HAS ANY RIGHTS OR STATUS AS A
7 SHAREHOLDER OF THE CORPORATION OTHER THAN THE RIGHT TO RECEIVE
8 THE AMOUNTS AWARDED BY THE ORDER OF THE COURT, WHICH IS
9 ENFORCEABLE IN THE SAME MANNER AS ANY OTHER JUDGMENT.

10 (7) THE PURCHASE ORDERED PURSUANT TO SUBSECTION (5) OF
11 THIS SECTION MUST BE MADE WITHIN TEN DAYS AFTER THE DATE THE
12 ORDER BECOMES FINAL UNLESS, BEFORE THAT TIME, THE CORPORATION
13 FILES WITH THE COURT A NOTICE OF ITS INTENTION TO ADOPT ARTICLES OF
14 DISSOLUTION PURSUANT TO SECTIONS 7-114-102 AND 7-114-103, WHICH
15 ARTICLES MUST THEN BE ADOPTED AND FILED WITHIN FIFTY DAYS AFTER
16 THE FILING OF THE NOTICE. UPON FILING OF THE ARTICLES OF
17 DISSOLUTION, THE CORPORATION IS DISSOLVED IN ACCORDANCE WITH
18 SECTIONS 7-90-910 TO 7-90-914 AND THE ORDER ENTERED PURSUANT TO
19 SUBSECTION (5) OF THIS SECTION IS NO LONGER OF ANY FORCE OR EFFECT;
20 EXCEPT THAT THE COURT MAY AWARD THE PETITIONING SHAREHOLDER
21 EXPENSES IN ACCORDANCE WITH SUBSECTION (5)(c) OF THIS SECTION AND
22 THE PETITIONER MAY CONTINUE TO PURSUE ANY CLAIMS PREVIOUSLY
23 ASSERTED ON BEHALF OF THE CORPORATION.

24 (8) ANY PAYMENT BY THE CORPORATION PURSUANT TO AN ORDER
25 UNDER SUBSECTION (3) OR (5) OF THIS SECTION, OTHER THAN AN AWARD
26 OF EXPENSES PURSUANT TO SUBSECTION (5) OF THIS SECTION, IS SUBJECT
27 TO SECTION 7-106-401.

1 **SECTION 61**. In Colorado Revised Statutes, 7-116-102, **amend**
2 (4)(b) as follows:

3 **7-116-102. Inspection of corporate records by shareholder.**

4 (4) For purposes of this section:

5 (b) "Shareholder" includes a beneficial owner. ~~whose shares are~~
6 ~~held in a voting trust and any other beneficial owner who establishes~~
7 ~~beneficial ownership.~~

8 **SECTION 62**. In Colorado Revised Statutes, 7-40-104, **amend**
9 (2)(b) as follows:

10 **7-40-104. Additional powers - indemnification - liability.**

11 (2) (b) Any such corporation shall have the same powers, rights, and
12 obligations and shall be subject to the same limitations as those that apply
13 to domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7.
14 Corporation directors, officers, employees, and agents shall have the same
15 rights as directors, officers, employees, and agents, respectively, of
16 domestic corporations, as set forth in article 109 of this ~~title~~ TITLE 7.
17 Corporation directors and officers shall have the benefit of the same
18 limitations on personal liability for any injury to person or property
19 arising out of a tort, as set forth in section ~~7-108-402 (2)~~ 7-108-403, for
20 directors and officers, respectively, of domestic corporations. Any
21 reference in said sections to shareholders shall be construed to refer to
22 voting members or voting stockholders, if any, for the purpose of this
23 section.

24 **SECTION 63**. In Colorado Revised Statutes, **amend** 7-55-107.5
25 as follows:

26 **7-55-107.5. Indemnification and personal liability of directors,**
27 **officers, employees, and agents.** The association shall have the same

1 powers, rights, and obligations and shall be subject to the same
2 limitations as apply to domestic corporations as set forth in article 109 of
3 this ~~title~~ TITLE 7. Association directors, officers, employees, and agents
4 shall have the same rights as directors, officers, employees, and agents,
5 respectively, of domestic corporations as set forth in article 109 of this
6 ~~title~~ TITLE 7. Association directors and officers shall have the benefit of
7 the same limitations on personal liability for any injury to person or
8 property arising out of a tort as set forth in section ~~7-108-402 (2)~~
9 7-108-403 for directors and officers, respectively, of domestic
10 corporations. Any reference in said sections to shareholders shall be
11 construed to refer to voting members or voting stockholders, if any, for
12 the purpose of this section.

13 **SECTION 64.** In Colorado Revised Statutes, 7-56-603, **amend**
14 (1) introductory portion, (1)(c), and (1)(d) as follows:

15 **7-56-603. Procedure for consolidation, share or equity capital**
16 **exchange, conversion, and merger.** (1) A plan for consolidation or
17 share or equity capital exchange ~~shall~~ MUST state the following:

18 (c) A statement that the consolidating entities are consolidated
19 with the surviving entity, or that the acquiring entity is acquiring shares
20 or equity capital of the other entities, and the section of this article
21 pursuant to which the consolidation or ~~share~~ exchange is effected;

22 (d) Any amendments to the articles of the surviving party to be
23 effected by the consolidation or ~~share or~~ equity capital exchange; and

24 **SECTION 65.** In Colorado Revised Statutes, 7-56-605, **amend**
25 (2) introductory portion as follows:

26 **7-56-605. Statement of consolidation or share or equity capital**
27 **exchange.** (2) After a plan of consolidation or share or equity capital

1 exchange is approved by all necessary action of all parties, the acquiring
2 entity shall deliver to the secretary of state, for filing pursuant to part 3 of
3 article 90 of this title, a statement of consolidation or a statement of ~~share~~
4 exchange stating:

5 **SECTION 66.** In Colorado Revised Statutes, 7-101-506, **amend**
6 (3) as follows:

7 **7-101-506. Duties of directors.** (3) The articles of incorporation
8 of a public benefit corporation may include a provision that a
9 disinterested director's failure to satisfy this section does not, for the
10 purposes of section 7-108-401 or ~~7-108-402~~ 7-108-403 or article 109 of
11 this title 7, constitute an act or omission not in good faith or a breach of
12 the duty of loyalty.

13 **SECTION 67.** In Colorado Revised Statutes, 7-117-101, **amend**
14 (8) as follows:

15 **7-117-101. Application to existing corporations.** (8) Unless the
16 articles of incorporation of an existing corporation contain a provision
17 establishing the vote of shareholders required to approve a plan of merger
18 or a plan of ~~share~~ exchange, as contemplated in section 7-111-103, ~~such~~
19 THE plan ~~shall~~ MUST be approved by each voting group entitled to vote
20 separately on the plan by two-thirds of all the votes entitled to be cast on
21 the plan by that voting group. In the case of a corporation incorporated
22 before July 1, 1978, each outstanding share of the corporation, other than
23 a redeemable share that is not entitled to vote by reason of section
24 7-107-202 (4), shall be entitled to vote on the plan of merger or ~~share~~
25 exchange whether or not such share has voting rights under the provisions
26 of the articles of incorporation, unless the articles of incorporation have
27 been amended after June 30, 1978, by the same vote of shareholders

1 ~~which~~ THAT would have been necessary at the time of the amendment to
2 approve the plan, so as to restrict or eliminate the right of ~~such~~ THE share
3 to vote on ~~such~~ THE plan.

4 **SECTION 68.** In Colorado Revised Statutes, 11-41-134, **amend**
5 (1) as follows:

6 **11-41-134. Indemnification and personal liability of directors,**
7 **officers, employees, and agents - legislative declaration.** (1) The
8 savings and loan association ~~shall have~~ HAS the same powers, rights, and
9 obligations and ~~shall be~~ IS subject to the same limitations as apply to
10 corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~ Savings
11 and loan association directors, officers, employees, and agents ~~shall have~~
12 the same rights as directors, officers, employees, and agents, respectively,
13 of corporations for profit as set forth in article 109 of title 7. ~~C.R.S.~~
14 Savings and loan association directors and officers ~~shall have~~ the benefit
15 of the same limitations on personal liability for any injury to person or
16 property arising out of a tort as set forth in section ~~7-108-402 (2), C.R.S.~~
17 7-108-403, for directors and officers, respectively, of corporations for
18 profit. Any reference in said sections to shareholders shall be construed
19 to refer to stockholders for the purposes of this section.

20 **SECTION 69.** In Colorado Revised Statutes, **amend** 11-103-602
21 as follows:

22 **11-103-602. Indemnification and personal liability of**
23 **directors, officers, employees, and agents.** ~~The~~ A state bank ~~shall have~~
24 HAS the same powers, rights, and obligations and ~~shall be~~ IS subject to the
25 same limitations as apply to corporations for profit as set forth in article
26 109 of title 7. ~~C.R.S.~~ State bank directors, officers, employees, and agents
27 ~~shall have~~ the same rights as directors, officers, employees, and agents,

1 respectively, of corporations for profit as set forth in article 109 of title
2 7. ~~C.R.S.~~ State bank directors and officers ~~shall~~ have the benefit of the
3 same limitations on personal liability for any injury to person or property
4 arising out of a tort as set forth in section ~~7-108-402 (2), C.R.S.~~
5 7-108-403, for directors and officers, respectively, of corporations for
6 profit. Any reference in said sections to shareholders shall be construed
7 to refer to stockholders for the purposes of this section.

8 **SECTION 70. Repeal of relocated provisions in this act.** In
9 Colorado Revised Statutes, **repeal** 7-108-402 (2).

10 **SECTION 71. Appropriation.** For the 2019-20 state fiscal year,
11 \$59,360 is appropriated to the department of state. This appropriation is
12 from the department of state cash fund created in section 24-21-104
13 (3)(b), C.R.S. To implement this act, the department may use this
14 appropriation for personal services related to information technology
15 services.

16 **SECTION 72. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect July 1, 2020; except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within the ninety-day period after final adjournment of the general
21 assembly, then the act, item, section, or part will not take effect unless
22 approved by the people at the general election to be held in November
23 2020 and, in such case, will take effect on the date of the official
24 declaration of the vote thereon by the governor.

25 (2) This act applies to conduct occurring on or after the applicable
26 effective date of this act.